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COPY

IN THE HIGH OF SOUTH AFRICA
(NORTHWEST DIVISION, MAHIKENG)

CASE NO: UM192/2022

In the matter between:

SAKELIGA NPC	1ST APPLICANT
CENTRE FOR GOOD GOVERNANCE AND SOCIAL JUSTICE NPC	2ND APPLICANT
BAREND LOURENS SNYMAN	3RD APPICANT

And

DITSOBOTLA LOCAL MUNICIPALITY	1ST RESPONDENT
MUNICIPAL MANAGER/ACTING MUNICIPAL MANAGER OF DITSOBOTLA LOCAL MUNICIPALITY	2ND RESPONDENT
THE PREMIER OF THE NORTH WEST PROVINCE	3RD RESPONDENT
PROVIBCIAL EXECUTIVE OF THE NORTH WEST PROVINCE: MEMBER OF THE EXECUTIVE COUNCIL	4TH RESPONDENT
NORTH WEST PROVINCE: COOPERATIVE GOVERNANCE ,HUMAN SETTLEMENT AND TRADITIONAL AFFAIRS	5TH RESPONDENT
MEMBERS OF THE EXECUTIVE COUNCIL, NORTH-WEST PROVINCE: FINANCE	6TH RESPONDENT
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	7TH RESPONDENT
MINISTER: NATIONAL DEPARTMENT OF COOPERATE GOVERNANCE, HUMAN SETTLEMENT AND TRADITIONAL AFFAIRS	8TH RESPONDENT
MINISTER: NATIONAL DEPARTMENT OF FINANCE	9TH RESPONDENT
MINISTER OF WATER AND SANITATION	10TH RESPONDENT
NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY	11TH RESPONDENT
ESKOM SOC LIMITED	12TH RESPONDNET
MAGALIES WATER BOARD	13TH RESPONDENT

ADMINISTRATOR: DITSOBOTLA LOCAL MUNICIPALITY 14TH RESPONDENT

FILING SHEET

DOCUMENTS FILED: THIRD, FOURTH, SIXTH, SEVENTH AND EIGHTH RESPONDENTS' ANSWERING AFFIDAVIT

SIGNED AND DATED AT MMABATHO ON THIS 9TH NOVEMBER 2022

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AND TO: ATTORNEYS OF THE APPLICANTS

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12:31 09/11/2022

'IN THE HIGH COURT OF SOUTH AFRICA
(NORTH-WEST DIVISION, MAHIKENG)

Case No. UM192/2022

In the matter between:

SAKELIGA NPC	1st Applicant
CENTRE FOR GOOD GOVERNANCE AND SOCIAL JUSTICE NPC	2nd Applicant
BAREND LOURENS SNYMAN	3rd Applicant

and

DITSOBOTLA LOCAL MUNICIPALITY	1st Respondent
MUNICIPAL MANAGER/ACTING MUNICIPAL MANAGER OF DITSOBOTLA LOCAL MUNICIPALITY	2nd Respondent
THE PREMIER OF THE NORTH-WEST PROVINCE	3rd Respondent
PROVINCIAL EXECUTIVE OF THE NORTH-WEST PROVINCE: MEMBER OF THE EXECUTIVE COUNCIL	4th Respondent
NORTH-WEST PROVINCE: COOPERATIVE GOVERNANCE, HUMAN SETTLEMENT AND TRADITIONAL AFFAIRS	5th Respondent
MEMBER OF THE EXECUTIVE COUNCIL, NORTH-WEST PROVINCE: FINANCE	6th Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	7th Respondent
MINISTER:NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	8th Respondent
MINISTER: NATIONAL DEPARTMENT OF FINANCE	9th Respondent

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MINISTER OF WATER AND SANITATION	10th Respondent
NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY	11th Respondent
ESKOM SOC LIMITED	12th Respondent
MAGALIES WATER BOARD	13th Respondent
ADMINISTRATOR: DITSOBOTLA LOCAL MUNICIPALITY	14th Respondent

THIRD, FOURTH, FIFTH, SIXTH, SEVENTH AND EIGHTH RESPONDENTS ANSWERING AFFIDAVIT

I, the undersigned

MAMORENA EVELYN LEHOKO

do hereby state under oath and say that:

1. I am the Acting Head of the Department of Cooperative Governance and Traditional Affairs, North West Province.

2. I am duly authorised to depose this affidavit on behalf of the, Third, Fourth, Fifth, Sixth, Seventh and Eighth Respondents.

3. The facts contained in this affidavit fall within my personal knowledge and are, to the best of my belief, both true and correct.

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4. Any mention of the word "respondent" in this affidavit means the Third, Fourth, Fifth, Sixth, Seventh and Eighth respondents.

5. The respondents, in their respective official capacities provide oversight on the activities of Ditsobotla Local Municipality *("First respondent")*.

6. Failure to deal with any averment made by the Respondents in the answering affidavit should be taken as a denial thereof.

POINT *IN LIMINE:* ONE: THE MATTER IS NOT URGENT:

7. The respondents aver that the matter is not urgent. Should urgency found to exist it should be due to the tardiness of the applicants. The applicants are well aware that the Ditsobotla Local Municipality Council has been dissolved in terms of section 139(1)(c) of the Constitution of South Africa 196 *("the Constitution")*. The applicants were notified or informed of the dissolution at the virtual meeting held on 29 September 2022, before **PART A** of the urgent application was heard and disposed of. The applicants have been notified that an administrator has been appointed and will take over all the executive and legislative authority that vested in the now dissolved Ditsobotla Local Municipality Council. The applicants are well aware that Sakeliga NPC is *"a public interest organisation with a supporter and bona base of more than 17 000 business people, companies and business organisations and a network of more than 40 000 subscribers in South*

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Africa." It is highly possible that the second and third applicants are affiliates of the first respondent. The second and third respondents are represented by the first applicant in all the litigations, cited or not

The subscriber base of Sakeliga includes business organisation, business people and companies within the Ditsobotla Local Municipality. Such averments were made by the Applicants in the main application before the above Honourable Court under case number M311/2021. The "averments" are contained in paragraph 8 of Case No. M311/2021. Reference is going to be made to the notice of motion, founding affidavit and the necessary annexures attached to Case No. M311/2021.

8. The respondents hereby attach a copy of the notice of motion, founding affidavit and necessary annexures under case number M311/2021. The documents are voluminous and the respondents request the above Honourable Court to incorporate the notice of motion, answering affidavit and the necessary annexures under case number M311/2021, specifically incorporated in this document as **Annexure 1**.

9. The unhappiness of the applicants regarding the Fifth and the Sixth respondents' failure "to implement mandatory intervention in terms of section 139 (5) of the Constitution be found to be inconsistent with the constitution" is contained and raised as a prayer in the notice of motion under case number M311/2021. The application under M311/2021 was

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issued by the above Honourable Court on 26 May 2021. The applicants are lamenting the failure to Ditsobotla Local Municipality to provide basic constitutional services like water and electricity within the community it governs. The applicants made the following averments in the founding affidavit of the main application regarding failure to provide basic services:

"9.8 *The municipality fails to settle its outstanding water debts. It was brought to the applicants' attention that the fifth respondent currently has millions of rands in debt still outstanding and due to the relevant Water Board." The precise outstanding amount is however unknown to the applicants. The municipality also owes Eskom a sum of R691 783 110.00.*

9.9 *Water supply has become irregular and unpredictable. The municipality no longer has the necessary skill and funds to service the water reticulation networks. As a result residents often sit without water for weeks on end waiting on the municipality to fix broken connections and pipes in the area. It has become such an issue that most houses rely on bulk water storage containers in order to help them through these long periods of service interruption. Unfortunately, not everyone in the municipal area can afford these water storage containers. If residents are unable to get access to a borehole or other water source, they are often without water. The residents of Lichtenburg often needs to take the lead*

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with regards to service delivery by transporting and distributing water to residents. It is often the surrounding farmers who need to assist in the supply of drinking water to the local communities in order for them to survive.

9.10 *The municipality also no longer maintains the electricity reticulation networks and infrastructure. The electricity network's distribution poles have not been maintained over the years. As a result of a lack of maintenance the poles are completely rusted. As a result of a lack of maintenance, the community faces regular interruptions in the supply of electricity to their business and homes. At this stage it seems as if the municipality is merely trying to maintain deprecated network by fixing the network as and when something fatally brakes down. This then takes weeks to do and by the time that an issue is resolved, several new breakdowns have been reported. There is no improvement being made to the network. The municipality simply does not have the money.*

9.11 *The stormwater network for the municipality has become basically non-existent. It is not maintained at all.*

9.12 *Probably one of the biggest issue currently in the municipality of the fifth respondent is the failing sewerage network. The Applicants has received many reports from businesses who have had to deal with*

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raw sewage spilling into their business premises for days on end. The municipality merely informs residents that they are unable to attend to the matter due to a lack of funds – with the result that business are required to appoint private contractors to repair their own sewerage connection. In this regard I refer to the photo album which is already attached as ***annexure "X12"****. The photo album, more specifically photo 7 clearly shows sewage is spilling out of a manhole which the fifth respondent failed to maintain.*

9.13 *The sewage treatment plants are not properly mantained and continue to seep raw sewerage into the Harts River, which as a consequence provides polluted water to the town of Schweizer-Reneke.*

9.14 *One of the most alarming concerns within the municipal area of the fifth respondent which was brought to the applicants' attention was that the fifth respondent has continuously failed to adequately maintained and upgrade the refuse removal infrastructure of Lichtenburg. Refuse is being dumped along the roads of Lichtenburg and the dumping sites are not adequately maintained by the fifth respondent. In this regard I refer to the photo album which is already attached as annexure "X12". The photo album, more specifically photo 6, and 11 to 17 demonstrate the fifth respondent's negligent and failure to adequately maintained and*

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upgrade the refuse removal infrastructure of Lichtenburg. It is evident that the fifth respondent no longer possesses the required skill and/or funds to ensure continuous and reliable refuse removal services delivery to the town."

10. It is evident from the extract above contained in the main application under case number M311/2021 that the issues raised by the applicants in the current urgent application were known far back far as May 2021. Therefore, PART B of the application cannot be treated as urgent.

11. The opportunity to be heard on urgent basis should not be abused only to skip the queue of the normal motion court roll. The Honourable Wepener J in *IN RE: SEVERAL MATTERS ON THE URGENT COURT ROLL 2013(1) 549 (GSJ)*, in relation to applications of this nature, correctly stated that:

"(15) Further, if a matter becomes opposed in the urgent court and the papers become voluminous there must be exceptional reasons why the matter is not to be removed to the ordinary motion roll. "The urgent court is not geared to dealing with the matter which is not only voluminous but clearly includes some complexity and even dome novel points of law. See Digital Printers v Reso Africa (Pty) Ltd Case Number 17318/02, an unreported judgement of Cachilia J, delivered in this division. There are also matter brought against departments of state. Experience has taught that such

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Respondents need time to look into allegations contained in the affidavits in order to be able to file answering affidavits, if they so wish.

(16) An abuse to process regarding urgent applications has developed (in all likelihood with a hope that the Respondents would not be able to file opposing affidavits in time). This practice must be addressed in order to stop matters being unnecessarily enrolled and to clog a busy urgent court roll. In these matters, sufficient time should be granted to the Respondents to file affidavits and they can rarely do so when papers are served less than a week before the matter is to be heard. That week includes a weekend when state machinery normally comes to a standstill. Practitioners will be well advised to be realistic and to afford the state departments a more reasonable time to file affidavits. No doubt there are matters which require urgent attention on shorter notice but amongst the 30 or so applications by foreigners to be released from custody on the roll today, I am struggling to find a single one that justifies a hearing urgently today, if there are such matters, the affidavits generally fail to sit out the urgency of the matter as required by the practice manual and Rule 6 of the uniform rules of court.

(17) Urgency is a matter of decree, see Luna Meubelvervaardigers (Edams) Bpk v Makin (t/a Makin's Furniture Manufactures)1977(4)

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SA 135 (W). Some Applicants who abuse the court process should be penalised and the matter struck of the roll with costs for lack of urgency. Those matters that justify postponement to allow the Respondents to file affidavits should in my view similarly be removed from the roll so that the parties can set them down on the ordinary opposed roll when they are ripe for hearing, with costs reserved."

12. Rule 6(12)(b) of the uniform rules of court provides that in every affidavit in support of an urgent application the applicant should set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the Applicant claims that the applicant could not afford substantial redress at a hearing in due course.

13. Uniform Rules of Court must be complied with as far as practical under the circumstances of the particular case:

Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk 1972 (1) SA 773 (A)

Luna Meubelvervaardigers(Pty) Ltd v Makin 1977(4) SA 1345(W)

Sikwe v SA Mutual Fire & General Insurance Company 1977(3) SA 438(W)

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The degree of abridgement of times and deviation from Rule 6 of the uniform rules of court should not be greater than the exigency demanded by the case.

> "Mere lip service to the requirement of Rule 6(12)(b) is not sufficient, applicant must make out a case justifying the particular departure from the service and time periods".

WHEREFORE the applicants claim should be dismissed with costs on a punitive scale as between attorney and client.

ABUSE OF COURT PROCESSES

14. The applicants are abusing processes per case M311/2021 which is outstanding before Judge Snyman. Judge Snyman's court still has to hear the matter and pronounce on it. It is common cause between the parties and not in dispute that the issues that are raised under PART B of the urgent application are the same issues raised under case number M311/2021. The court is under a constitutional duty to protect bona fide litigants, process of courts and administration of justice against vexatious proceedings. Section 165 of the Constitution requires that no person or organ of state may interfere with the functioning of the court. The vexatious litigant is the one who manipulates the functioning of the court so as to achieve its purpose other than the one the court is intended for. The objection is predicated on assumption that the

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applicant seeks this court to make decision over matters in different courts.

The applicants are opportunistically attempting to conflate unrelated Issues. The only urgent matter was the provision of water, which was Disposed. Ligation should never be used as a tool to address others.

The abuse of legal system should always be discouraged. In general Legal process is used properly when it is invoked for the vindication of rights or enforce of just claims and it is abused when it is diverted from its true cause so as to serve extortion, oppression or to exert pressure so as to achieve an improper end. Further argument will be presented in court.

INTRODUCTION

15. The Provincial Executive Committee ("PEC") of the Northwest Province resolved on 14 September 2022 to dissolve the Ditsobotla Local Municipality Council in terms of section 139(1)(c) of the constitution. The responsibilities of the dissolved Ditsobotla Local Municipality Council will vest in the administrator. The Provincial Executive Committee of Northwest Province decided to invoke section 139(1)(c) of the Constitution as a result of systematic failures by Ditsobotla Local Municipality Council to carry out its executive and other legislative mandates as articulated in section 152(1), 152(2) and 153 of the Constitution, including supporting other legislative mandates.

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16. Section 139(1)(c) of the Constitution is invoked by the PEC when a municipality does not fulfil an executive obligation in terms of the constitution or legislation. The administrator will be in charge of the activities which vested in the dissolved Ditsobotla Local Municipality Council until a newly elected municipal council is sworn in. There were exceptional circumstances which warranted the PEC to invoke section 139(1)(c) of the Constitution. The dissolution of Ditsobotla in section 139(1)(c) of the Constitution is the last step after numerous interventions in terms of section 1395 of the Constitution have failed.

17. Since the inauguration of the dissolved Ditsobotla Local Municipality in November 2021, instability continued to persist. The instability necessitated the member of the executive council responsible for local government to issue a directive in terms of section 139(1)(a) of the constitution in Ditsobotla Local Municipality in May 2022. The purpose of the directive in terms of section 139(1)(a) to the now dissolved Ditsobotla Local Municipality Council was an attempt to address the challenges of infighting and governance paralysis.

18. The provincial executive committee of North-west Province submitted a written notice of the dissolution to the relevant structures including the National Council of Provinces ('NCOP"). Since the inauguration of the dissolved Ditsobotla Local Municipality Council on 21 November 2021 instability in the municipality continued. The continued instability that

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existed in the municipality resulted in the fifth respondent issuing a directive in terms of section 139(1)(a) of the constitution to Ditsobotla Local Municipality Council in May 2022. The directive was to deal with the infighting.

FACTUAL MATRIX:

Sequence of events that led to the intervention by the Provincial Executive Council of North-West Province before the dissolution:

19. Following the local government elections in November 2021 and having established the new Ditsobotla Local Municipality Council plus the municipal elections it emerged through concerns from communities and various stakeholders that they seek stability within Ditsobotla Local Municipality Council.

Factors that led to the dissolution to the intervention:

Reasons that prompted the intervention:

20. Decisions taken by two parallel municipal Ditsobotla Local Municipality Council resulting in duplicating appointments in the municipality, i.e. two Mayors, two Speakers and two Whips of Council;

21. Irregular appointments of senior managers resulting in two acting municipal managers, two chief financial officers and two human resource managers.

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Ditsobotla Local Municipality dissolved council did not make any plans to address the abovementioned irregularities.

21.1 High vacancy rate in senior management positions – the positions of the accounting officer was vacant for the past three years;

21.2 Persistent infighting within the Ditsobotla Local Municipality Council;

21.3 Poor oversight of administration due to Ditsobotla Local Municipality being divided in decision-making;

21.4 High rate of suspension of staff in administrative position without following due process;

21.5 Conflict centered around the control of and signatories to the municipal bank account;

21.6 Non-payment of Eskom debt and unspent grant earmarked for upgrading the power station resulting in poor provision of sustained electricity supply; and

21.7 Community unrest due to poor service delivery.

Status of appointments of senior management in Ditsobotla Local Municipality:

22. The vacancy for senior management in Ditsobotla Local Municipality is standing at 100%. This has affected due diligence in terms of statutory obligations not complied with, e.g., adoption of the integrated development plan *("IDP")* and the budget;

22.1 Vacant positions are occupied by the following personnel.

22.2 Acting municipal manager – Tsietsi Shema;

22.3 Acting chief financial officer – Ms Primrose Motlhabane;

22.4 Acting director: community service – Ms Bridgette Dube;

22.5 Acting director: LED and planning – Ms Khalalelo Mothibedi;

22.6 Acting corporate services – Mr Rramokgosi Motlhabane;

23. **3 February 2022:**

23.1 The department of cooperative governance, Human Settlements and Traditional Affairs in the Northwest Province got reports that there were infights in the council of Ditsobotla when the term of contract of the previous municipal manager ended in February 2022. Council could not agree on appointment of any official of the Ditsobotla Local Municipality. The Mayor unilaterally re-appointed the outgoing municipal manager (Mr Shema) as the municipal manager (acting);

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23.2 The unilateral decision of the then Mayor to appoint to appoint Mr Shema as municipal manager (acting) triggered fights within Ditsobotla Local Municipality Council. There is a court order granted against Mr Shema brought by the former Cooperative Governance, Human Settlements and Traditional Affairs former MEC. The court order issued by the High Court, Mafikeng bars Mr Shema from acting as the municipal manager of Ditsobotla Local Municipality. A copy of such court order, together with the founding papers are attached hereto marked **annexures 4** and **5** respectively.

23.3 The honourable Premier of the North-West Province urgently responded and directed that the MEC for COGHSTA, MEC L Miga, MEC for Finance, MEC M Rosho and MEC for COSATMA, MEC S Lehari, together with the administration team led by heads of department that reports to the abovementioned executive authorities.

23.4 The purpose of the abovementioned MECs and heads of departments was to implement as a matter of urgency measures that are meant to address all the challenges and risks which impacts on the stability and delivery of services to the communities of Ditsobotla Local Municipality, among others.

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23.5 The delegation led by MEC, COGHSTA managed to meet with both the Ditsobotla Local Municipality Council and administration thereat. Guidance was given to the Ditsobotla Local Municipality on how to resolve the challenges of service delivery.

24. **March to June 2022:**

24.1 The situation at Ditsobotla Local Municipality got worse and as the instability was in progression and leading to downwards spiral of regression and collapse of governance and administration. Further engagements were made with Ditsobotla Local Municipality Council, however, the instability was not resolved. Municipal workers at Ditsobotla Local Municipality went on strike regarding alleged unfair labour practices, which involves suspensions and reinstatement of some workers unlawfully.

25. **July 2022: (the conditions set by National Treasury are the following):**

25.1 Power conflicts within the split council at Ditsobotla Local Municipality resulted in the outvoting of the Mayor then in a sweeping motion of no-confidence.

25.2 Another Mayor was elected by majority councillors in a meeting. The ousted erstwhile Mayor had appointed the former municipal manager

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in an acting capacity, was the re-constituted council also appointed their own acting municipal manager (Ms Josephine Ledwaba).

25.3 The former municipal manager (Mr Shema) forcefully took off his installed bouncers on the municipal premises with guns and live ammunition to control access and deny all opposed to him, including the ousted Mayor, as well as other councillors' access to the Ditsobotla Local Municipality head office.

25.4 The national treasury wrote to Ditsobotla Local Municipality and indicated that the equitable share of the municipality is withheld, pending the conditions which are specified being met. Their compatible share has since been released in order to be managed by the administrator.

25.5 The conditions set by national treasury in order to release equitable share to Ditsobotla are the following:

"The municipality is herewith given an opportunity in terms of section 38(2)(a) of the Municipal Finance Management Act ("MFMA") to submit written representations to National Treasury for the release of the equitable share and all other funds to the municipality that are due in terms of section 38(1)(a) and (b) of the MFMA by providing the following information:

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1. *Provide names of the Mayor, speaker and other councillors elected in terms of the Structures Act as amended;*

2. *Provide a council resolution on the appointment of both acting municipal manager and chief financial officer;*

3. *Provide minutes and all other documents (attendance register etc.) as evidence that the council that adopted the 2022/2023 MTREF budget was approved by a legally constituted council in terms of the Structures Act, as amended;*

4. *Submit the 2022/2023 MTREF budget information (i.e. adopted budget) schedule, service delivery and budget implementation SDBIP and the integrated development plan (IDP);*

5. *Provide the process plan for the recruitment and filling of all vacant senior position (the plan should not exceed 3 months).*

6. *Submit council resolution on the invocation of section 1395(5)(a) and (c) of the constitution read with section 139 of the Municipal Finance Management Act ("MFMA");*

7. *Submit the council resolution on the road map to implement the SIU report;*

8. *Submit a detailed report on the UNEP grant earmarked for the upgrading of the power station and measures put in place to address the impasse;*

9. *Submit a progress report of the disciplinary board on matters referred to in relation to allegations against municipal officials;*

10. *Provide a council resolution on how the municipality will address the Eskom debt;*

11. *Convene council to approve the funding plan and to address the budget deficit over the medium term and submit the council resolution in this regard;*

12. *Complete the capturing of the work enabled audit action plan and FMCMM including its implementation;*

13. *Submit council resolution on the implementation of consequence management in line with section 171 of the MFMA report requirement;*

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14. Submit the report on the readiness by the municipality to submit the 2021/2022 financial statements as required by section 121 and 122 of the MFMA, inclusive of the process plan; and

15. Submit approved names of officials delegated as bank signatories."

25.6 A copy containing the national treasury conditions is attached hereto marked **Annexure 6.**

26. **August 2022:**

26.1 There were engagements between the MEC of COGSTA North-West and the Ditsobotla Local Municipality Council regarding the situation of parallel structures (2 Mayors), 2 municipal managers and even 2 acting HR Managers. The purpose of the engagement by the MEC of COGSTA with Ditsobotla Local Municipality Council was an attempt to correct the anomaly of parallel structures.

26.2 Ms Ledwaba, the municipal manager (acting) was denied access to the municipal premises by bouncers and as a result cancelled the contract of the security company of the bouncers and tried to install a new company at the municipal premises. On that day violence broke out in the Ditsobotla Local Municipality building and news were all

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over the media with reports that the two security companies were fighting for turf. Furthermore, some rowdy group from the community came to the municipality to reinforce the fight against the new security company, gunfire and assaults with pangas took place.

27. **September 2022:**

27.1 The department of COGSTA received correspondence dated 4 September 2022 from the Mayor of Ditsobotla Local Municipality on behalf of council requesting the Department of Cooperative Governance, Human Settlements and Traditional Affairs in North-West Province to second an official to act as municipal Mayor at Ditsobotla Local Municipality, until the post is filled permanently.

27.2 The letter from the then Mayor of Ditsobotla Local Municipality was to request the MEC of Cooperative Governance, Human Settlements and Traditional Affairs, in the North-West Province to second an acting municipal manager to Ditsobotla Local Municipality, until the post is properly filled in terms of the applicable legislation. The MEC of Cooperative Governance, Human Settlements and Traditional Affairs, at the time, then seconded Dr Mokotedi Bole as acting municipal manager of Ditsobotla with effect from 5 September 2022.

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27.3 However, the council of Ditsobotla Local Municipality took a decision to overturn its prior decision for the province to deploy an acting municipal manager to Ditsobotla. Instead, the Ditsobotla Local Municipality Council resolved to appoint Mr Shema for a period of 3 months, as acting municipal manager.

27.4 The North-West Provincial Executive Committee received urgent calls that tensions arose in Ditsobotla Local Municipality Council meeting wherein the Mayor, Speaker and councillors were held hostage by workers of the municipality. The Mayor, Speaker and councillors were held hostage by disgruntled employees due to non-payment of the salaries.

27.5 The provincial executive committee intervened and managed to secure the release of the Mayor, Speaker and councillors from the hostage takers.

27.6 Despite all the interventions in terms of section 139 of the Constitution, Ditsobotla Local Municipality Council that was inaugurated in November 2021 never settled adequately to conduct their statutory functions. There was serious anarchy and vagary in Ditsobotla Local Municipality which the disbanded council could not deal with.

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27.7 Basic service delivery was severely affected and the community in an undesirable position. The workers of Ditsobotla Local Municipality stopped working at the water treatment plant and shut it down.

28. **DISSOLUTION OF DITSOBOTLA LOCAL MUNICIPALITY COUNCIL:**

28.1 The provincial executive committee of the North-West Province on 14 September 2022 resolved to invoke section 139(1)(c) of the constitution intervention the Ditsobotla Local Municipality with immediate effect.

28.2 The notice to invoke section 139(1)(c) of the Constitution was the last step after all the other interventions in terms of section 139(5) of the Constitution. The notice of dissolution was served on the then Ditsobotla Local Municipality Council on 15 September 2022.

29. The notice of the dissolution of the Ditsobotla Local Municipality Council was served as required by section 139(c) of the Constitution. Section 139(3) of the constitution stipulates that:

"If a municipal council is dissolved in terms of sub-section 1(c) –

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(a) The Provincial Executive must immediately submit a written notice of the notice of dissolution to –

(i) The cabinet member responsible for local government affairs; and

(ii) The relevant provincial legislature and the national council of provinces; and

(b) The dissolution takes effect 14 days from the date of receipt of the notice by the council unless set aside by that cabinet member or the council before the expiry of those 14 days."

30. The Ditsobotla Local Municipality Council remains dissolved. The affairs of the Ditsobotla Local Municipality Council now vest in the administrator.

AD PRAYERS (PART B)

PRAYERS:

Prayer 1:

31. The Third, Fourth, Fifth, Sixth and Eighth respondents (herein further referred to as "respondents") deny that Part B of the application is urgent. Part A and Part B are similar. Part A and B rely on the same founding affidavit. The urgency of the applicants was the lack of water in the Ditsobotla Local Municipality. The urgency in relation to Part B if it is found

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to exist, was caused by the tardiness of the applicants. A copy of the court order, granted on 13 October 2022 is attached hereto marked **Annexure 2**.

Prayer 2:

32. The respondents deny that the applicants are entitled to the prayer sought.

Prayer 3:

33. The respondents deny that the applicants are entitled to the prayer sought. There have been numerous interventions in terms of section 139(5) of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), before the dissolution of the Ditsobotla Local Municipality Council in terms of section 139(1)(c) of the Constitution. Progress report of the mandatory interventions in terms of section 139(5) of the Constitution is attached marked **Annexure 3**.

34. On 14 September 2022 the Provincial Executive Council of North West Province took a resolution to dissolve the then Council of Ditsobotla Local Municipality in terms of section 139(1)(c) of the Constitution. The affairs of Ditsobotla Local Municipality are currently dealt with by an administrator, until a newly elected Municipal Council is in office.

35. The applicants are disingenuous in alleging that the provincial executive of the North West Province has not decisively and adequately dealt with the

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maladministration that occurred in Ditsobotla Local Municipality under the dissolved Council.

36. Therefore, the respondents deny that the non-intervention of the national executive in terms of section 139(7) of the Constitution is in violation of the Constitution. Any intervention by the national executive could have been premature. The provincial executive of the North West has cooperated with the then Ditsobotla Local Municipality Council in an endeavour to resolve the exceptional circumstances that rendered the inability to provide basic services. The dissolution of the then Ditsobotla Local Municipality Council by the provincial executive of the North West Province is a clear indication of the decisive and correct step in addressing the inability to provide basic services.

37. The applicants expected the provincial executive to dissolve the Ditsobotla Local Municipality Council without actually recognising the Constitutional independence of local government, in terms of section 151 of the constitution. The "executive and legislative authority of the municipality is vested in the Municipal Council" in terms of section 152 of the Constitution. The intervention and the cooperation and collaboration of the national and provincial executive should only be in line with section 151(3) of the Constitution. The national and provincial government are cautioned to guard against compromising or impeding "a municipality's ability or right to exercise its powers or perform its functions", in terms of section 151(4) of

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the Constitution. The autonomy of the local government's sphere should be respected at all times by the national and provincial arms of government.

Prayer 5.1:

38. The respondents deny that the applicants are entitled to the prayer sought. The challenges faced by Ditsobotla Local Municipality are not of a financial nature only. The challenges faced by Ditsobotla Local Municipality also include economic and social. The economic challenges faced by Ditsobotla Local Municipality relates to the closure of large corporations and relocations thereof.

39. One example that comes to mind is the closure and relocation of Clover Dairy Company. There are others which have closed due to the problems encountered within Ditsobotla Local Municipality. The closure of large companies affects the economy of the area. The running of raw sewer on the streets of Lichtenburg and other townships fallen within the Ditsobotla Local Municipality affects the health of the residents, the economic and social challenges fall outside the ambit of section 139(5) of the Constitution. The economic and social challenges can only be addressed by the provincial executive or national executive through section 139(1) of the Constitution. The intervention that is preferred by the applicants in terms of section 139(5) of the Constitution is restrictive. The challenges of Ditsobotla Local Municipality encompass financial, economic and social. The best constitutional provision to apply in resolving the multi-disciplinary challenge

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in section 139(1) of the Constitution. A recovery is being compiled which is intended to assist the administrator.

Prayer 6:

40. The respondents deny that the applicant is entitled to the prayers sought. The provincial executive has intervened and dissolved the Ditsobotla Local Municipality Council in terms of section 139(1) of the Constitution.

41. The provincial executive of North West Province has on numerous times intervened in the affairs of Ditsobotla Local Municipality through section 139(5) of the Constitution.

42. The final straw of the incompetence of the dissolved Ditsobotla Local Municipality Council led to the invocation of section 139(1)(c) of the Constitution.

Prayer 7:

43. The respondents deny that the applicants are entitled to the prayers sought. The provincial executive will continue to provide its oversight role and work closely with the administrator in compliance with the applicable legislations including the constitution.

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Prayer 8:

44. The respondents deny that the applicants are entitled to the prayers sought. It would be premature for the national executive to intervene in section 139(7) of the Constitution. The administrator needs to be given an opportunity to ensure that governance is complied with in Ditsobotla Local Municipality.

Prayer 8.2:

45. The respondents deny that the applicants are entitled to the prayers sought. The administrator appointed to take charge of Ditsobotla Local Municipality's affairs is appointed.

Prayer 8.3:

46. The respondents deny that the applicants are entitled to the prayers sought. Section 217 of the Constitution of the Republic of South Africa provides mandatory requirements for any organ of state to comply with in the procurement of goods and services. The appointment of a "special master" as envisaged by the applicants will be in violation of section 217 of the Constitution.

47. Section 217(1) of the Constitution requires that an organ of state must procure goods and services in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

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48. The process which the applicants seek to appoint the "special master" which is a third party will not be a fair, equitable, transparent, competitive and cost-effective as required by section 217(1) of the Constitution.

Prayer 10:

49. The respondents deny that the applicants are entitled to the prayers sought. The provisions of basic services, in particular water, has been resolved in Ditsobotla Local Municipality. Part A of the applicants' affidavit dealt with this aspect. The applicants are abusing the court process by bringing this part of the application on an urgent basis. The applicants' urgent application should be dismissed on attorney and own client scale. The applicants are hedging their bets through Part B of the urgent application.

50. The parties agreed during adjudication of Part A of the urgent application, on 13 October 2022 that Sakeliga on behalf of its members will be engaged by Ditsobotla Local Municipality on the progress regarding the provision and/or restoration of basic services. The challenges faced by Ditsobotla Local Municipality are not only limited to "financial affairs". The challenges faced by Ditsobotla Local Municipality are broader than "financial affairs in that they also involve social and economic nature". The applicants are fixated only on "the crisis in the financial affairs of Ditsobotla".

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Prayer 11:

51. The Ditsobotla Local Municipality Council that was inaugurated on 21 November 2021 has been dissolved in terms of section 139(1)(c) of the constitution. The affairs of Ditsobotla are now controlled and undertaken by an administrator appointed in terms of the constitution. The problem relating to basic municipal services in Ditsobotla Local Municipality are being attended to and the applicants are aware of that.

Prayer 12:

52. The respondents deny that the applicants are entitled to the prayers sought. There has been constant communication with the applicants in relation to the provision of basic services in Ditsobotla. The applicants in their own founding affidavit indicates meaningful engagement with the respondents. The applicants brought this urgent application, which the respondents deny it being urgent, during the process of meaningful engagement. Annexure "CC36" attached to the applicant's founding affidavit, which is a letter dated 30 September 2022 from its attorney of record, Kriek Wassenaar & Venter Incorporated demonstrates that. In this regard, Annexure "CC36" reads as follows:

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"URGENT: SAKELIGA NPC / THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA & OTHERS (DITSOBOTLA LOCAL MUNICIPALITY)

1. *We refer to the engagement meeting of 30 September 2022.*

2. *We confirm that no specific outcomes could be agreed upon during the meeting. We understand that the Government is still trying to break through various legislative barriers and other barriers in order to ensure that the administrator is deployed and that he will be able to ensure that municipal services are retrenched to the community.*

3. *We refer your clients back to our letters since 23 September 2022. Our demands have not change and we do require that Government provide us with clear undertaking as to how they intend to ensure that basic services are returned in Ditsobotla, by no later than Monday, 3 October 2022 at 09h00. Failing a full and proper reply and clear undertaking as to our urgent steps taken in order to restore basic services, our client will have no choice but to approach the court for urgent relief.*

4. *We thank Government for the engagement but do require decisive and immediate intervention in order to protect the interest of the communities served within Ditsobotla."*

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53. The provincial government of North West during the engagement with the applicants through their attorney of record is contained in Annexure "CC36" in the founding affidavit, a resolution to dissolve Ditsobotla Local Municipality Council was taken on 14 September 2022. The applicants were informed to a virtual consultation held in September 2022 that an administrator is appointed and processes are in place to ensure the provision of basic services. The applicants were aware that some time in April 2021 the national government was ordered to intervene in the affairs of Ditsobotla. The applicants were aware of the interventions by COGTA through the municipal support and intervention plan (MSIP). Furthermore, the applicants were aware that the intervention on behalf of the national government by National Treasury and COGTA by instruction of his Excellency, the President of the Republic of South Africa. In this regard Annexure "CC34" attached to the applicants' founding affidavit, which is a letter dated 26 October 2021 by the honourable Minister of Finance, Mr Enoch Dodongwane, the honourable Premier of North West Province, Premier Bushi Maape. Annexure "CC34" attached to the applicants' founding affidavit reads as follows:

"Dear Premier Maape

INTERVENTIONS TO ADDRESS MUNICIPALITIES IN CRISIS

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In April 2021, National Government was for the first time ordered by a High Court to intervene in the financial and service delivery affairs of a municipality as provided for in S139(7) of the Constitution of South Africa, 1996. The intervention are the result of a court action initiated by the business community in the municipality who were suffering financially as a result of the municipality's inability to provide consistent and reliable services coupled with the subsequent failure of the Provincial Executive to successfully monitor and oversee the S139(5) intervention invoked in the municipality in 2018.

National Treasury believes that this landmark decision by the Gauteng High Court will set a precedent for many other frustrated municipalities who suffer similarly in other parts of the country. In order to ensure that such matters are addressed consistently amongst provinces, in full compliance with S139 Constitutional Provision and to avoid further litigation His Excellency, the President of South Africa instructed in May 2021 that a list to be compiled of all municipalities in the country currently in a financial and service delivery crisis. To comply with this request and ensure objectivity in this process, the National Treasury and the Department of Corporate Governance developed a matrix. The matrix was based on the four pillars of municipal sustainability, namely, governance, service delivery, institutional capacity and financial management. Information on hand for all municipalities were populated in the matrix and the financial analysis showed that there are 43 municipalities in the country who are in a financial

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and service delivery crisis. These municipalities require urgent intervention in terms of S139 of the Constitution. However, some of these municipality already have S139 interventions underway and it will be necessary for the Province to review these interventions to determine if they are still appropriated under the circumstances.

To assist in this task, the National Treasury and COGTA have recently concluded road shows in all nine provinces on the correct interpretation and implementation of section 139 interventions. Provinces were alerted to the hierarchy of interventions provided for in the Constitution and the conditions that must exist for such time of intervention to be invoked. In particular, Provinces will remember that a section 139(1) intervention should not be invoked when the criteria for persistent financial problems and crisis are already present in a municipality. The correct mode of intervention in this case would be to invoke a mandatory intervention in terms of section 139(5) of the Constitution read together with chapter 13 of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003).

Such intervention will require the MEC of Finance in the Province to request from the Minister of Finance, the development of a Financial Recovery Plan by the Municipal Finance Recovery Service Unit in the National Treasury. Typically, legislation allows for a financial recovery plan to be concluded within 90 days inclusive of all consultations that must take place with municipal stakeholders, including the municipality's top creditors.

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However, given the urgency of the situation, an interim recovery plan will be drafted for implementation within the first month of the intervention being invoked. This interim plan will focus on issues across all the sustainability pillars that can be remediated swiftly within the municipality without significant cost burdens or additional resources being required. Parallel to this process, a financial recovery plan will be prepared and approved by the MEC of Finance in the Province and handed to the Municipality for intervention.

The provincial executive will be required to monitor on a monthly basis, the implementation thereof by the municipality to ensure that objectives are met timeously, challenges are unblocked and that there is incremental and sustained improvement in municipal performance. Should the Province not be successful in overseeing this intervention National Government retains the right to intervene under section 139(7) of the Constitution. However, this is a remedy of last resort and we are confident that Provinces will be able to effectively fulfil their functions in this regard.

For the North West Province the attached addendum to this letter list the municipalities identified as being in a financial and service delivery crisis. Of these municipalities, two municipalities already have existing interventions. We recommend that these interventions be revised where necessary to ensure that they give effect to the right mode of intervention under section 139 of the constitution in chapter 13 of the MFMA. To assist

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the province, the attached addendum further articulates the mode of intervention the municipality in your province that must be considered and implemented by the Provincial Executive Council (EXCO).

We would also like to draw the attention of the Provinces on how to deal with the current interventions following the local government elections in November 2021. In this regard provinces are reminded that any intervention invoked prior to the local government elections will not result in an automatic termination of the intervention following the election of a new municipal council. Section 148(1) and (2) of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), provides clear guidelines as to the conditions that must exist in order to terminate a discretionary or mandatory intervention.

The National Treasury has shared this information with the National Department of Cooperative Governance and the Provincial Treasury in your province. Should you require any further clarification or information, please contact Ms Malijeng Ngqaleni, Deputy Director-General: Inter-Governmental Relations at the National Treasury.

We would also like to reiterate that while we have shared the information with National CoGTA and we are working very closely, this process is not synonymous with the Municipal Support and Intervention Plan (MSIP) process of CoGTA currently underway. These processes are

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complimentary, however, ***the National Treasury is giving effect to both constitutional considerations and the instruction from His Excellency, the President of South Africa.***

We trust that the province will find this in order and look forward to your cooperation and monthly progress report in terms of section 142 of the MFMA."

54. It is clear from Annexure "CC34" attached to the applicants' founding affidavit that His Excellency, the President of the Republic of South Africa cannot be faulted for not exercising his responsibilities in terms of the Constitution. His Excellency, the President of the Republic of South Africa gave clear instructions as contained in Annexure "CC34" to the applicants' founding affidavit.

Prayer 14:

55. The respondents deny that the applicants are entitled to the prayers sought. There are generally three sets of affidavits allowable in motion proceedings, namely founding affidavit of the applicants, answering affidavit of the respondents and replying affidavit of the applicants. A litigant does not have an automatic right to file an additional affidavit without leave of court as dictated to by Rule 6(5)(e) of the Uniform Rules of Court. The

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applicants must apply for leave to supplement and/or file additional affidavits further to the replying affidavit.

Prayer 15:

56. The respondents deny that the applicants are entitled to the prayers sought. There is case M311/2021 which was issued out of this above Honourable Court by the first applicant in May 2021. Part B of the applicants' prayers and averments is a repetition of the papers under case number M311/2021 that was issued by the above Honourable Court on 26 May 2021. It is on those bases that the respondents submit that the applicants' claim is not urgent and should be dismissed on a punitive scale as between attorney and client.

LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 32 OF 2000, AS AMENDED

57. Section 76(a) of the Municipal Systems Act allows for a municipality to engage the services of an external service provider for the provision of services.

58. The ability of a municipality to engage an external service provider requires *"entering into a service delivery agreement."*

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59. There is no *"service delivery agreement"* between Ditsobotla Local Municipality and any "Special Master" proposed by the applicants. The engagement of a Special Master and/or Sakeliga without a "Service Delivery Agreement" will be in violation of the Municipal Systems Act, 76(b).

60. Section 76 of the Municipal Systems Act allows a municipality to serve correct and decide the best mechanism manner of providing services to the community. Members of the community are entitled in terms of section 77(e) of the Municipal Systems Act to approach Municipal Council for the provision of basic services through an external mechanism. The request must comply with section 217 of the Constitution and there must be a service agreement. Section 78 of the Municipal Systems Act allows a municipality to engage the services of an external service provider for the provision of basic services. The determination of whether an external service provider is required must first establish if the municipalities internal human capital cannot be utilised for sourced services. The municipality before it engages the services of an external third-party service provider it must first engage labour, conduct an audit of its own personnel, establish as to why the services cannot be provided internally and also determine if ever there are financial resources to pay for the external third party service provider.

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61. The engagement of a third-party external service provider should not be intended to undermine the employees of the municipality and the labour unions. Section 78(5)(a) of the Municipal Systems Act, this is an obligation on a municipality to comply with "any applicable legislation relating to the appointment of a service provider other than the municipality".

62. The Constitution is the supreme law of the Republic, any conduct inconsistent therewith is invalid. The Municipal Systems Act and any other applicable legislation regulating local government does not empower violation or transgression of section 217 of the constitution in relation of the procurement of goods and services. There is a clear separation between the executive legislator and the judiciary. The ability to implement and provide services vest with either the national, provincial or local sphere. The judiciary, with the greatest of respect, does not have the power to arbitrarily procure goods and services on behalf of any sphere of government. Furthermore, the judiciary does not have the power to circumvent section 217 of the Constitution in the provision of goods and services.

Procurement process by Municipalities:-

63. In summary tender process must be followed in terms of the relevant provisions of Preferential Procurement Policy Framework Act 5 of 2000 and must be for rendering of services as described in the agreement.

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64. The procurement of goods and services by a Municipality is strictly regulated by the Local Government: Municipal Finance Management Act, Act 56 of 2003 ("the MFMA"), the Municipal Supply Chain Management Regulations published under Government Notice 868 in Government Gazette 27636 of 30 May 2005 and the Municipality's Supply Chain Management Policy ("SCMP").

65. The material applicable provisions of the MFMA are *inter alia:*

65.1 Section 15, which provides that a Municipality may incur expenditure only in terms of an approved budget.

65.2 Section 18(1) providing that the annual budget of a Municipality may only be funded from (a) realistically anticipated revenues to be collected, (b) cash backed accumulated funds from previous years surpluses not committed for other purposes and (c) borrowed funds, but only for the capital budget;

65.3 Section 29 which provided that the mayor of a Municipality may in emergency or other exceptional circumstances authorise unforeseeable and unavoidable expenditure for which no provision was made in an approved budget. Subsection (2), however provides that such expenditure must be in accordance with any framework

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that may be prescribed, may not exceed the prescribed percentage of the approved annual budget, must be reported by the mayor to the municipal council at its next meeting and must be appropriated in an adjustments budget. Subsection (3) provides that, if such adjustments budget is not passed within 60 days after the expenditure was incurred, the expenditure is unauthorised and section 32 applies.

65.4 Section 32(1)(c) provides that a municipal official who deliberately or negligently committed, made or authorised an irregular expenditure and in terms of section 32(2) a Municipality must recover such irregular expenditure from the person liable for that expenditure unless certified as irrecoverable and written off by the council.

65.5 Section 111 in terms of which a Municipality must have and implement a supply chain management policy.

65.6 Section 116 (3) which provides that a contract or agreement procured through supply chain management policy of a Municipality may be amended by the parties, but only after the reasons for the proposed amendment have been tabled in the council of the Municipality and the local community has been given reasonable notice of the intention to amend the contract or agreement and has been invited to submit representations to the Municipality.

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The most important applicable provisions of the Supply Chain Management Regulations are, *inter alia* :-

65.6.1 Regulation 36 which provides that the supply chain management policy of a Municipality may allow the accounting officer to dispense with the official procurement processes and to procure any required goods or services through any convenient process, but only, *inter alia* in an emergency, if such goods or services are produced or available from a single provider only, or in any other exceptional case where it is impractical and impossible to follow the official procurement processes. Sub-regulation 36(2) enjoins the accounting officer to record the reasons for any deviations and to report them to the next meeting of the council and include it as a note to the annual financial statements.

65.7 Regulation 51 deals with contracts providing for compensation based on turnover and provides that the contract between the Municipality and the service provider must stipulate a cap on the compensation payable to the service provider and that such compensation must be performance based.

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65.8 By no stretch of the imagination can a monthly amount be paid for emergencies in terms of the aforesaid section and regulation. Section 29 provides specifically for unforeseeable expenditure for which no provision was made in an approved budget.

65.9 What the applicants require from Court regarding take over of water supply would require monthly payment for indefinite period, such payments are therefore foreseeable events and not definitely the type of expenditure envisage in Section 29(1). This is over and above the fact that procurement procedures will be flaunted, and there is no provision for such in any of the above laws. Such irregularity will be noted on the Attorney General's report.

65.10 The Accounting Officer of the Municipality has to ensure that the municipality complies with the provisions of MFMA and other applicable legislation. Reference is made to the provisions of section 60-65 of the MFMA of specific importance is section 171(1) of MFMA which provides that the accounting officer of the municipality commits an act of financial misconduct if he deliberately or negligently contravenes the provisions of MFMA or fails to comply with the duty imposed by it on the accounting officer. Section 171(2) provide fir the instances in which a CFO of a municipality commits an act of financial misconduct. Section 173(1)(a) provides that it is a criminal offence if the accounting officer deliberately or in a grossly

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negligent way fails to take reasonable steps to implement the municipality's Supply Chain Management Policy or fails to take all reasonable steps to prevent unauthorised, irregular or fruitless and wasteful expenditure. The respondents pray that the application should be dismissed, for lack of urgency, on a punitive scale as between attorney and client.

PART B:

We now respond to the averments contained in the founding affidavit of the applicants relating to the oversight role. Failure to deal with any averments should not be construed as an admission thereof. The relevant respondent will address the averments

AD MERITS:

Ad paragraph 1 thereof:

66. The contents are noted.

Ad paragraph 2 thereof:

67. The contents of the paragraph are noted.

Ad paragraph 3 thereof:

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68. The contents of the paragraph are noted.

Ad paragraph 4 thereof:

69. The contents of the paragraph are noted.

Ad paragraph 5 thereof:

70. The contents of the paragraph are noted.

Ad paragraph 6 thereof:

71. The contents of the paragraph are noted.

Ad paragraph 7 thereof:

72. The contents of the paragraph are noted.

Ad paragraph 8 thereof:

73. The contents of the paragraph are noted.

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Ad paragraph 9 thereof:

74. The contents of the paragraph are noted.

Ad paragraph 10 thereof:

75. The contents of the paragraph are noted.

Ad paragraph 11 thereof:

76. The contents of the paragraph are noted. The respondents should not be taken to be involved in any of the unlawful activities in this paragraph.

Ad paragraph 12 thereof:

77. The contents of the paragraph are noted.

Ad paragraph 13 thereof:

78. The contents of the paragraph are noted.

Ad paragraph 14 thereof:

79. The contents of the paragraph are noted.

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Ad paragraph 15 thereof:

80. The contents of the paragraph are noted.

Ad paragraph 16 thereof:

81. The contents of the paragraph are noted.

Ad paragraph 17 thereof:

82. The contents of the paragraph are noted.

Ad paragraph 18 thereof:

83. The contents of the paragraph are noted.

Ad paragraph 19 thereof:

84. The contents of the paragraph are noted.

Ad paragraph 20 thereof: (intention to cure the point in limine)

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85. The contents of the paragraph are noted. The joining of the provincial executive of the North West Province in this urgent application does not in any way cure the point *in limine* pleaded by the respondents in the main application issued on 26 May 2021 under case number M311/2021. The point *in limine* of non-joinder of the provincial executive of the North West Province under case number M311/2021 stands and will be argued at the appropriate time.

Ad paragraph 21 thereof:

86. The contents of the paragraph are noted.

Ad paragraph 22 thereof:

87. The contents of the paragraph are noted.

Ad paragraph 23 thereof:

88. The contents of the paragraph are noted.

Ad paragraph 24 thereof:

89. The contents of the paragraph are noted.

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Ad paragraph 25 thereof:

90. The contents of the paragraph are noted.

Ad paragraph 26 thereof:

91. The contents of the paragraph are noted.

Ad paragraph 27 thereof:

92. The contents of the paragraph are noted.

Ad paragraph 28 thereof:

93. The contents of the paragraph are noted.

Ad paragraph 29 thereof:

94. The contents of the paragraph are noted.

Ad paragraph 30 thereof:

95. The contents of the paragraph are noted.

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Ad paragraph 31 thereof:

96. The contents of the paragraph are noted.

Ad paragraph 32 thereof:

97. The contents of the paragraph are noted.

Ad paragraph 33 thereof:

98. The contents of the paragraph are noted.

Ad paragraph 34 thereof:

99. The contents of the paragraph are noted. The applicants deny that Part B of this application is urgent. The alleged ("serious constitutional crisis") in the Municipality of Ditsobotla in relation to water has been resolved. Part A of the applicants' urgent application dealt with that crisis.

Ad paragraph 48 thereof:

100. The contents of the paragraph are noted.

Ad paragraph 49 thereof:

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101. The contents of the paragraph are admitted.

Ad paragraph 50 thereof:

102. The contents of the paragraph are admitted as far as they relate to the provisions of the constitution.

Ad paragraph 51 thereof:

103. The contents of the paragraph are admitted.

Ad paragraph 52 thereof:

104. The contents of the paragraph are noted.

Ad paragraph 53 thereof:

105. The contents of the paragraph are noted.

Ad paragraph 54 thereof:

106. The contents of the paragraph are noted.

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Ad paragraph 55 thereof:

107. The contents of the paragraph are noted. The support that national and provincial governments has to give to a municipality in terms of section 154 of the constitution should always be in compliance with section 151(4) of the constitution which prohibits national or provincial governments to *"not compromise or impede a municipality's ability or right to exercise its powers or perform its function".*

Ad paragraph 57 thereof:

108. The contents of the paragraph are admitted. The MEC of CoGTA in the North West Province in an oversight role always supported and endeavoured to ensure that Ditsobotla Local Municipality is strengthen in order to manage its own affairs.

Ad paragraph 58 thereof:

109. The acquitable share of Ditsobotla Local Municipality was only stopped temporarily when the dissolved Ditsobotla Local Municipality Council was misappropriating the funds. The misappropriation of funds included the appointment of two mayors, two municipal managers and two chief financial officers to say the least.

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Ad paragraph 59 thereof:

110. The contents of the paragraph are admitted as far as the constitutional obligation of the provincial and/or national sphere of government to interfere in the affairs of a municipality is concerned. The intervention in terms of section 139 should be in order to assist the municipality council to provide basic services within the area of jurisdiction.

111. The contents of the paragraph are admitted. The provincial executive of North West Province intervened in terms of section 139(5) of the constitution in an endeavour to assist the Ditsobotla Local Municipality Council, that is dissolved, to provide basic services.

Ad paragraph 60 thereof:

112. The contents of the paragraph are admitted. The provincial executive council of North West Province did monitor and assist Ditsobotla Local Municipality to be effective in the utilisation of resources in particular of a financial nature appropriated from the national fiscus.

Ad paragraph 61 thereof:

113. The contents of the paragraph are admitted.

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Ad paragraph 62 thereof:

114. The contents of the paragraph are admitted. The provincial executive of the North West Province intervened when the Ditsobotla Local Municipality Council was failing to fulfil its executive obligations. Section 139(5) of the constitution is predominantly limited to financial obligations whereas section 139(1) of the constitution addresses a failure to *fulfil ("an executive obligation in terms of the constitution or legislation")*.

Ad paragraph 63 thereof:

115. The contents of the paragraph are admitted.

Ad paragraph 64 thereof:

116. The contents of the paragraph are noted. Section 135(5) of the constitution is only limited to a failure that exist in the financial affairs of a municipality. Section 139(1) of the constitution is broader. Political appointees at national and executive sphere of government when taking a decision about a municipality must take into account the political, financial, economic and social crisis.

Ad paragraph 65 thereof:

117. Save to admit what section 1395 of the constitution requires. The rest of the paragraph is denied. The respondents submit that the intervention in

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terms of section 139(7) of the constitution is premature in this instance. The provincial executive has intervened in the affairs of Ditsobotla Local Municipality. The intervention of the provincial executive in the Ditsobotla Local Municipality led to the resolution taking on the 14th of September 2022 to dissolve the Ditsobotla Local Municipality Council that was inaugurated on the 21st of November 2021.

Ad paragraph 66 thereof:

118. The contents of the paragraph are admitted.

Ad paragraph 67 thereof:

119. The contents of paragraph are admitted.

Ad paragraph 68 thereof:

120. The contents of paragraph are admitted. Section 139(1) of the MFMA must be read together with section 139(5) of the Constitution as they are only restricted to *"a crisis in its financial affairs"*. Section 139(1) of the MFMA and 139(5) of the constitution do not address a Municipality's failure to *"fulfil an executive obligation"*.

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Ad paragraph 69 thereof:

121. The contents of the paragraph are admitted.

Ad paragraph 70 thereof:

122. The contents of the paragraph are noted. Sakeliga under case number M311/2021 did not only institute motion proceedings against Ditsobotla Local Municipality and Naledi Local Municipality. The respondents, to the exclusion of His Excellency, the President of the Republic of South Africa are parties to case number M311/2021.

Ad paragraphs 71.1, 71.2, 71.3, 71.4, 71.5, 71.6, 71.7, 71.8, 71.9, 71.10, 71.11, 71.12, and 71.13 thereof:

123. The contents are admitted as they are indeed the prayers contained in the notice of motion under case number M311/2011. The notice of motion under case number M311/2021 is attached hereto marked *Annexure "CC13"* of the applicant's founding affidavit in this urgent application.

Ad paragraph 72 thereof:

124. The contents of the paragraph are admitted. *Annexure "CC14"* to the applicants' urgent application is a clear demonstration that all the disputes that exists between the applicants and the respondents date back to May 2021. Therefore, there is no urgency in Part B of the urgent application.

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The application should be dismissed on a punitive scale as between attorney and client.

Ad paragraph 73 thereof:

125. The contents of the paragraph are noted. This paragraph is the clear abuse of the urgent process that is available to litigants. The applicants are not even shy to refer the above honourable court on the merits of case number M311/2021. Case number M311/2021 is not brought on urgent basis. The applicants are now trying to dispose of case M311/21 through the back door utilising urgent application process that is regulated by Rule 6(12) of the Uniform Rules of Court. The court should discourage such forum shopping by Sakeliga and the applicants.

Ad paragraph 74 to paragraph 101 thereof:

126. The contents of the paragraph are noted. All the averments made in this part B of the urgent application is what is dealt with in the main application under case number 311/2021. The applicants were very much aware of what has been mentioned under this paragraphs as far back as 2021.

Ad paragraph 105 thereof:

127. The contents of the paragraph are noted. The paragraph also supports the view of the respondents that the matter is not urgent by not informing

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Sakeliga of any effective remedy. Ditsobotla Local Municipality Council has been dissolved by a resolution of the provincial executive council taking on 14 September 2022 and Sakeliga is aware of that.

Ad paragraph 116 thereof:

128. The contents of the paragraph are noted. The respondents were engaging Sakeliga which represent its constituent members. The respondents deny that there was no meaningful conversation with the applicants. The applicants have indicated at paragraph CC28 attached to the founding affidavit in this urgent application that *"our letters did not only require a meeting. The letter also seeks various urgent undertakings from Government to avoid litigation"* [underlining is just my emphasis]. The letter of 26 September 2022 attached hereto as Annexure "CC28" to the founding affidavit of the applicants was in full view of the fact that there is a pending case issued by the above honourable court on the 26th of May 2021. Furthermore, there is this urgent application of which Part A has already been dealt with. The applicants are not in any way avoiding litigation. There is already multiple litigations by the applicants against government.

Ad paragraph 117 thereof:

129. The contents of the paragraph are noted. It is demonstrated by the applicants itself through a number of annexures that as early as 22

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September 2022 there have been engagements with the applicants. The engagements were not only for administrative purposes but were of a substantive nature aimed at addressing and resolving the problems of service delivery in Ditsobotla Local Municipality. The applicants in their letter dated 27 September 2022, attached to the founding affidavit in this urgent application as Annexure "CC30" states among others as follows:

"Furthermore, our client requires the immediate deployment of an administrator to take control of the municipality and to ensure that basic service delivery is restored. Even the undertaking that an administrator will meet with our client has been qualified".

Ad paragraph 119 thereof:

130. The contents of the paragraph are admitted. The respondents aver that meaningful engagement with Kriel Wassenaar & Venter (KWV) and its client always took place.

Ad paragraph 120 thereof:

131. The contents of the paragraph are denied. A meaningful engagement with the KWV has taken place. A response was provided to the applicants through the letters and in the individual meetings held.

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Ad paragraph 121 thereof:

132. The contents of the paragraph are admitted.

Ad paragraph 122 thereof:

133. The contents of the paragraph are noted. There has always been intervention at Ditsobotla by the provincial executive of the North West Province. The Ditsobotla Local Municipality Council has been dissolved in terms of section 139(1)(c) of the constitution.

Ad paragraph 123 thereof:

134. The contents of the paragraph are noted

Ad paragraph 124 thereof:

135. The contents of the paragraph are noted. The applicants admit that it always wanted to avoid litigation, as contained in paragraph 124.2 of this urgent application. There is already litigation under case number M311/2021 between the applicants and the respondents. Despite case number M311/2021 the applicants are continuing with urgent cases that addresses similar consents which are contained in the main application.

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Ad paragraph 124.4 to 124.10 thereof:

136. The contents of the paragraphs are noted.

Ad paragraph 125 thereof:

137. The contents of the paragraph are noted.

Ad paragraph 127 thereof:

138. The contents of the paragraph are denied. There is currently case M311/2021 that the applicant and the respondent are engaged in. Case number M311/2021 is case managed by the judiciary. Water has been restored to Ditsobotla Local Municipality.

Ad paragraph 128 thereof:

139. The contents of the paragraph are noted.

Ad paragraph 129 thereof:

140. The contents of the paragraph are denied. A clear right was dealt with in part A of the urgent application. No right exists under Part B. The problems that existed in relation to the provision of water has been resolved. As per the confirmatory affidavit of MISA.

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DEPONENT

I certify that the deponent has acknowledged and understand the contents of this affidavit which was sworn and signed before me at MAFIKENG on this the 8th day of NOVEMBER 2022, after provisions of Government Notice No. R.1258 of July 1972 (as amended) have been complied with.

COMMISSIONER OF OATHS

GAVIN NELSON APIE
Practicing Attorney
Commissioner Of Oaths
Crystal Building,Office No:8,Warren Str,Mahikeng
Tel:018 381 5116
Email:khumaloapieattorneys@gmail.com

COMMISSIONER OF OATHS:

FULL NAMES:

CAPACITY:

ADDRESS:

ANNEXURE 1

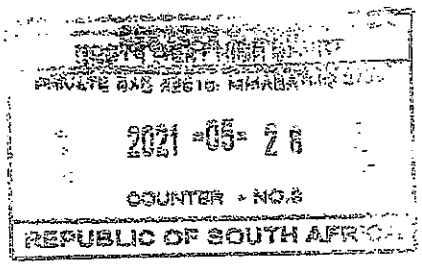
IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

CASE NO.: M 311 /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

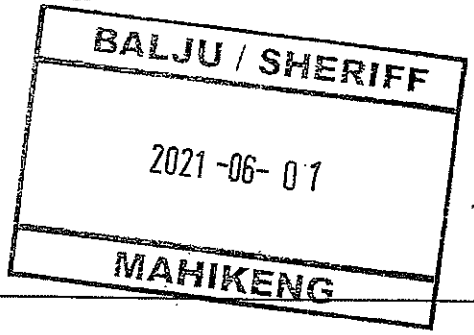
NALEDI LOCAL MUNICIPALITY 6th Respondent

THE PREMIER: NORTH WEST PROVINCE 7th Respondent

ESKOM SOC LIMITED 8th Respondent

MAGALIES WATER BOARD 9th Respondent

SEDIBENG WATER BOARD 10th Respondent



NOTICE OF MOTION

Documents Filed by:
Nicolene Neethling
Tel: (018) 381 0180/1/2
Cell: 082 597 3962

GM M.L

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 and second respondent's failure to implement mandatory intervention 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 first respondent be directed to intervene in terms of the provisions of the Local Government: Municipal Finance Management Act, No. 56 of 2003 ("MFMA"), in the fifth and sixth respondent municipalities and to forthwith take over their basic service delivery obligations;

4. That the intervention referred to in prayer 1 *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, to dissolve each of the councils of the affected municipalities and that administrators be appointed to take over the control of the affected municipalities;

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5. That the third and fourth respondents be directed to:

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;

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

8.2.2. 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;

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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 respondent to;

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TAKE NOTICE FURTHER that if you intend to oppose this application you are required to:

(a) deliver a written notice of your intention to oppose this application within 15 (fifteen) Court days of receipt hereof, which notice shall be directed to the to the applicant's attorney of record and the Registrar of this Court;

(b) file your answering affidavit, if any, within 15 (fifteen) Court days after you have delivered your written notice of your intention to oppose this application; and

(c) in your notice of intention to oppose this application, provide an address as envisaged in Rule 6(5)(b) of the Uniform Rules of Court at which you shall accept notice of all process in this application.

TAKE FURTHER NOTICE THAT if no such notice of intention to oppose be given, the application will be made on **Thursday, the 15th day of July 2021** at 10h00 or as soon thereafter as counsel may be heard.

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

KRIEK WASSENAAR & VENTER INC. ATTORNEYS
Attorneys for the Applicant
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
Mahikeng
Tel: 018 381 0180
Fax: 086 274 6253
E-mail: litigation1@smitstanton.co.za
REF: KRI19/0002/21

GNT M.L

TO:
THE REGISTRAR
OF THE HIGH COURT
MAHIKENG

AND TO:
THE MEC: NORTH WEST PROVINCE: COGTA
FIRST RESPONDENT
NWDC Building
Corner Provident House and University Drive
Mmabatho
North West Province

SERVICE BY SHERIFF

AND TO:
THE MEC: NORTH WEST PROVINCE: FINANCE
SECOND RESPONDENT
Garona Building
2nd Floor, East Wing
Corner James Moroka and University Drive
Mmabatho
North West Province

SERVICE BY SHERIFF

AND TO:
THE MINISTER: COGTA
THIRD RESPONDENT
87 Hamilton Street
Arcadia
Pretoria
Gauteng Province

SERVICE BY SHERIFF

AND TO:
THE MINISTER OF FINANCE
FOURTH RESPONDENT
40 Church Square
2nd Floor, Old Reserve Bank Building
Pretoria
Gauteng Province

SERVICE BY SHERIFF

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AND TO:
THE STATE ATTORNEY, PRETORIA
FOR AND ON BEHALF OF THE FIRST TO FOURTH AND SEVENTH RESPONDENTS
316 Thabo Sehume Street
Pretoria Central
Pretoria
Gauteng Province

Received a copy of this on
_____ **May 2021**.

_____

AND TO:
THE STATE ATTORNEY, MAHIKENG
1st Floor, East Gallery
Mega City Complex
Corner Sekame Road and Dr James Moroka Drive
Mmabatho
North West Province

Received a copy of this on
_____ **May 2021**.

_____

AND TO:
DITSOBOTLA LOCAL MUNICIPALITY
FIFTH RESPONDENT
Civic Centre
Corner Nelson Mandela Street and Transvaal Street
Lichtenburg
North West Province

SERVICE BY SHERIFF

AND TO:
NALEDI LOCAL MUNICIPALITY
SIXTH RESPONDENT
19A Market Street
Vryburg
North West Province

SERVICE BY SHERIFF

AND TO:
THE PREMIER: NORTH WEST PROVINCE
SEVENTH RESPONDENT
Garona Building
2nd Floor, East Wing
Corner James Moroka and University Drive
Mmabatho
North West Province

SERVICE BY SHERIFF

GM M.L

AND TO:
ESKOM SOC LTD
EIGHT RESPONDENT
Megawatt Park, Maxwell Drive,
Sunninghill, Sandton,
Johannesburg,
Gauteng.

SERVICE BY SHERIFF

AND TO:
MAGALIES WATER BOARD
NINTH RESPONDENT
38 Heystek Street,
Rustenburg,
North West Province

SERVICE BY SHERIFF

AND TO:
SEDIBENG WATER BOARD
TENTH RESPONDENT
Protea Street, Balkfontein,
Bothaville,
Free State Province

SERVICE BY SHERIFF

GM M.L

COPY

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH WEST DIVISION, MAHIKENG)

CASE NO: M311/2021

RECORDS OFFICE
NORTH WEST HIGH COURT
PRIVATE BAG X2010, MMABATHO 2735
2021 -08- 26
COUNTER - NO
REPUBLIC OF SO

In the matter 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 & 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

FILING SHEET

Filed by: Ms. B Moloto
State Attorney, Mahikeng
018 384 0269 / 083 730 0572

GA M.L

DOCUMENT : **ANSWERING AFFIDAVIT**

DATED AT MMABATHO ON THIS THE 25 DAY OF AUGUST 2021

The State Attorney
1st; 2nd & 3rd Respondents' Attorneys
Cnr Sekame Road
Dr James Moroka Drive
1st Floor, East Gallery
Megacity Complex
MMABATHO
Private Bag X51
MMABATHO, 2735
Enq: Ms N Mekgwe
Our Ref: 0955/21/P3
Tel: (018) 384 0161/0269
Fax2email: 086 456 6734
Email: NMekgwe@justice.gov.za

To : The Registrar of the above
Honourable High Court
MAHIKENG

And to: **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
MAHIKENG
Tel: 018 – 381 0180
Fax: 086 274 6253
Email: **litigation1@smitstanton.co.za**
Ref: KRI19/0002/21

Rass 15:20
SMIT STANTON INC. / ING.
ATTORNEYS / PROKUREURS
P.O.BOX / POSBUS 397/117
29 WARREN STREET MAFIKENG 2745
Tel: (018) 381 0160/1/2/3 • Fax: (018) 381 3356
25 Aug 21

Filed by: Ms. B Moloto
State Attorney, Mahikeng
018 384 0269 / 083 730 0572

GM M.L

COPY HEREOF RECEIVED ON THIS THE .....DAY OF AUGUST 2021

FOR PLAINTIFF'S ATTORNEYS

Filed by: Ms. B Moloto
State Attorney, Mahikeng
018 384 0269 / 083 730 0572

GOA M.L

IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NO: M311/2021

In the matter between:

SAKELIGA NPC
Applicant

and

THE MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: COOPERATIVE GOVERNANCE, HUMAN SETTLEMENT AND TRADITIONAL AFFAIRS
Respondent — First

THE MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: FINANCE
Respondent — Second

THE MINISTER: NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS
Respondent — Third

THE MINISTER OF FINANCE — Fourth Respondent

DITSOBOTLA LOCAL MUNICIPALITY — Fifth Respondent

NALEDI LOCAL MUNICIPALITY — Sixth Respondent

THE PREMIER: NORTH WEST PROVINCE — Seventh Respondent

ESKOM SOC LIMITED — Eighth Respondent

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MAGALIES WATER BOARD

Ninth Respondent

SEDIBENG WATER BOARD

Tenth Respondent

ANSWERING AFFIDAVIT

I the undersigned,

PHIHADU EPHRAIM MOTOKO,

hereby make oath and declare that:

1. I am a major male Head of Department, employed as such by the Department of Cooperative Governance and Traditional Affairs in the North West Province, with my office situated at 2nd Floor, West wing, Garona Building, University Drive, Mmabatho.

2. The facts I depose to in this affidavit fall within my personal knowledge, unless the contrary is stated or appears from the context, and are, to the best of my belief, both true and correct.

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3. Where I make allegations or submissions of a legal nature I do so on the advice of the first to third and seventh respondents' legal representatives, which I believe to be correct and accept.

4. I depose to this answering affidavit on behalf of the first to third and seventh respondents. The first respondent is the Member of the Executive Council for Cooperative Governance, Human Settlement and Traditional Affairs in the North West Province (MEC for COGHSTA), the second respondent is the Member of the Executive Council for Finance in the North West Province (MEC for Finance), the third respondent is the Minister of Cooperative Governance and Traditional Affairs (Minister of COGTA) and the seventh respondent is the Premier of the North West Province (Premier).

5. It is alleged at paragraph 24 of the founding affidavit that the Premier is "specifically joined" to these proceedings as the head of the provincial executive. When one has regard to the notice of motion and the founding affidavit, it is clear therefrom that Sakeliga NPC (Sakeliga), the applicant in this matter, does not seek any relief against the Premier on the merits. It is not surprising therefore that an allegation is made at paragraph 25 of the founding affidavit that Sakeliga does not seek a costs order against, inter alia, the Premier and that such order will only be sought in the event of the Premier electing to oppose the application. The Premier opposes the application despite the fact that no relief is sought against him on the merits. The reasons for his opposition will appear below.

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6. I have read the founding and supplementary founding affidavits of **PIETER JACOBUS LE ROUX** (Mr le Roux), deposed to on behalf of Sakeliga, and wish to respond to the allegations contained in the founding affidavit; the allegations in the supplementary founding affidavit do not require a response from the respondents on whose behalf I depose to this affidavit.

7. But I wish to deal with certain issues before I respond to the allegations in the founding affidavit.

8. The first relates to the late filing of this affidavit. I am advised that the period within which the affidavit should have been filed has lapsed. For this reason, the first to third and seventh respondents need to apply for condonation of the late filing of the affidavit.

9. The second issue relates to the relief sought in prayers 2 to 5 of the notice of motion. As I shall demonstrate, that relief offends against the principle of legality and it is incompetent for this honourable Court to grant it. It is apparent that the relief sought at prayer 6 depends on the granting of the relief sought at prayers 3 and 4. Since the relief sought in the latter prayers cannot be granted, it must follow that the relief sought at prayer 6 also cannot be granted. Apparently, the relief sought in prayers 7 to 16, insofar as the MEC for COGHSTA, the MEC for Finance and the Minister of COGTA are

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concerned, also depends on the granting of the relief sought in prayers 2 to 6. It follows that that relief also cannot be granted. I will therefore request that the application against these respondents be dismissed with costs.

10. The third issue is a point *in limine* relating to the non-joinder of the North West provincial executive council. I have stated that Sakeliga does not seek any relief against the Premier on the merits, although it alleges that he is "specifically joined" as the head of the provincial executive. The relief sought at prayers 2 to 5 is competent only against the North West provincial executive council. It has not been joined as a party in these proceedings and no relief is sought against it. It should have been joined. In the event that this Court does not dismiss the application for the reasons set out in the preceding paragraph, then the Court should dismiss it for the non-joinder of the North West provincial executive council. Alternatively, the Court should not entertain the application on the merits and determine it unless and until Sakeliga has joined the provincial executive council as a party hereto. The failure of Sakeliga to join the provincial executive council to these proceedings was grossly negligent, to say the least. In the event that the Court upholds the point *in limine*, then it should direct Sakeliga to pay the first to third and seventh respondents' costs.

11. I now proceed to deal with the above three issues in turn.

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CONDONATION

12. I am advised that this affidavit should have been filed within 15 (fifteen) days after a notice of intention to oppose was filed on behalf. Due to the fact that it was or would be impossible for this affidavit to be finalised, commissioned and filed within that period, the first to third and seventh respondents' attorneys, the State Attorney, Mahikeng requested Sakeliga's attorneys for an indulgence and extension of two weeks to file it. The indulgence was granted. The State Attorney later approached Sakeliga's attorneys for a further indulgence to file the affidavit by or on 19 August. That request was also granted.

13. I do not deem it necessary to set out the reasons which resulted in the initial request for an indulgence herein. But should the first to third and seventh respondents be required to provide those reasons they will file a supplementary answering affidavit, with the leave of the Court, setting out those reasons.

14. The first to third and seventh respondents were initially represented by senior counsel and one junior counsel. On or about 22 July a decision was taken to introduce another junior counsel in the matter. This was motivated by the fact that the latter junior counsel is conversant with some of the issues relating to the fifth respondent, the Ditsobotla Local Municipality. He has represented the MEC for COGHSTA in legal proceedings against that municipality in this

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Division. Obviously, counsel needed to peruse the papers and familiarise himself with the matter.

15. The first consultation regarding this matter was held on 07 July 2021. The second consultation was held on 29 July. Ms Nthabiseng Mekgwe is the attorney that has been assigned to deal with this matter on behalf of the first to third and seventh respondents at the State Attorney's office. She had attended the first consultation. She could not attend the second consultation. According to Ms Mekgwe, the reason for this was that she had fallen ill. She consulted with Dr Sebogodi regarding her illness. Dr Sebogodi then referred her to Lancet Laboratories at Victoria Hospital to test for the coronavirus. Ms Mekgwe attended at Victoria Hospital for the test. On 28 July she received her results which indicated that she had tested positive for the virus. She was later admitted at the hospital due to complications arising from the coronavirus and was discharged on Sunday, 15 August. Ms Mekgwe was contacted telephonically to obtain this information. I am unable to attach her confirmatory affidavit as she is still recovering at home. If Sakeliga disputes the allegations relating to Ms Mekgwe, which I doubt will be done, her affidavit and test results will be placed before this Court at a later stage.

16. As a result of her illness Ms Mekgwe could not attend to handling this matter. On 29 July her colleague Ms Bonolo Moloto attended the consultation on her behalf. On the same day Ms Moloto addressed a letter to Sakeliga's attorneys asking for a further indulgence to file these opposing papers on 19 August.

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The letter was delivered by email. I attach copies of the email and letter both marked "**MR1**".

17. On 10 August Ms Moloto had a telephonic conversation with Mr Pèter Wassenaar of Sakeliga's attorneys. It emerged during that conversation that Ms Moloto had sent the letter to an incorrect email address. As a result, Mr Wassenaar had not received it. Ms Moloto then forwarded the letter to Mr Wassenaar's correct email address on the same day (10 August). Mr Wassenaar acknowledged receipt thereof after about three minutes. He indicated that he would refer Ms Moloto's letter to his client (Sakeliga) and that he held instructions to apply for a date on the unopposed roll. However, he promised to revert to Ms Moloto "as soon as possible" regarding his instructions. Mr Wassenaar only reverted by a letter dated 18 August, which was emailed to, among others, Ms Moloto on the same day, in which he stated, among others, that Sakeliga was giving the first to fourth and seventh respondents until close of business ("office") on 25 August to file their opposing papers. I attach copies of the emails exchanged between Ms Moloto and Mr Wassenaar on 10 August marked "**MR2**" and copies of Mr Wassenaar's email and letter of 18 August marked "**MR3**".

18. In her letter Ms Moloto provided Ms Mekgwe's illness as the only reason for seeking a further indulgence from Sakeliga's attorneys. However, that was not the only reason. During the second consultation reference was made to certain documents which were not provided to counsel before or during the

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first consultation. Counsel advised that the documents were relevant to this case and requested to be provided therewith. The documents are voluminous and counsel obviously needed time to peruse them and consult thereon. They would then have to prepare this answering affidavit and hold a further consultation to finalise the draft answering affidavit. The documents were also a reason for requesting a further indulgence from Sakeliga's attorneys. Ms Moloto made a mistake by not referring to them in her letter.

19. I must say that the purpose for requesting indulgences to file this answering affidavit late was not to delay the hearing of this matter. The request was motivated by a desire for the first to third and seventh respondents to place material information before this Court to enable it to determine the application properly.

20. When first to third and seventh respondents asked for indulgences it was thought that they should file a substantive affidavit dealing with the application on the merits. Indeed a draft affidavit was prepared on that basis. However, I am advised that as counsel were discussing the matter on Monday, 16 August they realised that it is incompetent for the Court to grant the relief sought in prayers 2 to 6 of the notice of motion. For this reason, a totally different approach had to be taken and the draft affidavit had to be changed. I submit that the failure to file this affidavit was a blessing in disguise to the Court and all the parties. If the affidavit was filed on time, the fact that it is incompetent for the Court to grant the relief sought in those prayers will not have been

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raised. The Court might have granted an order which it was incompetent for the Court to grant and which might be impossible to enforce.

21. The fact that a different affidavit had to be prepared meant that another consultation had to be held to finalise it before it is commissioned and filed. This resulted in it being impossible to file the affidavit on or by 19 August. It is not due to any deliberate decision or gross negligence on the first to third and seventh respondents' part that the affidavit will be filed late but their desire to ensure that the Court is placed in a better position to properly determine this application.

22. As I shall demonstrate, the first to third and seventh respondents have strong prospects of success on the relief sought against them. Sakeliga will not suffer any material prejudice if they are granted condonation. It is not entitled to the relief sought in prayers 2 to 5. The fact that the first to third and seventh respondents are raising this issue is also for Sakeliga's own benefit as it will be impossible for it to enforce the order sought against the first to third and seventh respondents if it is granted. They are the ones that will suffer prejudice if the order is granted because they might be directed to do that which the law does not empower them to do, or they might be found to have failed to discharge their purported obligation in terms of section 139(5) of the Constitution read with the relevant provisions of the MFMA when there is no such obligation on them in the first place. The interests of justice demand that their version that it is incompetent for the Court to grant the relief sought

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against them in the notice of motion be placed before the Court. And their version can only be placed before the Court if the late filing of this affidavit is condoned.

23. For the above reasons, I request this honourable Court to condone the late filing of this affidavit.

INCOMPETENCE OF THE RELIEF SOUGHT AGAINST FIRST TO THIRD RESPONDENTS

24. Sakeliga relies mainly on section 139(5) of the Constitution and section 139 of the MFMA against the first to third respondents in this application. It goes without saying that the power conferred by the two sections constitute public power. In terms of the constitutional principle of legality public power can only be validly exercise if it is sourced in law. In ***Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others*** 1999 (1) SA 374 (CC) at paragraph 58 Chaskalson P expressed the principle thus:

> "It seems central to the conception of our constitutional order that the legislature and ***executive in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law.*** ..." (Emphasis added.)

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25. Needless to say, the MEC for COGHSTA and the MEC for Finance are members of the executive at the provincial level while the Minister of COGTA is a member of the executive at national level. As the Constitutional Court held in ***Fedsure***, they can only exercise those powers or perform those functions conferred upon them by the law. If the law does not specifically confer certain powers or functions on them, then to exercise or perform them would be inimical to the rule of law which is a foundational principle of the Constitution and of which the principle of legality is a part.

26. Since the principle of legality prohibits the first to third respondents from exercising powers or performing functions which have not been specifically conferred upon them by the law, it follows that they cannot be held to have failed to fulfil an obligation which is not imposed on them by the law. It also follows that the Court cannot direct the first to third respondents to exercise powers or perform functions which are not conferred on them by the law. Indeed, as the Supreme Court of Appeal held in ***National Director of Public Prosecutions v Zuma*** 2009 (2) SA 277 (SCA) at paragraph 15, "in exercising the judicial function ***judges are themselves constrained by the law***" (emphasis added).

27. It follows that in order for Sakeliga to be granted the relief sought against the first to third respondents at prayers 2 to 5 of the notice of motion, it must prove that they have the powers or are obliged to perform the functions set out in section 139(5) of the Constitution and section 139 of the MFMA. I am

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advised that it must make out its case in the founding affidavit. Sakeliga has failed to do so. I proceed to demonstrate why I say this.

28. Sakeliga has instituted proceedings against, inter alia, the MEC for COGHSTA, the MEC for Finance and the Minister of COGTA. These proceedings relate mainly to the affairs of the Ditsbotla Local Municipality and Naledi Local Municipality, in particular the alleged failure of the two municipalities to fulfil their constitutional obligation to render basic services to their communities due mainly to their being in financial distress. The two municipalities are cited as the fifth and sixth respondents respectively.

29. The relief sought against the MEC for COGHSTA and the MEC for Finance in prayer 2 is that their purported failure to implement a mandatory intervention in terms of section 139(5) of the Constitution read with section 136(4), 139 and 140 of the MFMA in the respondent municipalities be found to be inconsistent with sections 2, 10, 24, 139(5), 195 and 237 of the Constitution.

30. In prayer 3 Sakeliga seeks an order directing the MEC for COGHSTA to intervene in the two municipalities in terms of the relevant provisions of the MFMA and to take over their basic service delivery obligations. In prayer 4 it seeks an order directing that the intervention to be implemented be a mandatory intervention as envisaged in section 139 of the MFMA. A mistake is made in prayer 4 that the intervention is referred to in prayer 1 of the notice of motion. The latter prayer says absolutely nothing about intervention but

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seeks a declaratory order that the respondent municipalities be found to be in serious or persistent material breach of their obligations to provide basic services and to meet their financial commitments. In the event that the respondent municipalities, their administrations and/or councils resist the intervention, Sakeliga seeks that the municipal councils be dissolved and administrators be appointed to take control of the municipalities.

31. In prayer 5 Sakeliga seeks an order directing the Minister of COGTA and the fourth respondent (the Minister of Finance) to: determine the reasons for the crisis in each of the respondent municipalities' finances; assess each of the municipalities' financial status; instruct the Municipal Financial Recovery Service within the National Treasury to prepare recovery plans for the municipalities; recommend appropriate changes to the municipalities' budgets and revenue raising measures that will give effect to the recovery plans as developed and to submit to the MEC for Finance the determination and assessment , together with the recovery plans and recommendations, referred to above.

32. In prayer 6 Sakeliga seeks an order directing the MEC for COGHSTA to file a report in the court file relating to this case every sixty (60) days after the date of the order sought in the notice of motion. The report should set out the steps taken by the respondents in recovering the respondent municipalities and should provide updates on the implementation of the developed financial recovery plans. This relief is apparently based on or motivated by the relief

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sought in prayers 3 and 4 requiring the MEC for COGHSTA to implement a mandatory intervention in the respondent municipalities.

33. Insofar as the relief sought against the Minister of Finance is concerned, I understand that he is represented by a different legal team. As I have said, I depose to this affidavit on behalf of the MEC for COGHSTA, the MEC for Finance, the Minister of COGTA and the Premier. Therefore, whatever I say concerning the relief sought against both the Minister for COGTA and the Minister of Finance should be construed as only referring to the Minister of COGTA. The Minister of Finance or any person deposing to an answering affidavit on his behalf will deal with the relief sought against him.

34. I am not aware of any legislation that empowers the MEC for COGHSTA and the MEC for Finance to implement mandatory intervention in municipalities. I am further not aware of any legislation that empowers the Minister of COGTA to perform the functions or to exercise the powers referred to in prayer 5 of the notice of motion. Indeed, section 139(5) of the Constitution and the relevant provisions of the MFMA do not confer any such powers or functions on us. I proceed to deal with those provisions to substantiate this allegation.

35. The heading of section 139 of the Constitution is "Provincial intervention in local government". Subsection (5) imposes an obligation on the "relevant provincial executive" to implement a mandatory intervention in a municipality if the municipality, as a result of a crisis in its financial affairs, is in serious or

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persistent material breach of its obligation to provide basic services or to meet its financial commitments, or admits that it is unable to meets its obligations or financial commitments. Section 139(5) is quoted in the founding affidavit. For this reason I do not deem it necessary to quote it in full in this affidavit.

36. Section 139 of the MFMA similarly imposes an obligation on the "provincial executive" to implement a mandatory intervention in a municipality if the 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.

37. The "provincial executive" is required to promptly request the Municipal Financial Recovery Service to: determine the reasons for the crisis in its financial affairs; assess the municipality's financial state; prepare an appropriate recovery plan for the municipality; recommend appropriate changes to the municipality]'s budget and revenue raising measures that will give effect to the recovery plan; and submit to the MEC for finance in the province the determination and assessment as a matter of urgency and the recovery plan and recommendations within a period determined by the MEC for finance but that period may not exceed 90 days (section 139(1)*(a)*of the MFMA).

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38. The "provincial executive" must also promptly consult the mayor of the municipality to obtain the municipality's cooperation in implementing the recovery plan, including the approval of a budget and legislative measures giving effect to the recovery plan (section 139(1)*(b)* of the MFMA). In terms of section 139(2) of the MFMA the MEC for finance must submit a copy of any request to the Municipal Financial Recovery Service and of any determination and assessment received by him or her to the municipality, the Cabinet member responsible for local government (in this case the MEC for COGHSTA) and the Minister of Finance.

39. It is clear then that section 139(5) of the Constitution and section 139(1) of the MFMA places a duty to place a municipality under a mandatory intervention on the "relevant provincial executive" or the "provincial executive".

40. The question may be asked what is meant by the "relevant provincial executive" or the "provincial executive". The answer can be found in section 132 of the Constitution. In terms of subsection (1) thereof "[t]he Executive Council of a province consists of the Premier, as head of the Council, and no fewer than five and no more than ten members appointed by the Premier from among the members of the provincial legislature". As I understand the subsection, the provincial executive council comprises of the Premier as its head and all the MECs appointed by the Premier. Thus, the Premier alone does not constitute the provincial executive council. The individual MECs or some of them also do not constitute the provincial executive council.

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41. It follows that section 139(5) of the Constitution and section 139 of the MFMA confer the power to implement mandatory intervention in municipalities only on the Premier and all the MECs of a province as a unit. It further follows that one member or two members of the executive council does not or do not have the power to implement mandatory intervention in municipalities.

42. It is clear from what I have set out above that the MEC for COGHSTA and the MEC for Finance do not have the obligation to implement mandatory intervention in municipalities in terms of section 139(5) of the Constitution and the relevant provisions of the MFMA. Therefore, they could not have failed to fulfil a non-existent obligation and their purported conduct could not be inconsistent with sections 2, 10, 24, 139(5), 195 and 237 of the Constitution. It follows that this honourable Court cannot grant the order sought in prayer 2 of the notice of motion.

43. The MEC for COGHSTA does not have any authority to implement intervention, let alone mandatory intervention, in municipalities. He also does not have the power to take over the service delivery obligations of municipalities pursuant to interventions implemented in those municipalities. Section 139(5)*(c)* of the Constitution and section 146(3)*(b)* of the MFMA empower the provincial executive, not the MEC responsible for local government, to assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not implement the

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recovery plan. It follows that this Court cannot grant the relief sought in prayers 3 and 4 of the notice of motion.

44. The relief sought in prayer 5 is based on section 139(1) of the MFMA. It is clear from the section that only the Municipal Financial Recovery Service has the power to perform the functions set out at paragraph *(a)*(i) to (v). No mention is made of the Minister of COGTA in the section. For these reasons, the Minister for COGTA cannot be directed to perform the functions or exercise the powers set out in subsection 1(*a*). It follows that the Court cannot grant the relief sought in prayer 5.

45. As I have said, the relief sought in prayer 6 is apparently based on the relief sought in prayers 3 and 4. Because it is incompetent for this Court to grant the relief sought in the latter prayers, it must follow that it also cannot grant the relief sought in prayer 6. The MEC for COGHSTA cannot be directed to file reports within the stipulated period unless there is an order directing the proper party to implement mandatory intervention in the respondent municipalities.

46. I submit that the granting of the relief sought in prayers 7 to 16 depends on the relief sought in prayers 2 to 5. Unless and until a proper party (the North West provincial executive council) is directed to implement mandatory intervention in the respondent municipalities, the relief sought in the former

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prayers cannot be granted. I am advised that counsel will present argument on this issue at the hearing of this application.

47. For the above reasons, I submit that Sakeliga has not made out a case for the relief sought against the first to third respondents. The application must therefore be dismissed on this basis alone. I also submit that costs should follow the result. I am advised that our counsel will present argument to the Court on the issue of costs.

NON-JOINDER OF THE PROVINCIAL EXECUTIVE COUNCIL

48. I have stated that section 139(5) of the Constitution and section 139 of the MFMA confer the power to implement mandatory intervention in municipalities on the "relevant provincial executive" or the "provincial executive". In the present proceedings that is the North West provincial executive council.

49. The Premier, the MEC for COGHSTA and the MEC for Finance are members of the North West provincial executive council. But, as I have said, the provincial executive council is constituted by the Premier and all the MECs of a province. Therefore, the mere fact that the Premier, the MEC for COGHSTA and the MEC for Finance have been cited in these proceedings does not necessarily mean that the North West provincial executive council is a party to these proceedings. As I have stated, although Sakeliga has allegedly

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"specifically joined" the Premier as the head of the provincial executive council, it does not seek relief against him on the merits in that capacity. There are other MECs who should have been joined but are not parties to this application. Therefore, the North West provincial executive council is not before this Court. It must have been joined to these proceedings.

50. It goes without saying that the North West provincial executive council has a direct and substantial interest in the relief sought in these proceedings. It is the only party in the province that has the authority to implement mandatory intervention in municipalities. The relief sought in prayers 2 to 5 of the notice of motion has the effect of divesting it of that authority. If the relief is granted, Sakeliga might seek to enforce it against the North West provincial executive council as it will be impossible for Sakeliga to enforce it against the first to third respondents.

51. I must say that I am surprised that Sakeliga has not joined the North West provincial executive council as a party to these proceedings. It has quoted section 139(5) of the Constitution and section 139 of the MFMA from which it is clear that only a provincial executive council has the power to implement mandatory intervention in municipalities. Nowhere in those sections is the MEC for COGHSTA and the MEC for Finance empowered to implement mandatory intervention in municipalities, nor is the Minister for COGTA empowered to perform the functions or exercise the powers set out in section 139(1)*(a)* of the MFMA.

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52. I submit that the point *in limine* should be upheld and the application dismissed with costs. Alternatively, the relief sought in the notice of motion should not be granted unless and until Sakeliga has joined the provincial executive council to these proceedings. If Sakeliga had joined the provincial executive council to the proceedings, then there would have been no need for the first to third and seventh respondents to raise this point *in limine*. It was grossly negligent of Sakeliga not to join the provincial executive council despite its clear knowledge that it has a direct and substantial interest in these proceedings. Sakeliga must therefore be directed to pay our costs relating to the point *in limine*.

53. I now turn to deal with the allegations in the founding affidavit.

54. But before I do so, I must point out to the Court that the allegations I make in this affidavit relate only to the Minister of COGTA , the MEC for COGHSTA and the MEC for Finance. The allegations made in the founding affidavit do not relate to the Premier at all. Therefore, my responses should not be interpreted to relate or apply to him as well. My responses should also not be interpreted to relate to the North West provincial executive council. The latter is not a party to the proceedings, as I have said. The provincial executive council has not met and taken a decision regarding these proceedings. The first to third and seventh respondents' legal team has also not consulted with

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it. Therefore, I cannot speak on its behalf when I do not know what its stance would be regarding the proceedings.

55. If the point *in limine* is upheld and Sakeliga is directed to join the North West provincial executive council to these proceedings, it will obviously have to amend the notice of motion and file another supplementary founding affidavit. In the event it does so, I submit, the first to third respondents will be entitled to file a supplementary answering affidavit to deal with the new relief sought in the amended notice of motion and the new allegations in the further supplementary founding affidavit. To the extent that I do not deal with some of the allegations in the founding affidavit, I should not be understood to admit them. I may not deal with them because they are misguided or do not relate to the first to third respondents.

AD PARAGRAPHS 1 AND 2 THEREOF

56. I note the allegations in those paragraphs.

AD PARAGRAPH 3 THEREOF

57. I deny that all the allegations or facts in the founding affidavit are both true and correct. As appears from what I have said above, some of the facts are based on a misconception of the law.

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AD PARAGRAPH 4 THEREOF

58. For the reasons appearing above, some of the legal submissions Mr le Roux makes are completely wrong.

AD PARAGRAPHS 5 AND 6 THEREOF

59. I admit that this Court has jurisdiction over the first to third and seventh respondents but deny, for the reasons appearing above, that it has jurisdiction to grant the relief sought in prayers 2 to 5 of the notice of motion and the prayers that follow thereafter.

AD PARAGRAPHS 7 TO 13 THEREOF

60. I bear no personal knowledge of the allegations in those paragraphs and cannot admit or deny them.

AD PARAGRAPH 14 THEREOF

61. I deny that Ms Boitumelo Moiloa is the present acting MEC for COGHSTA. It is apparent that Mr le Roux makes the allegation merely based on the report attached to the founding affidavit as annexure "X3". That report was signed by Ms Moiloa on 24 August 2020 when she was the acting MEC for COGHSTA. The previous incumbent MEC for COGHSTA was Mr Gordon Kegakilwe who passed away on 06 July 2020, hence Ms Moiloa's appointment to act in that position.

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62. Mr le Roux deposed to the founding affidavit on 24 May 2021. At that time the MEC for COGHSTA was Mr Mmoloki Cwaile who was appointed in November 2020. He has since been replaced by Ms Lenah Miga.

AD PARAGRAPHS 15 AND 16 THEREOF

63. I admit the allegations in those paragraphs.

AD PARAGRAPH 17 THEREOF

64. I admit that Mr Tito Mboweni was the Minister of Finance when Mr le Roux deposed to the affidavit. However, he has since been replaced by Mr Enoch Gondongwana following a cabinet reshuffling by the President.

AD PARAGRAPHS 18 TO 23 THEREOF

65. I note the allegations in those paragraphs.

AD PARAGRAPHS 24 AND 25 THEREOF

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66. Subject to reiterating that no relief is sought against the Premier but he opposes the relief sought in prayers 2 to 5 due to the incompetence thereof and that the North West provincial executive has not been joined to these proceedings, I note the allegations in those paragraphs.

AD PARAGRAPH 27 THEREOF

67. I reiterate that it is incompetent for this Court to grant the relief sought in prayers 2 to 5 of the notice of motion and that the relief in the remaining prayers cannot be granted as the granting thereof is dependent on the relief sought in the former prayers.

AD PARAGRAPHS 28 AND 29 THEREOF

68. I admit that Ms Moiloa signed annexure "X3" but reiterate that she is no longer the acting MEC for COGHSTA. Therefore, it is incorrect to refer to her as the first respondent.

69. I bring it to the attention of the Court that the provincial executive council intervened in some of the municipalities in terms of section 139(1)*(b)* of the Constitution. Therefore, the interventions may have resulted in the

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improvement of those municipalities. In any event, this case only relates to the Ditsobotla and Naledi local municipalities.

AD PARAGRAPHS 30 AND 31 THEREOF

70. I am not aware that Sakeliga has placed evidence before this Court to substantiate the allegation that the respondent municipalities are plagued by corruption.

71. I admit that according to annexure "X3" the respondent municipalities are in financial distress.

AD PARAGRAPH 32 THEREOF

72. The allegations in that paragraph constitute an expression of an opinion.

AD PARAGRAPHS 33 TO 37 THEREOF

73. I deny the allegation that the dire nature of the current crisis results from state failure at all levels of government insofar as we are concerned. The allegation seems to be based on our purported failure to implement mandatory

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intervention in the respondent municipalities. I reiterate that we do not have the power to do so.

74. I note the remaining allegations in those paragraphs. We reserve the right to respond thereto if the Court directs Sakeliga to join the provincial executive council to these proceedings and Sakeliga amends its notice of motion and files a supplementary founding affidavit.

AD PARAGRAPH 38 THEREOF

75. I have already dealt with the relief sought against the first to third respondents above and demonstrated that it is incompetent for this Court to grant it.

AD PARAGRAPHS 39 TO 50 THEREOF

76. It is clear or at least apparent from the allegations made in those paragraphs that Sakeliga is fully aware or ought to be fully aware that the provincial executive council must have been joined as a party to these proceedings.

AD PARAGRAPHS 51 TO 85 THEREOF

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77. I note the allegations in those paragraphs insofar as they correctly set out what is stated in annexure "X3".

78. If a need arises for us to file a supplementary answering affidavit, we may deal with the allegations.

AD PARAGRAPH 86 THEREOF

79. I deny that the first to third respondents failed to intervene. If they failed to do so, it is because they do not have the power to intervene. They merely play an oversight role. As I have said, the power to intervene in municipalities is the exclusive preserve of provincial executive councils.

80. The allegations made in the first and second sentences of that paragraph constitute nothing but an opinion.

AD PARAGRAPHS 87 THEREOF

81. Before these proceedings were instituted the North West Department of Finance had appointed Thuso Financial Consultants to prepare a financial recovery plan in respect of the Ditsobotla Local Municipality and Pamoja IMI MAT Consortium to prepare one in respect of the Naledi Local Municipality.

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Those reports were prepared and consultations were held with the officials of the two municipalities in July in relation thereto. This shows that the MEC for COGHSTA and the MEC for Finance were not sitting on their laurels as Sakeliga insinuates. I do not deem it necessary to attach copies of the reports to this affidavit since Sakeliga consider them to be meaningless. But the reports will be produced if the MEC for Finance is required to do so. The first and second respondents reserve the right to deal with the reports in a supplementary answering affidavit should a need arise for one to be filed.

AD PARAGRAPHS 88 AND 89 THEREOF

82. Mr le Roux alleges that mandatory interventions are required and that consideration should be given to dissolving the councils of the respondent municipalities. Yet Sakeliga has not joined the only party that has the power to exercise those powers.

AD PARAGRAPH 90 TO 90.31 THEREOF

83. We, together with our legal team, have not consulted with the officials of the respondent municipalities. I understand that the municipalities are represented by their own legal teams. Therefore, I elect not to respond to the allegations in those paragraphs at this stage.

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AD PARAGRAPHS 91 AND 92 THEREOF

84. I reiterate that the Minister of COGTA does not have the power to intervene in municipalities.

AD PARAGRAPHS 93 TO 98 THEREOF

85. I have stated that I only depose to this affidavit on behalf of the Minister of COGTA, the MEC for COGHSTA and the MEC for Finance insofar as the merits are concerned. Therefore, I elect not to respond to the allegations in those paragraphs as they relate to the Minister of Finance who, as I have said, I understand is represented by a different legal team.

AD PARAGRAPHS 99 TO 106.7 THEREOF

86. I note that Sakeliga does not seek to compel compliance with its requests for access to information in this application.

87. I reiterate at this stage that the MEC for COGHSTA and the MEC for Finance do not have the power to intervene in municipalities and that only the North West provincial executive council has the power to do so.

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88. The MEC for COGHSTA, then Mr Cwaile, did not make a deliberate decision not to respond to Sakeliga's request for access to information. The failure to respond was merely an oversight on my part to refer the request to the Chief Directorate for Local Government within our department which could have responded thereto.

89. I deny that no new discretionary intervention was implemented in the respondent municipalities. On or about 23 March 2021 the provincial executive council took a decision to place the Ditsobotla Local Municipality under administration in terms of section 139(1)*(b)* of the Constitution. Former MEC Cwaile then addressed a letter dated 13 April to Mr G J Moatshe informing him of the decision to appoint him as the administrator. Mr Moatshe accepted the appointment on 14 April. On 13 April former MEC Cwaile wrote a letter to Ms Esther Mmota, the Speaker of the Ditsobotla Local Municipality of the decision to place that municipality under administration and requested her to invite the councillors to a virtual meeting with him on 15 April.

90. The Ditsobotla Local Municipality then instituted urgent legal proceedings in this Division against the chairperson of the provincial executive council, the MEC for COGHSTA and Mr Moatshe under UM103/2021. It also instituted urgent legal proceedings against, inter alia, the chairperson of the provincial executive council, the MEC for COGHSTA, Mr Moatshe and the Minister of COGTA under case number UM 108/2021.

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91. In the proceedings under case number UM103/2021 that municipality seeks, inter alia, an order declaring the decision to place it under administration unlawful and reviewing and setting aside the decision.

92. In the proceedings under case number UM108/2021 the municipality sought an order, inter alia, suspending Mr Moatshe's appointment and interdicting the implementation of the decision to place it under administration pending the finalisation of the review proceedings under case number UM103/2021.

93. I understand that the Ditsobotla Local Municipality was granted the interim relief sought in case number UM108/2021 and that the review application has not yet been finalised.

94. I do not deem it necessary to attach the papers relating to the proceedings referred to above to this affidavit. Suffice it to state that if it becomes necessary to do so, the papers will be placed before the Court at the hearing of this application. Sakeliga's attorneys may visit the Registrar's office and ask for the files relating to those proceedings to confirm the correctness of the above allegations.

95. The provincial executive council had also taken a decision to place the Naledi Local Municipality under administration in terms of section 139(1)*(b)* of the Constitution. The National Council of Provinces did not approve the

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intervention. In terms of section 139(2)*(b)*(ii) of the Constitution the intervention had to end.

AD PARAGRAPHS 107 AND 108 THEREOF

96. Suffice it to state that annexures "X36" and "X37" deal with affairs of municipalities within the province and not the province per se, I note the allegations in those paragraphs insofar as they correctly set out the contents of those annexures. I must point out, however, that the contents of annexure "X37" constitute inadmissible hearsay evidence and that it does not appear that the allegations of corruption have been tested in court.

AD PARAGRAPHS 110 TO 128 THEREOF

97. I reiterate that the relief referred to in those paragraphs depends on the granting of the relief sought in prayers 2 to 5 of the notice of motion which it is incompetent for this Court to grant. Therefore, the Court cannot grant the relief sought in those paragraphs.

98. We reserve the right to deal with the allegations in those paragraphs should Sakeliga be directed to join the provincial executive council to these proceedings. Suffice it to state at this stage that: Sakeliga has not provided

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any reasons why it considers Advoca Auditors to be the only party that is competent to be appointed as the special master in the event the Court decides that one should be appointed; there is an institution that was specifically created for the purpose of assisting municipalities to discharge their obligations and can be appointed as special master should the Court direct that one should be appointed; and, the facts of the cases relating to the appointment of special masters that will allegedly be relied upon differ materially from the facts of this case.

AD PARAGRAPHS 129 TO 133 THEREOF

99. For the reasons appearing above, I deny that Sakeliga is entitled to the relief sought in the notice of motion, in particular against the first to third respondents.

100. The fact that a litigant is non-profit company, that it relies on donations from its members to conduct its affairs, that litigation is costly, that consultation and preparation for the ligation requires many days and that organs of state allegedly failed to fulfil their obligations cannot constitute justification for an order of costs on attorney and client costs. If the contention by Sakeliga was correct, then a punitive costs order would be justified in the majority if not all legal proceedings instituted by non-profit companies or organisations against organs of state for their alleged failure to fulfil their constitutional or statutory obligations.

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101. But as I have demonstrated, Sakeliga cannot be granted an order on the merits against the first to third respondents on the founding papers as they stand. Therefore, it is not entitled to an order for costs, let alone on an attorney and client scale.

WHEREFORE I pray that the application be dismissed with costs, including the costs of two counsel.

DEPONENT

I certify that the deponent has acknowledged that she knows and understands the contents of this affidavit which was signed and sworn to before me at MAHIKENG on the 25TH day of **AUGUST 2021**, the- regulations contained in Government Notice R1258 dated 21 July 1972, as amended, having been complied with.

Commissioner of Oaths

Full names: ANITA HARDING
Designation: Practicing Attorney
Area: Commissioner of Oaths
Motheo House,58 Shippard Street
Mahikeng, 2745
Tel: [illegible]
Date 25/8/2021

M.L

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA
OFFICE OF THE STATE ATTORNEY: MAHIKENG
Private Bag X 51 MMABATHO, 2735 • East Gallery, 1st Floor, Mega City, MMABATHO
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Your ref : **P J WASSENAAR/ES/QB0616**
Our ref : **0955/21/P3**
Enq : **Ms. N MEKGWE**

E-mail :NMekgwe@justice.gov.za

Thursday, 29th July 2021

URGENT

KRIEK WASSENAAR & VENTER INC.
APPLICANT'S ATTORNEYS
EMAIL: Peter@krlekprok.co.za
Cc : litigation1@smitstanton.co.za

Dear Sir/Madam

RE: SAKELIGA // MEC FOR COGTA & 9 OTHERS

REQUEST FOR FURTHER INDULGENCE TO FILE OPPOSING PAPERS

1. The above refers.

2. We hereby bring to your attention that we will not be able to file our opposing papers as agreed, that is on the 30th July 2021, due to the fact that the instructing attorney, Ms. Mekgwe is currently under quarantine for Covid-19 and the writer hereof has temporarily taken over the matter to assist in finalizing the said papers.

3. In light of the above, we request further indulgence to finalise drafting the papers, until the ***19th August 2021***, to file the answering affidavit.

4. We await your response herein.

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Yours faithfully

Ms. B Moloto

For the Office of the State Attorney

REPUBLIC OF SOUTH AFRICA

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"MP 2"
0946

Moloto Bonolo

From:	Moloto Bonolo
Sent:	Tuesday, 10 August 2021 14:23
To:	'peter@kriekprok.co.za'
Cc:	'litigation1@smitstanton.co.za'
Subject:	FW: RE: URGENT REQUEST! SAKELIGA // MEC FOR COGTA & 9 OTHERS
Attachments:	CCF20210729.pdf
Importance:	High

Good day Mr Peter

As per our telephone conversation with the writer hereof on the 10th instant, kindly see our email below which was sent on the 29th July 2021, and the attachment thereof.

Kindly acknowledge receipt herein.

Ms. Bonolo Moloto
Office of the State Attorney, Mahikeng
Tel: 018 384 0269
Cell:0837300572

From: Moloto Bonolo
Sent: Thursday, 29 July 2021 17:23
To: 'peter@kreikprok.co.za' <peter@kreikprok.co.za>
Cc: 'litigation1@smitstanton.co.za' <litigation1@smitstanton.co.za>; Mekgwe Nthabiseng <NMekgwe@justice.gov.za>
Subject: RE: URGENT REQUEST! SAKELIGA // MEC FOR COGTA & 9 OTHERS
Importance: High

Good day

Your ref: P J WASSENAAR/ES/QB0616

The above matter refers.

Kindly find attached hereto a letter for your *urgent* attention.

Regards

Ms. Bonolo Moloto
Office of the State Attorney, Mahikeng
Tel: 018 384 0269

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Moloto Bonolo

From: Peter Wassenaar <peter@kriekprok.co.za>
Sent: Tuesday, 10 August 2021 14:32
To: Moloto Bonolo
Cc: litigation1@smitstanton.co.za
Subject: RE: RE: URGENT REQUEST! SAKELIGA // MEC FOR COGTA & 9 OTHERS

Dear Ms Moloto

I acknowledge receipt. Please note that your previous email was directed at the wrong email address and would not have shown proper delivery.

I will refer your letter to my client. As already stated, I hold instructions to apply for a date on the unopposed roll.

I will, however, revert as soon as possible regarding my instructions.

Yours faithfully / Die uwe

Pèter Wassenaar
Kriek Wassenaar & Venter Ing
Direkteur / Director
• (t) (+27) 12 803 4719 (c) 0829204474
• (a) Third Floor, HB Forum Building, 13 Stamvrug Street, Val de Grace, Pretoria
• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21

From: Moloto Bonolo <BMoloto@justice.gov.za>
Sent: Tuesday, 10 August 2021 14:29
To: Peter Wassenaar <peter@kriekprok.co.za>
Cc: litigation1@smitstanton.co.za
Subject: FW: RE: URGENT REQUEST! SAKELIGA // MEC FOR COGTA & 9 OTHERS
Importance: High

Good day Mr Peter

As per our telephone conversation with the writer hereof on the 10th instant, kindly see our email below which was sent on the 29th July 2021, and the attachment thereof.

Kindly acknowledge receipt herein.

Regards

Ms. Bonolo Moloto
Office of the State Attorney, Mahikeng

M.L
PE

Tel: 018 384 0269
Cell:0837300572

From: Moloto Bonolo
Sent: Thursday, 29 July 2021 17:23
To: 'peter@kreikprok.co.za' <peter@kreikprok.co.za>
Cc: 'litigation1@smitstanton.co.za' <litigation1@smitstanton.co.za>; Mekgwe Nthabiseng <NMekgwe@justice.gov.za>
Subject: RE: URGENT REQUEST! SAKELIGA // MEC FOR COGTA & 9 OTHERS
Importance: High

Good day

Your ref: P J WASSENAAR/ES/QB0616

The above matter refers.

Kindly find attached hereto a letter for your *urgent* attention.

Regards

Ms. Bonolo Moloto
Office of the State Attorney, Mahikeng
Tel: 018 384 0269
Cell:0837300572

Disclaimer

Privileged/Confidential information may be contained in this message. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person) you may not copy or deliver this message to anyone. In such case, you should destroy this message and kindly notify the sender by reply E-Mail. Please advise immediately if you or your employer do not consent to e-mail messages of this kind. Opinions, conclusions and other information in this message that do not relate to the official business of the Department of Justice and Constitutional Development shall be understood as neither given nor endorsed by it. All views expressed herein are the views of the author and do not reflect the views of the Department of Justice unless specifically stated otherwise.

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4. We await the filing of your clients' opposing papers.

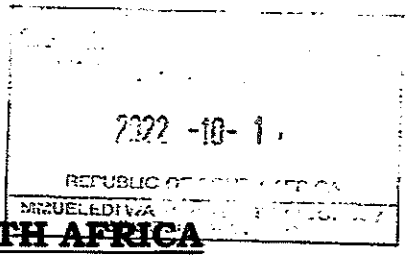
Yours faithfully

KRIEK WASSENAAR & VENTER INC
PETER WASSENAAR – DIREKTEUR / DIRECTOR
(f) 086 596 8514
(e) peter@kriekprov.co.za

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ANNEXURE "2"





IN THE HIGH COURT OF SOUTH AFRICA
(NORTH WEST DIVISION, MAHIKENG)

CASE NO: UM 192/2022

Held at MMABATHO on this the 13th day of OCTOBER 2021
BEFORE the Honourable Madam Justice MAHLANGU AJ

In the matter between:

SAKELIGA NPC	1st Applicant
CENTER FOR GOOD GOVERNANCE AND SOCIAL JUSTICE NPC	2nd Applicant
BAREND LOURENS SNYMAN	3rd Applicant
and	
DITSOBOTLA LOCAL MUNICIPALITY	1st Respondent
THE MUNICIPAL MANAGER/ACTING MUNICIPAL MANAGER OF THE DISTOBOTLA LOCAL MUNICIPALITY	2nd Respondent
THE PREMIER OF NORTH WEST PROVINCE	3rd Respondent
PROVINCIAL EXECUTIVE OF THE NORTH WEST PROVINCE	4th Respondent
MEMBER OF THE EXECUTIVE COUNCIL: NORHT WEST PROVINCE: COOPERATIVE GOVERNANCE, HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS	5th Respondent
MEMBER OF THE EXEVUTIVE COUNCIL: NORTH WEST PROVINCE: FINANCE	6th Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	7th Respondent

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MINISTER NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	8th Respondent
MINISTER: NATIONAL DEPARTMENT OF FINANCE	9th Respondent
MINISTER: WATER AND SANITATION	10th Respondent
NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY	11th Respondent
ESKOM SOC LTD	12th Respondent
MAGALIES WATER BOARD	13th Respondent
THE ADMINISTRATOR: DITSOBOTLA LOCAL MUNICIPALITY	14th Respondent

HAVING HEARD ADV G R EGAN on behalf of the Applicants and ADV SCHOLTZ on behalf of the 1st and 2nd Respondents, ADV MAJOKO on behalf of the 3rd Respondent, ADV MOKADIKOA SC on behalf of the 4th to 8th Respondents, ADV MAKGELE on behalf of the 11th and ADV MONNAHELA and ADV SELEKE on behalf of the 14th Respondent and having read the Notice of Motion and other documents filed of record;

IT IS ORDERED

1. THAT: The 14th Respondent, the administrator of Ditsobotla Local Municipality ensures the supply of water at the rectification system assisted by municipal infrastructure support agent.

2. THAT: The Applicant be allowed to be observant of the water supply of Ditsobotla Municipality.

3. THAT: The 14th Respondent provide to provide the report about the water in the Ditsobotla Municipality within 15 days of this order.

4. THAT: The costs of this application be determined on the 10th of NOVEMBER 2022 of the hearing of Part B on this Notice of Motion.

BY THE COURT

REGISTRAR

ANNEXURE "B"

SUBJECT :PROGRESS REPORT IMPLEMENTATION OF MANDATORY INTERVENTION IN LINE WITH SECTION 139 (5) (a) and (c) THE CONSTITUTION READ TOGETHER WITH SECTION 139 OF THE MFMA

---

1. PURPOSE

The purpose of this memorandum is:

1.1. To table the progress report on the implementation of mandatory intervention at eight (8) municipalities

1.2. To outline the roadmap for the preparation of the financial recovery plan for these eight municipalities placed under mandatory intervention.

1.3. To provide recommendations on the resourcing and collaborative approach on the implementation of the mandatory intervention at these eight municipalities.

2. BACKGROUND

The Executive Committee (EXCO) resolved in November 2021 to place eight municipalities(Naledi, Dr RSM, Madibeng, Kgetleng, Ramotshere Moiloa, Tswaing, Ditsobotla and Mafikeng under mandatory intervention in line with S139(5) (a) and (c) of the Constitution read together with S139 of the Municipal Finance Management Act (MFMA). EXCO mandated both MEC for Finance and COGHSTA to engage with the affected municipalities prior the implementation of the mandatory intervention.

The Provincial Treasury as a lead department in implementing the mandatory intervention has adopted the following principles to ensure that all affected stakeholders understand and fully embrace the intervention:

- Role player engagement and activation
- Strengthening the Municipal Finance Recovery Service
- Transparency and Participation

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The Provincial Treasury, COGTA and SALGA held sustained engagements with affected municipalities in July 2021 and subsequent in November 2021, with the new municipal Councils. At these engagements the Mayors of municipalities were taken through the outcome of an assessment conducted in line with provisions of section 138 and 140 of the MFMA which determines the criteria for a municipality in financial crisis.

3. MOTIVATED SUBMISSION

When there is a financial crisis, section 139 of the MFMA requires that specific steps must be followed. These include:

- requesting the Municipal Financial Recovery Service (MFRS) to determine the reasons, assess the municipality's financial state, and prepare a financial recovery plan (which will include any needed changes to the budget and revenue measures); and
- consulting the mayor to obtain the municipality's co-operation.

Further, when there is a financial crisis, section 139(5) of the Constitution requires that the provincial executive must impose the recovery plan.

In preparation for the implementation of the mandatory intervention the Provincial Treasury, COGTA, SALGA, National Treasury and National COGTA convened the Role-player engagement and activation consultation sessions in April and May 2022, where seven (7) municipal Councils (Mafikeng Local Municipality is yet to be engaged) and senior officials were consulted in an effort to build awareness on the requirements of Section 139 of the Constitution and Chapter 13 of the MFMA. Feedback on the outcome of the role-player engagements and activation consultation session is summarised as follows:

- Councillors expressed their concerns on the implementation of the mandatory intervention citing the following:
    - They just started office and should be provided the opportunity to perform and proof themselves.

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concern for municipalities. Councillors sighted that lack of improvement in performance, including financial and nonfinancial, recorded during the implementation of the discretionary intervention which has worsen the situation.

- Lack of understanding of the difference between Mandatory Sec.139(5) and 139(1)
- Councillors viewed the imposition of the financial recovery plan by the provincial government as an opportunity for the municipality to get additional funding
- Monitoring and political oversight is key to successful implementation of the intervention
- Municipal Mayors and Speakers set the tone by committing to work with the provincial and national government to implement the intervention.
- All municipal Council engaged appreciated the presentation and acceded to the intervention

NATIONAL TREASURY MUNICIPAL FINANCIAL RECOVERY SERVICES

STATUS QUO ASSESSMENTS

The first step in the financial recovery process is a diagnostic assessment to determine the reasons for the crisis in a municipality's financial affairs. The objective of the assessment is to determine the status quo and the root causes of the financial crisis. The outcome of the assessment provide enough information to the Provincial Executive to set in motion the process of consultation with the municipality. The municipality's status quo assessment report findings are used to prepare an appropriate financial recovery plan. The key assessment areas are indicated in the diagram below.

The status quo assessment report is a diagnostic assessment to determine the reasons for the financial crisis in the municipality. The objective of the assessment is to determine the status quo and the root causes of the financial crisis. The outcome of the assessment must be measured against existing legislation, best practice benchmarks and targets/standards provided for in the MFMA circulars. The findings of the status quo assessment will be used to prepare an appropriate recovery plan. The key assessment focus areas are:

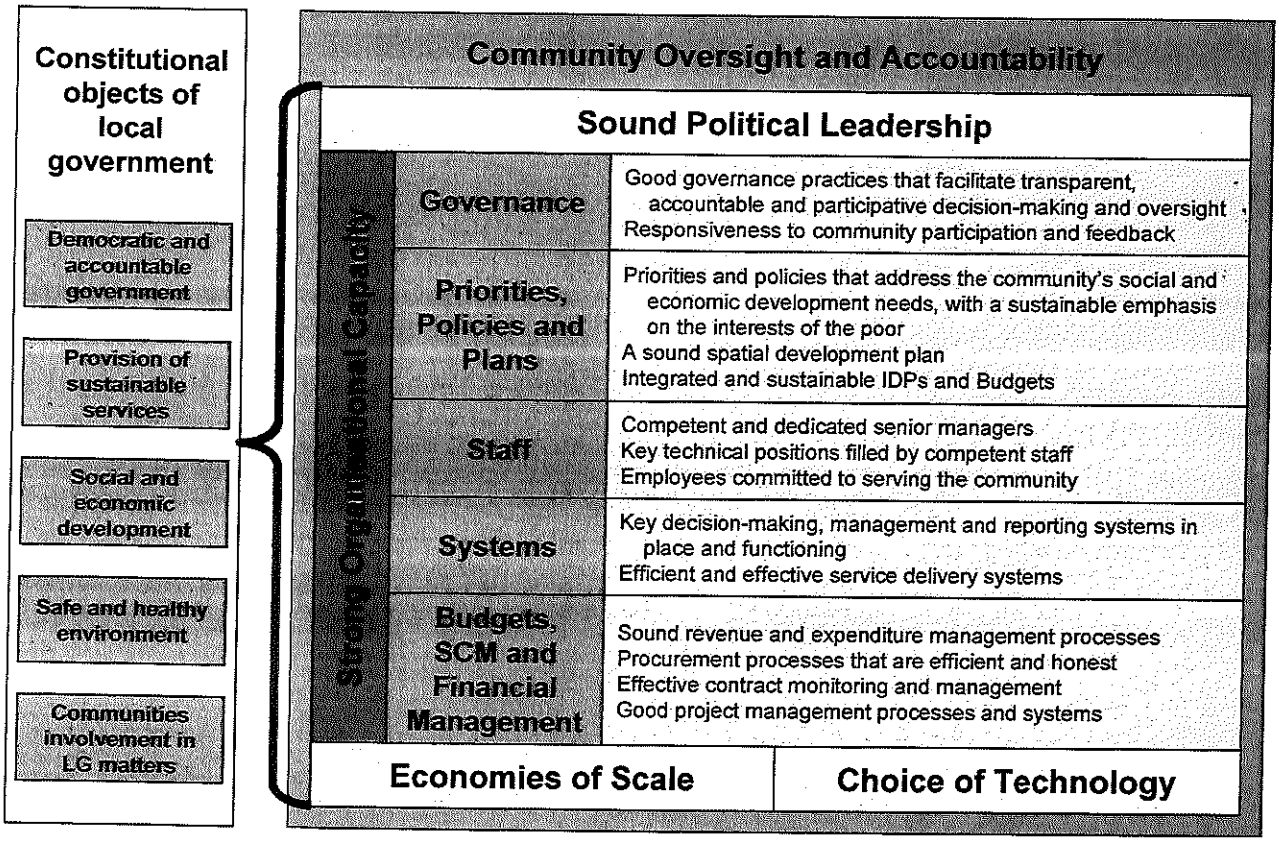
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- The failure by the Provincial Government (COGTA) to provide handover or closeout reports of the previous Sec. 139(1) interventions remains a

- Municipal Governance
- Institutional arrangement and capacity
- Financial Management and
- Service delivery

The diagram below outlines key elements of a functional, well-performing

municipality of which the assessment of the status quo is the basis of the analysis



The MEC for Finance has communicated the Provincial Executive Council's resolution to the affected municipalities and further requested the Minister of Finance to provide the services of the Municipal Financial Recovery Services to conduct an assessment to determine the reasons for the crisis in the financial affairs of these eight municipalities, and prepare a financial recovery plan as required by section 139(10 and141 (2) (3) and (4) of the MFMA.

The National Treasury working together with the Provincial Treasury seconded multidisciplinary teams at these municipalities to conduct the status quo assessment and the table below summarises the progress:

ACTIVITY	PERIOD	PROGRESS
Introductory session and Kick off meeting	June 2022	The introductory session were successfully held from 21 -24 June 2022 for the seven municipalities (

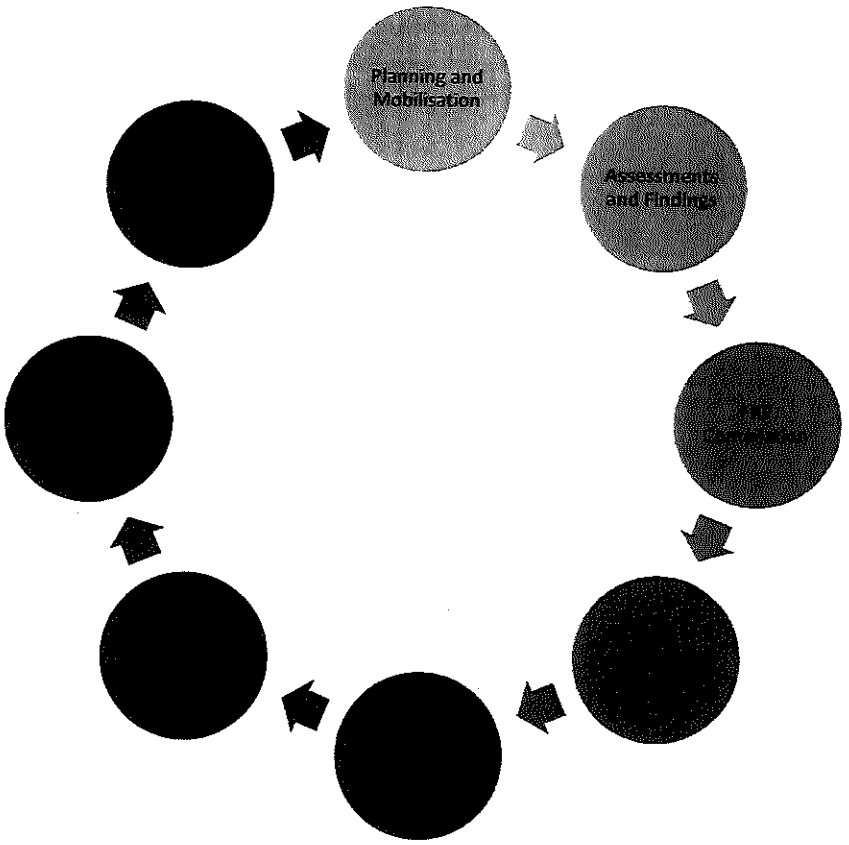
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– Status quo assessment		Mafikeng LM not yet commenced) and all Mayors/ Executive Mayors cooperated during these session
Collation of Information	June 2022	Municipalities managed to provide the information and documents required, however there were challenges experienced where provision of information was delayed
Desktop analysis	July 2022	Completed. Information and documents received from municipalities were analysed and benchmarked against best practise performance on the four pillars of a sustainable municipality (i.e Governance, Institutional capability, financial management and service delivery)
Work stream meetings	July - August	Work streams for all four pillars (Governance, Institutional capacity, and Finance and Service delivery) were convened by the Provincial Treasury working together with the affected municipalities. All stakeholders (COGTA, NT, PT, SALGA, MISA, DWS participated and were represented in the work streams as experts.
Status quo Assessment reports	September - November	Draft Status quo Assessment reports were completed in October 2022. The MEC for finance have scheduled consultation session to be held in November. The following stakeholders will be consulted to provide them with the outcome of the assessment conducted on the state of the financial crisis at the seven municipalities (Mafikeng excluded as the processes are still underway): • The municipality (Targeting the TROIKA and senior managers) • Major Creditors • Organised Labour • COGTA, SALGA, MISA, ESKOM, DWS, District Municipalities and Office of the Premeir The above stakeholders will be afforded an opportunity to make inputs on the report. The final report will be used as a basis to develop the financial recovery plan.

4. FINANCIAL RECOVER PLAN

The National Treasury Municipal Financial Recovery Services (MFRS) is exclusively responsible for the preparation of Mandatory the Financial Recovery Plan (FRP) for the eight affected municipalities in the province. The process will commence in November 2022 after the Provincial Treasury concludes the consultation sessions with the

municipality and other stakeholders on the outcome of the status quo assessment and should be concluded within ninety (90) days. The method applied by the MFRS in development the FRP is providing a performance-based approach with Key Performance Indicators that facilitate financial recovery achievements. A funded budget is the key driver for financial recovery. The diagram below depicts the financial recovery plan value chain:



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FRP ROADMAP

No	Process Activity
1	Formal request to NT Municipal Financial Recovery Service - MFRS (Minister of Finance) to provide mandatory intervention support to eight (08) North West municipalities
2	Approval/Response letter by National Treasury
3	Communication of the Intervention (including citizen engagement at commencement of intervention) through media statement and publication to local news paper
4	Final Terms of Reference focusing on PEC Representative and experts with clear roles and responsibilities.
5	Appoint PEC Representative and required resources/ Mobilise available resources for the intervention
6	Introduction of the intervention team to the Municipal administration, labour, municipal council, communities provincial champions and District Mayor
7	**Preparation of the Interim Plan** Informed by key indicators for Funded Budget, Cash Containment, Cash Flow Management, Debtor Management, Creditor Management, cash-backing of Conditional Grants and. Identify key Operations & Maintenance (O&M) projects (Spillages, water leaks, waste removal and roads rehabilitation and patching of potholes. Secondment of critical skills (artisans, process controllers and scientists. **This phase will be prioritised for rapid implementation, while the detailed FRP is being developed)** Institutionalise IGR Structure for FRP monitoring and oversight in interim phase
8	Finalise Draft FRP and Implementation Plan (in compliance with MFMA S142 criteria) with due consideration of FRP previously approved if applicable
9	Distribute Draft FRP and Implementation Plan for comments to the municipality, Provincial Treasury, Provincial Cogta and National Treasury counterparts, CoGTA
10.	Consideration of all comments on the Draft FRP
11	Finalise Final Draft FRP
12	Submission of the Final Draft FRP, for comments to the municipality, MEC for Finance, MEC Cogta, Provincial SALGA, Organised labour, any supplier or creditor of the municipality on request (MFMA S141(3)(c))
13	Publication of FRP for public comments (MFMA S141(3)(c)). Submit publication notices for publication in municipal newspapers (14 days)
14	Consolidate all public and other stakeholder inputs into the Final Draft FRP
15	Submission of the FRP to the MEC for Finance (MFMA S141(4))

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No	Process Activity
16	Verification if prescribed processes and criteria have been followed in developing the FRP (MFMA S143(2))
17.	Approval of FRP by the MEC for Finance (MFMA S143(2))
18.	Submission of approved FRP to the Municipality, MEC of Cogta, Auditor General, and Provincial SALGA (MFMA 143(3))
19	Institutionalise IGR Structure for FRP monitoring and oversight
20	Monthly progress reporting in accordance with reporting framework
21	Compile quarterly FRP assessment review reports on the intervention and sent to the Municipality, MEC for Finance, I Minister of CoGTA, MECs Finance and CoGTA, WCPL, SALGA (Section 147 (1)(b) of the MFMA)

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ANNEXURE 4

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH WEST DIVISION, MAHIKENG)

CASE UM 21/21

Held at MMABATHO ON THE 19TH DAY OF FEBRUARY 2021 BEFORE THE HONORABLE ACTING JUDGE NONYANE

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG
Private Bag X2010, Mmabatho 2735
2021 -02- 22
NWD-NW-002
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG

MEC DEPARTMENT OF COOPERATIVE GOVERNMENT AND TRATIONAL AFFAIRS, N.W. — APPLICANT

and

DITSOBOTLA LOCAL MUNICIPALITY — 1ST RESPONDENT
MOTLHANKA PATRICK MOREO NO — 2ND RESPONDENT
MOSIDI ESTHER MMOTA NO — 3RD RESPONDDENT
TSIETSI ISAAC SHEMA — 4TH RESPONDENT

Having heard Advocate Monnahela on behalf of the Applicant and Advocate Ferris on behalf of the Respondents and having read the affidavits and documents filed

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IT IS ORDERED:-

1. That the applicant's non-compliance with the Rules of this Court relating to forms, service and time period is condoned and this application is heard on urgent basis in terms of rule 6(12) of the Uniform Rules of Court

2. That the First Respondent (Municipal Council's) decision to appoint the fourth respondent as its acting Municipal Manager is declared unlawful and set aside

3. That fourth respondent's decision to approve an adjustment budget of the first respondent contrary to Section 28 of the local government Municipal Finance Management Act 56 of 2003 is unlawful and is set aside.

4. The first respondent is ordered to pay the cost of this application on a party and party scale.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG
Private Bag X2018, Mmabatho 2735
2021 -02- 22
NWD-NW-008
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG

BY THE COURT

REGISTRAR OF HIGH COURT
NORTH WEST HIGH COURT
MAHIKENG

REGISTRAR

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Circulate to Regional Magistrates: YES / NO

IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

CASE NO: UM 21/2021

In the matter between:

MEC FOR DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS N.W. PROVINCE	**APPLICANT**

And

DITSOBOTLA LOCAL MUNICIPALITY	**FIRST RESPONDENT**
MOTLHANKA PATRICK MOREO N.O.	**SECOND RESPONDENT**
MOSIDI ESTHER MMOTA N.O.	**THIRD RESPONDENT**
TSIETSI ISAAC SHEMA	**FOURTH RESPONDENT**

REASONS FOR JUDGMENT / ORDER

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[1] On the12th February 2021 the following order was granted:-

"IT IS ORDERED:-

1. *That the respondents' application be and is hereby dismissed.*

2. *That the matter be and is hereby postponed to the 19th day of February 2021.*

3. *That the respondents file their answering affidavit on or before the 16th day of February 2021*

4. *That the applicant file his replying affidavit if any on or before the 18th day of February 2021.*

5. *That the issues of urgency remain reserved.*

6. *That the applicants is ordered to pay the costs occasioned by the postponement on a party and party scale."*

[2] On 17 February 2021 the first to fourth respondents requested the Court to provide written reasons for the abovementioned order. Here follows the reasons for the order.

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BACKGROUND

[3] The applicant launched an urgent application on 08 February 2021. The matter was set down on the 12 February 2021. On the date of the hearing the respondents filed a notice in terms of rule 6(5)(d(iii) of the Uniform Rules of Court raising the following questions of law

"1. the application is brought on an urgent basis and set down for 12 February 2021 at 10h00;

2. the respondents are required to inform the applicant's attorney-of-record on/or before 12h00 on 8 February 2021 whether they intend opposing the matter and to file their answering affidavit at 14h00 on 12 February 2021;

3. the application was served on the respondents on Tuesday, 9 February 2021. The notice of motion requires the respondents to file their notice of intention to defend on 8 February. The application was served after the time period in which the respondents were required to deliver their notice of intention to defend;

4. the respondents are required to file their answering affidavits by 14h00 on 12 February 2021. The matter has been set down for

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argument at 10h00 on 12 February 2021. In the circumstances, the respondents are required to file their answering affidavit after the hearing of the application;

5. *the notice of motion is therefore fatally defective and cannot be cured by an amendment. The application falls to be dismissed with costs on an attorney and own client scale including the cost consequent upon the employment of two counsel, including the costs of senior counsel."*

[5] The applicant in his notice of motion made an error with regards to the dates and days within which the respondent were to file their notice of intention to oppose and their answering affidavit.

[6] The applicant's notice of motion required the respondents to:-

"(a) Notify the applicant's attorney in writing of such intention at or before 12h00 on Wednesday, 08 February 2021, and in such notice to appoint an address within 15 kilometres of the office of the Registrar of this Honorable Court at which the respondents will accept service of all notices and documents in these proceedings; and

(b) File their answering affidavit(s), if any, by 14h00 on Thursday, 12 February 2021."

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DISCUSSION

[7] The point *in limine* was argued extensively and the respondent's counsel contended that the fact that the applicant requested the respondents to file their notice of intention to oppose a day before they were served and to file their answering affidavit after the matter has been adjudicated renders the notice of motion fatally defective and an abuse of the process.

[8] The applicant's counsel argued that the clerical error in the notice of motion may be cured by the Court's indulgence. He further referred the Court to the dictum of Plasket AJ, as he then was, in ***Nelson Mandela Metropolitan Municipality and Others v Greyvenouw CC and Others***[1] wherein the learned judge held that:

> *"[40] I am of the view that the argument of the respondents on this point is based on a degree of inflexible formalism that, I am sure, Kroon J did not intend to suggest should be the norm in all cases irrespective of the circumstances. Indeed, the erstwhile Appellate Division has on a number of occasions turned its back on such formalism in the application of the Rules. For instance, in Trans-African Insurance Co Ltd v Maluleka Schreiner JA held that 'technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible, inexpensive decision of cases on their real merits'. In Federated Trust Ltd v Botha, Van Winsen AJA held that the 'rules are not an end in*

[1] 2004 (2) SA 81 at para 40.

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themselves to be observed for their own sake. They are provided to secure the inexpensive and expeditious completion of litigation before the courts' and that '[w]here one or other of the parties has failed to comply with requirements of the Rules or an order made in terms thereof and prejudice has thereby been caused to his opponent, it should be the Court's endeavour to remedy such prejudice in a manner appropriate to the circumstances, always bearing in mind the objects for which the Rules were designed'. In Safcor Forwarding (Johannesburg) (Pty) Ltd v National Transport Commission Corbett JA held that '[n]aturally, it is for the Court to decide whether the matter is really one of urgency and whether the circumstances warrant a departure from the normal procedures. To hold otherwise would, in my view, make the Court the captive of the Rules. I prefer the view that the Rules exist for the Court, rather than the Court for the Rules'. Most recently, in D F Scott (EP) (Pty) Ltd v Golden Valley Supermarket, Harms JA held that the Rules 'are designed to ensure a fair hearing and should be interpreted in such a way as to advance, and not reduce, the scope of the entrenched fair trial right' contained in s 34 of the Constitution." (own emphasis and footnotes omitted.)

[10] The Court has the general discretion to condone non-compliance with the rules.[2] It has been held that the need to draw the distinction between irregular procedure, which may be condoned by the court, and nullity places far reaching limitations on the court's discretion to grant condonation for non compliance with the rules.[3] The latter cannot be condoned. In casu, the notice of motion required the applicant to file their answering affidavit by Thursday 12 February 2021 at 14h00. I

[2] *C Du Plooy v Anwes Motors (Edms) Bpk* 1983 (4) SA 212 (O) at 216H-217A.

[3] *Mynhardt v Mynhardt* 1986 (1) SA 456 (E) at 826 – 828.

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understand the word by, used in the aforementioned context, to mean on or before. The respondents were thus, despite the errors in the notice of motion, not precluded from filing their answering affidavit before the hearing of the matter. I therefore do not view the defects in the notice of motion as a nullity.

[11] The cardinal point, *inter alia*, in condoning non-compliance with the rules is whether the respondents would be prejudiced.[4] I am of the view that, generally, the yardstick should be whether the court is entitled to overlook the non-compliance which does not cause any substantial prejudice to the other side.

[12] The applicant in the founding affidavit raised, *prima facie*, urgent matters which, in my view, deserves the immediate attention of the Court. I saw it necessary that the Court not dismiss the application and afford the respondent an opportunity to file their opposing papers to answer to the applicant's allegation.

[13] The respondents did not allege any prejudice during their submissions on the point *in limine*. Taking cognisance of the above cited dictum in ***Nelson Mandela Metropolitan*** that the court should not be held captive by the strict requirement of compliance to Rules in urgent

[4] *SA Instrumentation (Pty) Ltd v Smithchem (Pty) Ltd* 1977 (3) SA 703 (D); *Krugel v Minister of Police* 1981 (1) SA 765 (T); *Minister of Prisons v Jongilanga* 1983 (3) SA 47 (E).

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application, the respondents' failure to allege and prove prejudice due to the defects in the notice of motion and the need for the matter to be properly ventilated before the Court in an expeditious manner, I dismissed the respondents' application for the applicant's case to be struck off the roll.

Costs

I awarded costs in favour of the Respondent, even though I did not uphold their point in law, because had it not been for the defects in the applicant's notice of motion the matter would have proceeded.

B R. NONYANE
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION

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APPEARANCES

DATE OF HEARING	:	12 FEBRUARY 2021
DATE OF ORDER	:	12 FEBRUARY 2021
DATE OF REASONS	:	18 FEBRUARY 2021
COUNSEL FOR APPLICANT	:	ADV. O MONNAHELA
COUNSEL FOR RESPONDENT	:	ADV. M DEWRANCE SC With Adv. B Rowjee & Adv. N. Ferris
ATTORNEYS		
For the Applicant	:	STATE ATTORNEYS 1ST FLOOR EAST WITNG MEGACITY COMPLEX Cnr. Sekame Road & Dr James Moroka MMABATHO
For the Respondent	:	TIRO ATTORNEYS Office No. 5 Ground Floor Kelgor House, 14 Tillard Street MAHIKENG

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ANNEXURE 5

IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NO:

In the matter between:

MEC FOR THE DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, NORTH WEST	Applicant
and	
DITSOBOTLA LOCAL MUNICIPALITY	First Respondent
MOTLHANKA PATRICK MOREO N O	Second Respondent
MOSIDI ESTHER MMOTA N O	Third Respondent
TSIETSI ISAAC SHEMA	Fourth Respondent

FOUNDING AFFIDAVIT

I the undersigned,

MMOLOKI SAVIOUR CWAILE,

hereby make oath and declare that:

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1. I am a major male, currently appointed as the Member of the Executive Council for the Department of Cooperative Governance and Traditional Affairs in the North West Province, with my office situated at Second Floor West Wing, Garona Building, University Drive, Mmabatho.

2. The facts I depose to in this affidavit are within my personal knowledge, unless the contrary is stated or appears from the context, and are, to the best of my belief, both true and correct. Where I rely on information obtained from others I attach their confirmatory affidavits.

3. Where I make legal submissions I do so on the advice of my legal representatives, which I believe to be correct and accept.

4. In what follows I deal with the following issues:

   4.1 The purpose of the application;

   4.2 The parties;

   4.3 The legal framework relating to the appointment of a municipal manager or an acting municipal manager;

4.4 The unlawful decision to appoint the fourth respondent as the acting municipal manager by the first respondent;

4.5 The unlawful conduct of the fourth respondent since his appointment as the acting municipal manager;

4.6 Costs; and

4.7 Urgency.

5. I proceed to deal with the above issues in turn.

PURPOSE OF APPLICATION

6. The purpose of this application is to obtain an order declaring the decision of the first respondent's municipal council to appoint the fourth respondent as its acting municipal manager unlawful and setting it aside. The appointment was made contrary to the applicable legislation and regulations which I will refer to below as the fourth respondent did not meet the requirements for appointment. It was made despite opposition from some of the councillors who correctly stated the legal position. The municipal council ignored my directive that the

decision be reversed. This has left me with no option but to approach this Court for appropriate relief.

THE PARTIES

7. I am the applicant in this matter and my particulars are as set out in paragraph 1 above.

8. The first respondent is **DITSOBOTLA LOCAL MUNICIPALITY**, a local municipality established in terms of the Local Government: Municipal Structures Act 117 of 1998 ("Structures Act") and having a separate legal personality in terms of section *2(d)* of the Local Government: Municipal Systems Act 32 of 2000 ("Systems Act"), with its principal place of business situated at Civic Centre, corner of Dr Nelson Mandela Drive and Transvaal Street Lichtenburg. I shall refer to the first respondent as "the Municipality" henceforth.

9. The second respondent is **MOTLHANKA PATRICK MOREO N O**, a major male, purportedly elected as the Mayor of the Municipality at a meeting of the municipal council held on 15 January 2021, with his office situated at Civic Centre, corner of Dr Nelson Mandela Drive and Transvaal Street Lichtenburg. The reason(s) why I use the word "purportedly" shall appear below. I shall refer to the second respondent as "Councillor Moreo" henceforth.

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10. The third respondent is **MOSIDI ESTHER MMOTA N O**, a major female, currently serving as the Speaker of the municipal council, with her office situated at Civic Centre, corner of Dr Nelson Mandela Drive and Transvaal Street Lichtenburg. I shall refer to the third respondent as "Councillor Mmota" henceforth.

11. The fourth respondent is **TSIETSI ISAAC SHEMA**, a major male, purportedly appointed as the Municipality's acting municipal manager at the council's meeting held on 02 December 2002, with his office situated at corner of Dr Nelson Mandela Drive and Transvaal Street Lichtenburg. Due to the unlawfulness of his appointment and his unlawful conduct set out below the fourth respondent is cited in his personal capacity. I shall refer to him as "Mr Shema" henceforth.

LEGAL FRAMEWORK RELATING TO APPOINTMENT OF MUNICIPAL MANAGER OR ACTING MUNICIPAL MANAGER

12. Originally, the appointment of municipal managers or acting municipal managers was regulated by section 82 of the Structures Act. Section 82(1)*(a)* and *(b)* places an obligation on a municipal council to appoint a municipal manager and an acting municipal manager when necessary, respectively. In terms of section 82(2) "[a] person appointed as municipal manager ***must have***

M.L AH

the relevant skills and expertise to perform the duties associated with that post" (emphasis added).

13. At the time of its enactment the Systems Act did not have any provision dealing with the appointment of municipal managers or acting municipal managers. In 2011 section 54A, which dealt with the issue, was introduced into the Systems Act by the Local Government: Municipal Systems Amendment Act 7 of 2011 ("the Systems Amendment Act"). Section 15 of the Systems Amendment Act repealed section 82 of the Structures Act.

14. In 2016 the Gauteng Division of the High Court, Pretoria declared the entire Systems Amendment Act invalid and referred the matter to the Constitutional Court for confirmation of the declaration of invalidity. On 09 March 2017, in *South African Municipal Workers' Union v Minister of Co-operative Governance and Traditional Affairs and Others*, the Constitutional Court confirmed the declaration of invalidity made by the high court. It suspended the declaration of invalidity for a period of 24 months to enable the legislature to correct the defect. The legislature did not do so within that period, meaning that the declaration of invalidity became effective on 09 March 2019. Thus, the Systems Amendment Act is no longer effective. I am advised that this means that section 82 of the Structures Act is still valid, hence I used the present tense when referring to it above.

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15. In 2014 the Minister for Cooperative Governance and Traditional Affairs ("the Minister") made the *Local Government: Regulations on appointment and Conditions of Employment of Senior Managers* which were published in *Government Gazette No. 37245, Government Notice 21* of 17 January 2014 ("the 2014 regulations"). The regulations define "senior manager" as "***a municipal manager or acting municipal manager, appointed in terms of section 54A of the [Systems] Act***, and includes a manager directly accountable to a municipal manager appointed in terms of section 56 of the Act". I attach a copy of the definition of regulation 1 marked "**MC1**".

16. Due to the declaration of invalidity of the Systems Amendment Act and probably the confusion that might arise regarding the validity of the 2014 regulations as a result thereof, the Minister issued Circular No. 1 2019 ("Circular 1") on 11 April 2019 stating, among others, that the regulations, except those that were specifically excluded, remained valid. The Minister later replaced Circular 1 with Circular No. 2 of 2019 ("Circular 2") on 2 December 2019 (see paragraph 1.6 of Circular 2). Paragraph 5 of Circular 2 provides in relevant part that "All Regulations and Guidelines that were validly made or issued prior to 9 March 2019, in terms of a section or sub-section of the Systems Act that was inserted by the 2011 Amendment Act, remains[] valid and binding post 9 March 2019". Thus, the entire 2014 regulations (there is no longer an exclusion of any of the regulations) still govern the appointment of municipal managers or acting municipal managers. I attach a copy of Circular 2 marked "**MC2**".

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17. I proceed to deal set out the parts of the 2014 regulations which I consider to be relevant to the determination of this application.

18. In regulation 1 "competence" is defined as "having the necessary higher education qualification, ***work experience*** and knowledge to obtain at least a competent level of achievement". Regulation 9(2) requires a person appointed as senior manager in terms of the regulations to "comply with the minimum requirements for higher education qualification, ***work experience and knowledge as set out in Annexure B***" (emphasis added). I attach a copy of regulation 9(2) marked "**MC3**". In Item 2(b) of Annexure B a person is required to have at least five (5) years' experience at a senior management level and to have "proven successful institutional transformation within public or private sector". The person must also have, among others, "advanced knowledge and understanding of relevant policy and legislation", "advanced understanding of council operations and delegation of powers", "good governance", "audit and risk management establishment and functionality" and "budget and finance management". I attach a copy of Item 2 of Annexure B marked "**MC4**".

19. Regulation 17(1)(a) imposes an obligation on a municipal council to satisfy itself that the candidate for appointment meets the competency requirements for the post, as set out in [Annexure B] ...". In terms of regulation 17(2) a municipal council is obliged to "take a decision on the appointment of a ***suitable candidate***" (emphasis added). I attach a copy of regulation 17 marked "**MC5**".

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20. It will be recalled that the definition of senior manager in regulation 1 includes an acting municipal manager. Therefore, I submit, before a person is appointed as an acting municipal manager he or she must satisfy all the competency requirements set out above.

UNLAWFUL DECISION TO APPOINT MR SHEMA AS ACTING MUNICIPAL MANAGER

21. Until 30 November 2020 Mr Abel Metswamere ("Mr Metswamere") was the Municipality's municipal manager. According to the documents in my possession which were obtained from the Municipality, Mr Metswamere tendered his resignation with effect from 01 December 2020. The resignation was sudden and without the normal notice. As a result, an acting municipal manager needed to be appointed as the Municipality could not be without an accounting officer.

22. According to Mr Tebogo Daniel Buthelezi ("Mr Buthelezi") who was the mayor at the relevant time, the Executive Committee ("EXCO") then held a meeting to discuss the issue of Mr Metswamere's resignation and the appointment of an acting municipal manager. EXCO resolved to recommend to the municipal council three employees of the Municipality, namely, Mr Letlhogonolo Sydney Mokena ("Mr Mokoena"), Mr O Letebele and Mr J Letlhaku, from whom it should appoint the acting municipal manager. Of the three candidates only Mr Letebele satisfied the requirements as set out in the 2014 regulations. Pursuant to the resolution Mr Buthelezi prepared a report to be tabled before council at

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its meeting scheduled for 02 December 2020. I attach a copy of Mr Buthelezi's report marked "**MC6**". It is obvious from a reference to section 54A of the Systems Act that EXCO was oblivious to the confirmation of the declaration of invalidity of the Systems Act by the Constitutional Court or had at least ignored it. I attach Mr Buthelezi's confirmatory affidavit marked "**MC7**" and request that it be read as also confirming the further hearsay allegations relating to him below.

23. The council meeting was held on 02 December as scheduled. According to Mr Buthelezi, the council or at least a majority thereof ignored EXCO's resolution. Instead of appointing one of the candidates recommended by EXCO, one of the councillors recommended Mr Shema for appointment "from the floor". The council then resolved to appoint one of Mr Letebele and Mr Shema as the acting municipal manager. Mr Mokoena and Mr Letlhaku were not considered for appointment at all. While both of them were senior managers, albeit without the necessary work experience, Mr Shema was not in a senior manager position at all.

24. It is stated in the extract from the minutes of the meeting that eighteen (18) councillors voted in favour of the appointment of Mr Shema and twelve (12) councillors in favour of the appointment of Mr Letebele. The council then appointed Mr Shema. It is further stated that the Democratic Alliance opposed the decision on the basis of the Systems Act and the relevant regulations "not to appoint ***a junior manager*** in a position of the Municipal Manager" (emphasis

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added). Councillor Mvundisi voted against Mr Shema's appointment. The African Christian Democratic Party also opposed the appointment "***due to the regulations***" (emphasis added). Importantly, at item (g) it is recorded that "a report with regard to the above be addressed to the MEC". "Above" was a reference to the resignation of Mr Metswamere and the need to appoint "***a suitable candidate*** relevant to the Municipal Systems Act and ***the regulations on the appointment and conditions of employment of senior managers under minimum competency requirements for senior managers which details the prescribed requirements for Municipal Manager***" (item (f)). It is clear from this that the councillors were fully aware that they could not appoint a person who did not satisfy the minimum competency requirements. When the resolution was taken I had already been appointed to my current position. I attach a copy of the extract from the minutes marked "**MC8**". Mr Shema is currently performing the functions of a municipal manager in an acting capacity.

25. I have in my possession a copy of Mr Shema's curriculum vitae ("CV"). It forms part of the documents that were submitted to my department. A request for the documents had been made by an official in my department per my instruction. It is clear from the CV that Mr Shema did not meet the minimum competency requirements for appointment as acting municipal manager and that those councillors who opposed his appointment on the basis of the (2014) regulations were correct to do so. I attach a copy of the CV marked "**MC9**".

26. I am advised that our courts, including the Constitutional Court, have held that a body such as the municipal council may only exercise those powers that have been given to it by legislation. It may not act outside those powers. The 2014 regulations, read with section 82 of the Structures Act, do not confer any authority on the municipal council to appoint a person who does not meet the minimum competency requirements. As appears above, even the council itself was aware of this. It follows that the council should not have appointed Mr Shema as the acting municipal manager at all and that its decision to the contrary is unlawful.

27. Mr Shema's conduct after his appointment bears testimony to the fact that he does not meet the minimum competency requirements to be appointed as the acting municipal manager. He deliberately flouted legislation even when properly advised by Mr Mokoena, the Municipality's chief financial officer ("CFO"), and abused his position by harassing and victimising certain employees of the Municipality, including Mr Mokoena. As stated in his CV, Mr Shema is an attorney of this Court and cannot be ignorant of the fact that his conduct is completely unlawful and may prejudice the interests of the Municipality. It is to that conduct that I now turn.

MR SHEMA'S UNLAWFUL CONDUCT AFTER HIS APPOINTMENT

28. According to Mr Mokoena, a letter dated 29 October 2020 from the Member of the Executive Council for the Department of Finance, MEC Motlalepula Rosho,

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addressed to Mr Buthelezi in his capacity as the mayor, was forwarded to Mr Shema on 07 December. The letter concerned the financial crisis faced by the Municipality and the need for intervention by the Provincial Treasury in terms of the relevant provision(s) of the Local Government: Municipal Finance Management Act 56 of 2003 ("MFMA"). Mr Shema only made the letter available to Mr Buthelezi on 10 December to be tabled at the council meeting scheduled for the same day. The meeting was attended by both Mr Shema and Mr Mokoena. At the meeting some councillors made certain remarks against Mr Mokoena and employees in his department. Councillor Mokosho instructed Mr Shema to suspend employees in that department. This was supported by Councillors Matshogo, Itlhopeng and Mokoneng. The latter specifically mentioned Mr Mokoena as the person that should be suspended.

29. On the same day (10 December) Mr Mokoena addressed a memorandum to Mr Shema in which he formally complained about the accusations levelled against them by the councillors, among others. He alleged that what transpired at the meeting possibly constituted constructive dismissal or "***pre-empted suspension*** as instructed by Councillor Mokosho" (emphasis added). Mr Mokoena alleged that what unfolded at the meeting had a negative effect on him and his performance as a senior manager directly reporting to Mr Shema. I attach a copy of the memorandum marked "**MC10**". I shall return to the memorandum below.

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30. Mr Mokoena alleges that the complaint he lodged marked the beginning of his harassment and victimisation by Mr Shema. Based on the facts I set out below there is merit in the allegation.

31. On 17 December, that is, barely seven days after Mr Mokoena lodged the complaint, Mr Shema served him with a notice of intention to suspend him. The notice alleged that Mr Mokoena, as the CFO and "part of the top management of the Municipality", had failed to comply with his duties to assist the accounting officer, presumably Mr Shema, to "take all reasonable steps to ensure that the Municipality has [an] effective revenue collection system in line with section 64(1) and 2(a) of the MFMA" and to "ensure that all money owing by the Municipality is paid within 30 days of receiving the relevant invoices or statement in line with section 65(1) and (2) (e) of the MFMA". Mr Mokoena had also allegedly failed "to ensure that the financial problems of the Municipality are brought to the attention of the MEC for Local Government and MEC for Finance in the province and organised local government in line with section 135(1) and (2) – (c) of the MFMA". He was informed of the intention to place him on a precautionary suspension "pending an extensive investigation" on the allegations "preferred" against him "and other allegations which might come to the attention of the Municipality during the investigation ...". He was given seven days within which to make representations why he should not be placed on a precautionary suspension, or to "provide the Municipality with a written or detailed response or clarity on the aforesaid allegations". I attach a copy of the notice marked "**MC11**".

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32. According to Mr Mokoena, whose confirmatory affidavit I attach marked "**MC12**", the allegations against him were trumped up and Mr Shema is fully aware of this. I agree with Mr Mokoena for the following reasons.

33. First, section 135 of the MFMA does not place any responsibility to report the financial problems of a municipality to the MECs for local government and finance and organised local government on a CFO. I am not aware that a CFO has direct communication with the MECs or organised local government. As I understand, it is the mayor who has direct communication with the MECs. It is not surprising that MEC Rosho's letter was addressed to Mr Buthelezi as the mayor. It is also not surprising that Mr Buthelezi communicated directly with me regarding the pending motion of no confidence against him and Mr Shema's unlawful appointment. I shall deal with that communication below when I deal with the issue of urgency. Therefore, there is no substance in the allegation that Mr Mokoena failed to ensure that the Municipality's financial problems were reported to the MECs and organised local government. I challenge Mr Shema to point this Court to any instrument that specifically places an obligation on a CFO to report a municipality's financial problems to the MECs and organised local government. If he is unable to do so, as I believe will be the case, he should tell the Court why he "preferred" false allegations against Mr Mokoena.

34. The allegation that Mr Mokoena failed to assist the accounting officer to ensure that the Municipality has an effective revenue collection system and to ensure

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that all money owing by the Municipality is paid within 30 days of receiving invoices is, according to Mr Mokoena, utterly false. Mr Shema is fully aware that the Municipality has a revenue collection system known as Sebata which Mr Mokoena, who only joined the Municipality in 2019, says he was informed has been used since 2012. The system could not be used to generate municipal bills to consumers due to the service provider's failure to comply with its contractual obligations. As a result, the Municipality appointed Motshabi and Associates Incorporated of Mahikeng to do collections on behalf of the Municipality on bills that had already been issued before the problem with the system arose. At the relevant time Mr Shema was the Acting Legal Manager and was fully aware of their appointment. Mr Shema gave an instruction to those attorneys to issue a letter of demand to the service provider to comply with its contractual obligations, failing which the Municipality would institute legal proceedings to force it to do so. I attach a copy of the letter of demand marked "**MC13**". For these reasons, Mr Mokoena could not have been expected to ensure that the Municipality has an effective revenue collection system.

35. It is important to note that, in his memorandum to Mr Shema dated 10 December, through which he laid a formal complaint, Mr Mokoena reminded Mr Shema that he knew "about the ***challenges of Sebata*** as the former ***financial system provider on billing issues*** and the general ledger (GL)" (paragraph 3.4; emphasis added). In a later memorandum dated 22 December, with which I deal below, Mr Mokoena informed Mr Shema that he had not responded to his memorandum of 10 December. Mr Shema has not responded to the memorandum at all. Therefore, he has never denied being aware of the

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challenges relating to the system and, I submit, must be taken to have acknowledged being aware thereof. Yet, he "preferred" an allegation he knew to be utterly false as the basis for seeking to suspend Mr Mokoena.

36. Regarding the alleged non-payment of invoices, Mr Mokoena says that invoices were paid timeously where the funds to do so were available. It is only where funds were not available that invoices were not paid. Mr Mokoena gives two examples in this regard. The first one relates to the Municipality's historical debt of over R600 million to Eskom for the supply of electricity to the Municipality and Mesale Projects (Pty) Ltd ("Mesale") which had been appointed to construct an ablution block and fencing at the cemetery in Itsoseng. Mesale was appointed on a three-year contract and payment to it would be made over that period.

37. Mr Mokoena says that in 2020 he, Mr Metswamere, Mr Shema and Mr Victor Motshabi of Motshabi and Associates Incorporated visited the offices of Eskom to negotiate the settlement of the Municiplaity's debt. They informed Eskom that the Municipality could only pay the debt over a period of twenty (20) years. The proposal was not acceptable to Eskom which rejected it. At present, Eskom expects the Municipality to pay the amount which it is not in a position to do. In his memorandum through which he lodged a formal complaint Mr Mokoena stated that Mr Shema was aware of the historical debt and, according to Mr Mokoena, that allegation has never ben denied.

38. Mesale completed its project ahead of schedule and submitted an invoice for the amount of about R2 million. I attach a copy of the invoice marked "**MC14**". The project was for about R3 million and the Municipality had already paid over R900 000.00. On 17 December, Mr Thami Mtshali who is the Acting Director: Infrastructure addressed two memoranda to Mr Shema in which he stated that there were no sufficient funds for the Mesale invoice to be paid and requested that the shortfall be taken from the funds budgeted for the Itsoseng Roads and Storm Water project. The memoranda were copied to Mr Mokoena but he says that he only became aware thereof on 11 January 2021 when he signed one of them. Mr Mtshali and Mr Shema signed one memorandum on 17 and 18 December respectively and the other 18 on December. I attach copies of the memoranda marked "**MC15**" and "**MC16**" respectively.

39. The approval by Mr Shema of the use of the funds meant for the Itsoseng Road and Storm Water project for the Mesale project was unlawful as it amounted to an adjustments budget. In terms of section 28 of the MFMA this may only be done by a municipal council. In terms of section 28(4) "only a mayor may table an adjustments budget in the municipal council ...". According to Mr Buthelezi who was the mayor, he never tabled an adjustments budget in the council and council never approved any adjustments budget before Mr Shema approved the request by Mr Mtshali. Mr Shema did not bother to consult Mr Mokoena on the issue who later stated in one of the memoranda that only the municipal council can approve an adjustments budget which Mr Mtshali's request would constitute. It is clear from this and what I deal with below that Mr Mokoena

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fulfilled his duties as the CFO, contrary to the allegation made by Mr Shema in the notice of intention to suspend him.

40. I challenge Mr Shema to place credible documentary evidence before this Court to justify the allegation that Mr Mokoena had failed to ensure that the money owed by the Municipality was paid within 30 days after receipt of the invoices. It must include proof that there were funds available for the invoices to be paid and this was not done. In the event he does not produce the evidence he must tell the Court why he "preferred" an allegation which he knew to be false against Mr Mokoena.

41. Mr Mokoena responded to the notice of intention to suspend him through a letter dated 22 December 2020. In it he referred Mr Shema to the *Local Government: Disciplinary Regulations for Senior Managers, 2010* ("the 2010 regulations") published in *Government Gazette No 34213* of 21 April 2011. He specifically referred Mr Shema to regulation 6 thereof. I do not deem it necessary to quote the regulation herein, suffice it to state that it vests the power to suspend a senior manager only on a municipal council. I pause to add that regulation 3(4) prohibits the taking of disciplinary action against a senior manager "until a full investigation has been carried out", unless there are exceptional circumstances present. Mr Mokoena informed Mr Shema that, as the former Acting Legal Manager and Manager in the Office of the Speaker, it was expected of Mr Shema to obtain council resolution before suspending senior managers as they were not appointed by him. He stated that Mr Shema

did not refer to any report he had tabled before the council and council resolution recommending that he be served with a notice of intention to suspend him. He viewed the notice of intention to suspend him as harassment that would affect his performance and the allegations as "vague, baseless and not specific to the point" for him "to respond adequately and to the best of [his] ability". I attach copies of Mr Mokoena's letter and the 2010 regulations marked "**MC17**" and "**MC18**" respectively.

42. It is clear from Mr Mokoena's letter that the purpose thereof was not provide reasons why he should not be placed on precautionary suspension. Rather, it was intended to alert Mr Shema to the fact that the notice was invalid and that he was unable to respond thereto as he had been called upon to do.

43. A council meeting was scheduled for Friday, 29 January. One of the items on the agenda was the report by the acting municipal manager (Mr Shema) on the misconduct of senior managers. According to Mr Mokoena, the senior managers referred to were himself and another senior manager appointed on a five-year fixed-term contract. Strangely, it was stated that the acting municipal manager's report would be "submitted during the meeting ***due to the confidentiality of the matter***" (emphasis added). The agenda was signed by Mr Shema and Councillor Moreo who, as I have said, is the purported mayor. I attach a copy of the relevant parts of that agenda marked "**MC19**". There is another agenda signed by Mr Shema and Councillor Mmota, the Speaker. The latter agenda is silent on the item relating to the report by the acting municipal

manager. Instead, attached to it is a copy of "**Division "B"**" which had served before the council meeting of 19 January in which reference was made to the acting municipal manager's report on the misconduct of senior managers. I attach a copy of the agenda signed by Mr Shema and Councillor Mmota marked "**MC20**".

44. Despite Mr Mokoena's letter to Mr Shema regarding the invalidity of the notice of intention to suspend him and the fact that he did not respond to the allegations in the notice, the council purportedly took a resolution to place Mr Mokoena on a precautionary suspension. The notice of suspension was signed by Mr Shema on the same day. In paragraph 2 thereof reference is made to the notice of intention to suspend Mr Mokoena dated 17 December, that is, the very notice whose validity Mr Mokoena had disputed, and the representations he had purportedly made "in response to the letter of intention to suspend". The precautionary suspension was "with immediate effect and ... full pay, pending the appointment of the investigator, and the investigation and possible disciplinary hearing depending on the outcome of the investigations. The letter regurgitated the provisions of regulation 6(1)(a) and (b) of the 2010 regulations. No specific facts were set out to justify why it was thought that Mr Mokoena's presence at the workplace was undesirable. I attach a copy of the letter of suspension relating to Mr Mokoena marked "**MC21**".

45. As I have said, Mr Shema is an attorney of this Court and was previously the Municipality's Acting Legal Manager. Therefore, he knows the law, including

the procedure that must be followed before a senior manager is placed on precautionary suspension. Mr Mokoena brought the 2010 regulations, in particular regulation 6, to his attention the letter dated 22 December. Mr Shema was fully aware that Mr Mokoena did not respond to the substance of the allegations against him, if there was substance therein. In terms of section 55(1)*(i)* of the Systems Act, Mr Shema is responsible and accountable "for advising the political structures and political office bearers of the municipality". Mr Shema deliberately failed to inform the municipal council that Mr Mokoena had correctly questioned the validity of the notice of intention to suspend him and not responded to the allegations against him. He should not even have placed the issue before the council at all. But he did so. I expect him to know that merely regurgitating the provisions of regulation 6 was not enough to justify the undesirability of Mr Mokoena's presence at the workplace.

46. I specifically challenge Mr Shema to tell this Court whether he knew of the existence of the 2010 regulations before Mr Mokoena brought them to his attention. If he did, I challenge him to tell the Court why he did not table the alleged misconduct before the council, as required by regulation 5(2), before he issued the notice of intention to suspend Mr Mokoena. According to Mr Buthelezi and Mr Mokoena, council only held one meeting, on 10 December, before Mr Shema issued the notice of intention to suspend Mr Mokoena. At that meeting Mr Shema never tabled Mr Mokoena's alleged misconduct before the council. If Mr Shema knew about the regulations, and it is apparent from paragraphs 5 and 6 of the notice that he did, then he knew that his conduct in issuing the notice was unlawful.

47. If he claims that he did not know about the regulations, I challenge him to tell the Court how he knew that an "extensive investigation" had to be carried out and that Mr Mokoena was entitled to be given seven (7) days to respond to the allegations against him before he could be placed on precautionary suspension. I further challenge him to tell the Court whether he bothered to check the regulations after Mr Mokoena brought them to his attention and, if not, why he did not do so to ensure that he had not acted unlawfully. I further challenge him to tell the Court why he allowed the council to take the resolution to suspend Mr Mokoena before observing the rules of natural justice which he definitely is aware of.

48. According to Mr Mokoena, he has already instructed his attorneys to institute urgent proceedings in this Division to challenge the unlawful decision to suspend him. The matter will be set down for hearing during the week of 08 to 12 February.

49. In addition to his formal complaint referred to above, Mr Mokoena addressed another memorandum, also dated 10 December, to Mr Shema. In it he, among others, advised that "payments should not be made to the service providers that were committed unlawfully by the officials of the municipality, without municipal commitment in a form of an order or letter by Accounting Officer or delegated official". He further advised Mr Shema to consider taking disciplinary steps against the likes of "Mr Malesa, Mr Chiwarawara and mechanical

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workshop". He also advised Mr Shema on the consequences of certain vacant posts of senior managers and the need to appoint acting senior managers. I attach a copy of the memorandum marked "**MC22**". The contents thereof casts doubt on the allegation in the notice of intention to suspend Mr Mokoena that he failed in his duty to assist the accounting officer.

50. I pause to mention that Mr Shema also failed to advise the municipal council on the motion of no confidence that was passed against Mr Buthelezi at the council meeting of 15 January. Mr Buthelezi had previously been purportedly removed as the mayor. He successfully applied to this Division to be reinstated to his position. The order was granted on 30 December 2020. I attach a copy of the court order marked "**MC23**". Mr Shema probably knew that the removal again of Mr Buthelezi might amount to a violation of the court order and be contrary to the Standing Orders of the council. I attach a copy of the Standing Orders marked "**MC24**". Mr Buthelezi's attorneys addressed a letter dated 19 January 2021 to Councillor Mmota and copied it to Mr Shema alerting them to the unlawfulness of the resolution to remove Mr Buthelezi as mayor. They requested Councillor Mmota to confirm by 17h00 on the same day that Mr Buthelezi would be allowed to execute his statutory duties. I attach a copy of the letter marked "**MC25**". It is apparent that the request was ignored because Mr Buthelezi says he has instituted other urgent proceedings to challenge his removal. I understand that the matter is set down for hearing on Friday, 05 February and that the respondents have asked for a postponement to Frida, 12 February.

before this Court to show that their suspension was justified. He must specifically set out the facts relating to their misconduct and tell the Court why their presence at the workplace was considered undesirable.

53. Mr Shema addressed a letter dated 07 January to Mr Mokoena in which he informed him that he was "no longer authorised to *finalise payments of creditors* without written authorisation of the accounting officer". This would be done by the accounting officer, that is, Mr Shema. Mr Mokoena's role was limited to the preparation and submission on a daily basis of a creditor's list to Mr Shema. Mr Mokoena was further instructed "not to shift any funds between municipal accounts without consultation of and the express written authority from the accounting officer". He was also instructed to present the information requested to Mr Shema at 09:00 on a daily basis. I attach a copy of the letter marked "**MC29**". It is worth noting that Mr Shema did not provide any reasons for withdrawing Mr Mokoena's powers and requiring Mr Mokoena to report to him on a daily basis at 09:00.

54. In response to the letter, Mr Mokoena addressed a memorandum dated 08 January 2021 to Mr Shema, which he copied to Mr Buthelezi. The purpose of the memorandum was to seek clarity on the duties of the CFO as set out in section 81 of the MFMA. He put emphasis on section 81(1)*(e)* which prescribes his duties as the CFO. The section imposes an obligation on him to "perform such budgeting, accounting, analysis, financial reporting, cash management, debt management, supply chain management, financial management, review

and other duties as may in terms of section 79 be delegated by the accounting officer to the chief financial officer". Mr Mokoena informed Mr Shema that he had given Mr Mokoena's subordinates the same instruction he had given to him. He stated that if he was no longer authorised to perform his duties as the CFO, then that amounted to constructive dismissal. He informed Mr Shema that he had no option but lodge a grievance with the mayor (Mr Buthelezi) and the speaker (Councillor Mmota) in order for them to intervene. He complained about the effect of the harassment he was subjected to by Mr Shema on his performance. I attach a copy of the memo marked "**MC30**".

55. Mr Shema replied by a letter dated 11 January 2021. He stated, among others, that Mr Mokoena's duties had not changed and that he was expected to carry out those duties "as required" in terms of the legislation referred to, presumably, in Mr Mokoena's memorandum. He accused Mr Mokoena of insubordination. It is difficult to understand why Mr Mokoena's asking Mr Shema to give instructions formally and seeking clarity on his role could be thought to amount to insubordination. I challenge Mr Shema to tell this Court why he reasonably believed that the conduct amounted to insubordination. I attach a copy of Mr Shema's reply marked "**MC31**".

56. On the same day (11 January) Mr Mokoena addressed a memorandum to Mr Shema seeking "further clarity on other functions relating to section 81 of the [MFMA]". In it he referred to a document relating to the Mesale project which he received on that day and said it was "fully authorised" by Mr Shema without

his "comments or advice as the CFO". He stated that he was confused as to his role. He requested Mr Shema to "clearly indicate whether all role[s] in line with section 81(1)(e) are performed by the accounting officer [Mr Shema] moving forward". He advised that the Mesale project would lead to "unauthorised expenditure and [i]rregular if not budgeted for in the current year". He further advised that the municipal infrastructure grant (MIG) funds were depleted and that the Municipality could not "afford to pay conditional grants with operational funds, nor pay operations with conditional grant monies". He would await Mr Shema's response on his role as the CFO as the latest developments showed that he was being overlooked. I attach a copy of the memorandum marked "**MC32**". Again, this is the person who Mr Shema claimed did not assist him to discharge his statutory duties.

57. On 11 January, Mr Mokoena addressed a memorandum to Ms N Dhlamini, the chairperson of the Audit Committee in which outlined the challenges they had encountered during the preparation of the annual financial statements. He stated that he had realised that Mr Shema was performing his duties in his presence and did not require his comments before taking decisions. In effect, Mr Mokoena's complaint was that it was Mr Shema who was not interested in being assisted by him as prescribed by the MFMA. I attach a copy of the memorandum marked "**MC33**".

58. Mr Mokoena addressed a memorandum dated 13 January 2021 to Mr Shema in which he complained about the withdrawal of his functions which would lead

to a constructive dismissal (section 186*(e)* of the Labour Relations Act 66 of 1995). He accused Mr Shema of having a plan which did not include him as part of his support staff. He stated that despite the series of letters he had written to Mr Shema, he would not take any advice from him. He advised him, "as a legal person," "to proceed with caution". He complained that Mr Shema had rendered him redundant. He expressed shock at Mr Shema's allegation of insubordination in his letter dated 11 January to him. He stated that he it would be impossible for him to comply with Mr Shema's instruction regarding the submission of information to Mr Shema on a daily basis as he was not in control of the department but Mr Shema was. I attach a copy of Mr Mokoena's memorandum to Mr Shema dated 13 January marked "**MC34**".

59. On the same day (13 January) Mr Mokoena addressed another memorandum to Mr Buthelezi in which he reported Mr Shema's conduct to him. He reported, among others, that Mr Shema had taken away his functions and responsibilities without notice to him. He alleged that Mr Shema's letters were intended to destroy the finance department's ability "to adhere to its roles and responsibility". Mr Shema's "harassment and bullying" had resulted in the deterioration of the department's performance. He made the serious allegation that "[t]he audit steering committee chaired by the accounting officer is dysfunctional and negatively affects the submission of the AFS [annual financial statements]". He sought Mr Buthelezi's intervention as the developments had drastically affected his performance. I attach a copy of Mr Mokoena's memorandum to Mr Buthelezi dated 13 January marked "**MC35**".

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60. On 26 January, Mr Mokoena addressed a memorandum to Mr Shema complaining about his "unpalatable conduct" at the extended meeting that was attended by "politicians". He alleged that Mr Shema was giving instructions to his subordinates without his knowledge and wanted him to comment on reports he knew nothing about. This, Mr Mokoena alleged, was intended to ensure that he incriminated himself; this being the reason Mr Shema had invited councillors to the meeting without informing the officials. He alleged that Mr Shema was a man on a mission "to discredit and or eliminate" him as the CFO. He informed Mr Shema that the environment was "unpalatable" to him and "toxic in the way that it affects my wellbeing". I attach a copy of the memorandum marked "**MC36**".

61. Mr Mokoena addressed yet another memorandum, dated 29 January, to Mr Shema in which he still complained about his conduct. It will be remembered that the council purportedly took the resolution to suspend Mr Mokoena on the same day. He alleged that he was informed by a team sent by the Provincial Treasury to the Municipality that Mr Shema had held meetings with them on 26 and 28 January and instructed them not to work with Mr Mokoena in preparing the annual financial statements. Mr Shema allegedly told them to report directly report to Mr Tsie on any process relating to the annual financial statements. Mr Mokoena complained that the conduct was prejudicial to him. I attach a copy of the memorandum marked "**MC37**".

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62. In addition to the conduct set out above, Mr Shema issued a notice of termination of the service level agreement for security services entered into between the Municipality and MK 63 Security Services (Pty) Ltd ("MK63"). The agreement is for a period of three years and the amount involved is approximately R39 million. It was concluded on 30 October 2020 and became effective on 01 November, some two or three days later. Mr Shema's notice purportedly terminating the agreement is dated 14 January. Thus, the agreement had endured for less than three months when the notice was issued.

63. The purported termination was in direct contravention of the provisions of the agreement which requires the parties to make every effort to resolve amicably any dispute or difference of any kind "by mutual consultation" (clause 22.1). If the dispute or difference is not resolved after thirty (30) days, then either party may give the other notice of intention to commence with a private mediation process, which process may not commence without a notice having been given to the other party (clause 22.2). Mr Shema had not complied with any of these clauses before he issued the notice. I reiterate that he is an attorney of this Court and knows the law. Therefore, he ought to have known that his conduct amounted to a repudiation of the agreement which might have resulted in MK 63 accepting it and then terminating the agreement. I am advised that MK 63 could still have successfully sued the Municipality for loss of income.

64. I understand that the Municipality instituted urgent proceedings against MK 63 in this Division. However, it did not obtain the exact order it had sought. I am

M.L

advised that should it become necessary, the court file relating to those proceedings will be placed before the Court hearing this application or that the relevant documents relating thereto will be attached to the replying affidavit, if it is filed.

65. The above conduct of Mr Shema clearly shows that he did not meet the minimum competency requirements and should not have been appointed as the acting municipal manager. It was prejudicial to the interests of the Municipality and exposed it to being sued for constructive dismissal and/or breach of contract. On Wednesday, 03 February the State Attorney received a letter from MK 63's attorneys in which they alleged that their client intended to institute urgent proceedings against the Municipality for contempt of court. I attach a copy of that letter marked "**MC38**". But for Mr Shema's conduct, the Municipality would not be involved in this unnecessary litigation which causes it to incur unnecessary costs.

COSTS

66. I request this honourable Court, in the event it grants the order sought in the notice of motion, to postpone the issue of costs for later determination. I intend to join all the councillors of the Municipality to those proceedings in their personal capacities and seek costs against them on the scale between attorney and client. I have not been able to do so due to the limited time available to me to consult and prepare the papers. The councillors who voted in favour of Mr

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Shema's appointment knew before they did so that they were acting unlawfully. Some of them went to the extent of associating themselves with his conduct in harassing and victimising Mr Mokoena. In my view, the Municipality, which is in financial distress, should not be saddled with the costs of this application. If this is done it is the residents who will suffer as the funds meant for service delivery might be used to settle the legal costs. If the Court agrees with me, I ask that it grant an order directing that the councillors be joined to the proceedings in their personal capacities and directing them to file affidavits explaining why they should not be ordered to pay the costs of the application jointly and severally, the one paying the others to be absolved.

67. I have already set out Mr Shema's conduct above. That conduct deserves nothing but an order directing him to pay the costs of the application in his personal capacity on an attorney and client scale, jointly and severally with the counsellors in their personal capacities, the one paying the others to be absolved.

68. In the event the Court does not agree to postpone the hearing on the issue of costs for the reasons set out above, then I request that an order be granted directing the Municipality to pay between 60% and 70% of the costs on a party and party scale and Mr Shema to pay the remaining percentage in his personal capacity on the attorney and client scale. I do not seek a punitive costs order against the Municipality because the people who will ultimately suffer is the residents who are not guilty of any unlawful conduct.

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URGENCY

69. I have stated above that it was recorded in item (g) of the extract from the minutes of the meeting of 02 December 2020 that Mr Metswamere's resignation and need to appoint an acting municipal manager should be reported to me. This was never done. I only became aware of Mr Shema's appointment on 14 January when I received a letter with the same date from Mr Buthelezi. In it he complained about the motion of no confidence that was intended to be passed against him as the mayor. He dealt with Mr Shema's conduct against employees of the Municipality that is set out above. He stated that the municipal council had, among others, appointed Mr Shema contrary to the applicable legislation. I attach a copy of Mr Buthelezi's letter to me marked "**MC39**".

70. I, being mindful of the provisions of section 41(1)*(h)*(vi) of the Constitution, requested officials in my Department to request documents relating to Mr Shema's appointment from the Municipality on the same day I received Mr Buthelezi's letter. Mr Kelotlhoko Plaatjie then sent an email to Ms M J Ledwaba requesting to be provided with the necessary information. Ms Ledwaba replied by, among others, providing copies of Mr Shema's CV and extract from the minutes of the council meeting of 02 December. She later replied by providing other documents. However, these were not all the documents. Others were provided on or about 28 January. I attach a copy of the email communication between Mr Plaatjie and Ms Ledwaba marked "**MC40**".

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71. On 19 January, still mindful of the provisions of section 41 of the Constitution, I addressed a letter dated 18 January to Mr Buthelezi as the mayor directing the municipal council to, among others, reverse Mr Shema's appointment as it was unlawful. I attach a copy of the letter marked "**MC41**". Mr Buthelezi replied through a letter dated 22 January to inform me that he had requested Councillor Mmota through a letter dated 20 January to call a special council meeting but this was not done. I attach copies of Mr Buthelezi's letters to me dated 22 January both marked "**MC42**". This left me with no choice but to direct the Head of Department to instruct the State Attorney to institute urgent proceedings to set aside the municipal council's decision to appoint Mr Shema and to appoint counsel, which he did.

72. We then received information that council would hold a meeting on Friday, 29 January. Counsel then advised that I should suspend the institution of the proceedings and await the outcome of the meeting. We thought that my directive would be complied with and that the institution of the proceedings would be come unnecessary. We had not seen the agenda of the meeting. However, on the day of the meeting we realised that the directive was not complied with.

73. I became unavailable to appear before the commissioner of oaths to depose to the affidavit due my mother's death. I am from Taung and that is where the funeral was held on Tuesday, 02 February. I was unable to travel back to

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Mahikeng immediately after the funeral or on Wednesday or Thursday. I only became available late in the afternoon of Friday, 05 February to attend to the commissioning of the affidavit. It is only after the commissioning of the affidavit that the papers will be filed.

74. It is clear from what I have set out that I did not delay unnecessarily before instituting these proceedings. It was not unreasonable of me to try to settle the matter out of court as section 41 of the Constitution required of me.

75. I have said that the Mr Shema's conduct is prejudicial to the interests of the Municipality. He has no regard for budgetary processes and the councillors do not hold him responsible for his conduct. While his appointment will lapse at the end of February 2019, there is a real likelihood that he will continue with his unlawful and recalcitrant conduct. Given that he has now succeeded in removing Mr Mokoena as the CFO, he might abuse the Municipality's funds contrary to the approved budget. He has already demonstrated his willingness to do so in relation to the Mesale project. Given the support given to him by the majority of the councillors, I believe that they may extend his contract. I have already stated that they overlooked the only person (Mr Letebele) who meets the requirements for appointment. Councillor Mmota, who is the only person that could call a council meeting for the issue of the reversal of the appointment to be considered, deliberately ignored my directive. I bring it to the attention of the Court that Mr Shema is the manager in Councillor Mmota's office. That could be the reason why she ignored the directive.

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76. I submit that this is a matter that requires to be heard and for an order to be issued on an urgent basis. Otherwise, irreversible harm might arise and the people who will suffer the most are the residents of the Municipality. Mr Shema is rendering the Municipality non-functional. One can imagine how his conduct has affected the morale of the staff. Referring the matter to the ordinary roll will be a futile exercise as Mr Shema's appointment is for a very short period, even if it is extended.

77. For the above reasons, I submit that I have made out a case for the order sought.

WHEREFORE I pray for an order in terms of the notice of motion to which this affidavit is attached.

Deponent

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at MAHIKENG on the 5TH day of **FEBRUARY 2021**, the regulations contained in Government Notice R1258 dated 21 July 1972, as amended, having been complied with.

M L

Commissioner of Oaths

Full names: _____

Capacity : _____

Address : _____

ANITA HARDING
Practicing Attorney
Commissioner of Oaths
Motheo House,56 Shippard Street
Mahikeng, 2745
Tel: 018 381 0495
Date: 27/02/2018

_____

_____

GAT
M.L

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MC 1

"**medical practitioner**" for purposes of these regulations includes a practitioner as defined by the Health Professions Council of South Africa, and who is legally certified to diagnose and treat patients;

"**Medical Schemes Act**" means the Medical Schemes Act, 1998 (Act No. 131 of 1998);

"**Municipal Finance Management Act**" means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), and any regulations made under that Act;

"**Municipal Structures Act**" means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)

"**Pension Funds Act**" means the Pension Funds Act, 1956 (Act No. 24 of 1956);

"**performance agreement**" means an agreement as contemplated in section 57 of the Act;

"**post**" means a post on the approved staff establishment of a municipality which has been budgeted for;

"**senior manager**" means a municipal manager or acting municipal manager, appointed in terms of section 54A of the Act, and includes a manager directly accountable to a municipal manager appointed in terms of section 56 of the Act;

"**speaker**" has the meaning assigned to it in the Municipal Structures Act;

"**staff establishment**" means the approved posts created for the normal and regular requirements of a municipality;

"**the Act**" means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and

"**total remuneration package**" means the total cost of a senior manager's remuneration to a municipality and includes the salary, pension contributions, medical aid contributions and other forms of payment or benefit.

Scope of application

2. (1) These regulations apply to—
- (a) municipalities in the Republic of South Africa;
- (b) municipal entities; and
- (c) senior managers.

(2) These regulations must be read in conjunction with—
- (a) any regulations or guidelines issued in terms of section 120 of the Act concerning matters listed in section 54A, 56, 57A and 72; and
- (b) the Local Government: Municipal Regulations on Minimum Competency Levels, 2007, issued in terms of the Municipal Finance Management Act, as published under Government Notice No. 493 in Government Gazette No. 29967 of 15 June 2007.

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MINISTRY
COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS
REPUBLIC OF SOUTH AFRICA

Private Bag x802, PRETORIA, 0001 Tel: (+27 12) 334 0705 Fax: (+27 12) 326 4478
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CIRCULAR NO. 4 of 2019

FROM: **MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

TO ALL : **MECs RESPONSIBLE FOR LOCAL GOVERNMENT IN THE PROVINCES**

EXECUTIVE MAYORS / MAYORS

IMPLICATIONS OF THE CONSTITUTIONAL COURT JUDGEMENT DECLARING THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS AMENDMENT ACT, 2011 (ACT NO. 7 OF 2011) UNCONSTITUTIONAL

1. PURPOSE AND BACKGROUND

1.1 On 9 March 2017, in the matter between the South African Municipal Workers' Union v Minister of Co-Operative Governance and Traditional Affairs (CCT54/16) [2017] ZACC 7; 2017 (5) BCLR 641 (CC), the Constitutional Court declared the Local Government: Municipal Systems Amendment Act, 2011 (Act No. 7 of 2011) ["hereinafter referred to as the 2011 Amendment Act"] unconstitutional and invalid in its entirety, as the Bill preceding the 2011 Amendment Act was incorrectly tagged by Parliament. The declaration of invalidity was, however, suspended for a period of 24 months. This 24-month period expired on 8 March 2019 before the procedural defect was corrected by Parliament.

1.2 The 2011 Amendment Act brought about substantial amendments to the provisions of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) ["hereinafter referred to as the Systems Act"] dealing, *inter alia*, with uniform norms and standards, procedures and competency criteria for appointments of municipal managers and

managers directly accountable to municipal managers, including the consequences of appointments made in contravention of such procedures and criteria.

1.3 On 11 April 2019, the Minister of Cooperative Governance and Traditional Affairs issued Circular No. 1 of 2019. The purpose of the Circular was to:

1.3.1 inform municipalities and provincial departments responsible for local government about the status of the 2011 Amendment Act and the implications of the Constitutional Court order;

1.3.2 provide progress on measures taken towards correcting the tagging defect as ordered by the Constitutional Court; and

1.3.3 provide transitional measures to be applied by municipalities until such time that the Local Government: Municipal Systems Amendment Bill, 2019 ("the Amendment Bill") is approved by Parliament and assented to by the President.

1.4 Since issuing the Circular on 11 April 2019, two legal opinions have been obtained from Senior Counsels to provide legal certainty with regard to the status of the 2011 Amendment Act and the implications of the Constitutional Court order.

1.5 The purpose of this Circular is to:

1.5.1 provide further clarity to municipalities and provincial departments responsible for local government about the status of the 2011 Amendment Act and the implications of the Constitutional Court order; and

1.5.2 provide progress on measures taken towards correcting the tagging defect and reintroduction of the Amendment Bill to Parliament.

1.6 This Circular replaces Circular 1 of 2019.

2. PROGRESS ON MEASURES TAKEN TOWARDS CORRECTING THE TAGGING DEFECT AND REINTRODUCTION OF THE AMENDMENT BILL TO PARLIAMENT

2.1 A new Amendment Bill providing corresponding provisions verbatim as contained in the 2011 Amendment Act was developed.

2.2 The Amendment Bill was introduced to Parliament on 6 February 2019 following approval by the National Cabinet.

2.3 The Amendment Bill was properly classified as a section 76 Bill. Due to due to time constraints, the Amendment Bill was deferred by the Fifth Parliament to the Sixth Parliament for finalisation.

2.4 The Amendment Bill has been revived by the Sixth Parliament for finalisation.

3. STATUS OF THE PROVISIONS/ AMENDMENTS INTRODUCED BY THE 2011 AMENDMENT ACT

3.1 As of 9 March 2019, the 2011 Amendment Act is invalid and unenforceable in its entirety.

4. APPLICABLE LEGISLATIVE PRESCRIPTS GIVEN THE INVALIDITY OF THE 2011 AMENDMENT ACT

4.1 As of 9 March 2019, municipalities are required to comply with the Systems Act, including all amendments made until 2008 but excluding the amendments introduced by the 2011 Amendment Act.

4.2 The Systems Act, post 9 March 2019, authorise the Minister to make regulations or issue guidelines in accordance with section 120 of the Systems Act to regulate or provide for:

(a) the setting of uniform standards for any matter concerning municipal personnel administration;

(b) municipal staff systems and procedures and the matters that must be dealt with in such systems and procedures;

(c) the regulation of remuneration and other conditions of service of staff members of municipalities, including the municipal manager and managers directly accountable to municipal managers;

(d) the development of remuneration grading and incentive frameworks for staff members of municipalities, including the municipal manager and managers directly accountable to municipal managers;

(e) the measuring and evaluation of staff performance, including that of the municipal manager and managers directly accountable to municipal managers; and

(f) a disciplinary code and procedures for municipal managers and managers directly accountable to the municipal managers.

4.3 Attached to this Circular please find a table ("**Annexure A**") that reflects the provisions of the 2011 Amendment Act that have been declared invalid as of 9 March 2019 and the provisions of the Systems Act that continue to be valid after the declaration of invalidity of the 2011 Amendment Act.

5. STATUS OF REGULATIONS MADE AND GUIDELINES ISSUED IN TERMS OF SECTION 72 AND 120 OF THE SYSTEMS ACT AFFECTING MUNICIPAL MANAGERS AND MANAGERS DIRECTLY ACCOUNTABLE TO MUNICIPAL MANAGERS

The Constitutional Court's order of invalidity is prospective with effect from 9 March 2019. Any action or decision validly taken prior to 9 March 2019, in terms of a section or sub-section of the Systems Act that was inserted by the 2011 Amendment Act, is unaffected by the declaration of invalidity and remains valid. All Regulations and Guidelines that were validly made or issued prior to 9 March 2019, in terms of a section or sub-section of the Systems Act that was inserted by the 2011 Amendment Act, remains valid and binding post 9 March 2019.

5.1 Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers ("the Appointment Regulations")

5.1.1 The Appointment Regulations remain valid and enforceable after 9 March 2019 and all municipalities are required to comply therewith.

5.1.2 Where a regulation or sub-regulation of the Appointment Regulations refers to a section or sub-section of the Systems Act that was inserted by the 2011 Amendment Act and which section or sub-section is, as of 9 March 2019, not

longer in force, such regulation or sub-regulation must, as far as possible, be interpreted to disregard the reference to the invalid section or sub-section and the regulation or sub-regulation must, as far as possible, still be complied with.

5.2 **Upper Limits of Total Remuneration Packages Payable to Municipal Managers and Managers Directly Accountable to Municipal Managers ("the Upper Limits Notice")**

5.2.1 The Upper Limits Notice published in Government Gazette 42023 on 8 November 2018 was validly made or issued prior to 9 March 2019, in terms of sections 72 and 120 of the Systems Act and therefore remains valid and binding post 9 March 2019. All municipalities are required to comply therewith until such time that a new Upper Limits Notice, which will take effect from 1 July 2019, is issued in accordance with the provisions of section 72 of the Systems Act that is not affected by the invalidity read together with regulation 35 of the Appointment Regulations.

5.2.1 The Upper Limits Notice applies to all municipal managers and managers directly accountable to municipal managers.

5.3 **Local Government: Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers, 2006 ("the Performance Regulations")**

The Performance Regulations were validly made or issued prior to 9 March 2019 and therefore remain valid and enforceable after 9 March 2019 and all municipalities are required to comply therewith.

5.4 **Local Government: Disciplinary Regulations for Senior Managers ("the Disciplinary Regulations")**

The Disciplinary Regulations were validly made or issued prior to 9 March 2019 and therefore remain valid and enforceable after 9 March 2019 and all municipalities are required to comply therewith.

6. **STATUS OF THE REGULATIONS ON MINIMUM COMPETENCY LEVELS MADE IN TERMS OF THE MFMA**

The Regulations on Minimum Competency Levels made in terms of section 168 of the Local Government: Municipal Finance Management Act, 56 of 2003, are unaffected by the invalidity of the 2011 Amendment Act and remain valid and enforceable after 9 March 2019 and municipalities are required to comply therewith.

7. ENQUIRIES

Further enquiries relating to this matter may be directed to the following officials in the Department of Cooperative Governance and Traditional Affairs:

Mr Tebogo Motlashuping	Telephone: (012) 334 0998/ 336 5763 Email: tebogomo@cogta.gov.za
Mr Jackey Maepa	Telephone: (012) 334 0920/ 4915 Email: jackeym@cogta.go.za
Ms Nakedi Monyela	Telephone: (012) 334 0754 Email: nakedim@cogta.gov.za

NC Zuma

DR NKOSAZANA DLAMINI ZUMA, MP

MINISTER

DATE: 02-12-19

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(d) ensure that sufficient budgeted funds, including funds for the remaining period of the medium-term expenditure framework, are available for filling the post.

CHAPTER 3

RECRUITMENT, SELECTION AND APPOINTMENT

Principles of recruitment

6. (1) The recruitment, selection and appointment of senior managers must take place in accordance with the municipal systems and procedures contemplated in section 67 of the Act that are consistent with sections 54A, 56, 57A and 72 of the Act.

(2) A senior manager post must be filled through public advertising, in accordance with the procedures contemplated in regulation 10.

(3) Selection must be competence-based to enhance the quality of appointment decisions and to ensure the effective performance by municipalities of their functions.

Determination of recruitment needs

7. (1) When the post of a senior manager becomes vacant, or is due to become vacant, the mayor, in the case of a municipal manager, or the municipal manager, in the case of a manager directly accountable to the municipal manager, must, upon receipt of official notification that the post of a senior manager will become vacant, obtain approval from the municipal council for the filling of such post in its next council meeting or as soon as it is reasonably possible to do so.

(2) A vacant senior manager post may not be filled, unless—

(a) approval to fill the post has been granted by the municipal council; and

(b) the post has been budgeted for.

(3) Notwithstanding subregulation (1), the speaker may convene a special meeting to obtain municipal council approval for the filling of a senior manager post.

General requirements for appointment of senior managers

8. (1) No person may be appointed as a senior manager on a fixed term contract, on a permanent basis or on probation, to any post on the approved staff establishment of a municipality, unless he or she—

(a) is a South African citizen or permanent resident; and

(b) possesses the relevant competencies, qualifications, experience, and knowledge set out in Annexures A and B to these regulations.

(2) An appointment may not take effect before the first day of the month following the month during which the municipal council approved the appointment.

Competence requirements for senior managers

9. (1) ~~A person appointed as a senior~~ manager in terms of these regulations must have the competencies as set out in Annexure A.

(2) A person appointed as a senior manager in terms of these regulations must comply with the minimum requirements for higher education qualification, work experience and knowledge as set out in Annexure B.

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ANNEXURE B

MINIMUM COMPETENCY REQUIREMENTS FOR SENIOR MANAGERS

1. Definitions

The terms defined below must be used to interpret the higher education qualification, the level of experience and the work-related experience when appointing senior managers-

"middle management level" means a management level associated with persons in middle mangement positions responsible for supervising staff, and includes-

(a) An official directly accountable to a manager in the senior managment level; or
(b) A person that occupied a position in a management level substantially similar to middle management level, outside the local government sphere;

"senior management level" means a management level associated with persons in senior managment positions responsible for supervising staff in middle management positions responsible for supervising staff in middle managment positions, and includes-

(a) the municipal manager of a municipality or the chief executive officer of a municipal entity;
(b) any manager directly accountable to-
    (i) the municipal manager, in the case of a municipality; or
    (ii) the chief executive officer, in the case of a municipality; or
(c) a person that occupied a position in a management level substantially similar to senior managment level, outside the local government sphere;

"work-related experience" means the expertise of a person or skills attained by a person whether in the course of formal or informal employment.

2. MUNICIPAL MANAGER

(a) HIGHER EDUCATION QUALIFICATION	
Bachelor Degree in Public Administration / Political Sciences / Social Sciences / Law; or equivalent.	
(b) WORK-RELATED EXPERIENCE AND KNOWLEDGE	
Years of Experience	**Type of Experience**
5 years	• Relevant experience at a senior management level; and • Have proven successful institutional transformation within public or private sector.
Knowledge	**Type of Knowledge**
	• Advanced knowledge and understanding of relevant policy and legislation; • Advanced understanding of institutional governance systems and performance management; • Advanced understanding of council operations and delegation of powers; • Good governance; • Audit and risk management establishment and functionality; and • Budget and finance management.

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(4) Notwithstanding subregulation (3) and upon good cause shown, a municipality encountering cash flow problems may apply to the Local Government Sector Education and Training Authority to make use of the discretionary grants to fund the competency assessment for purposes of filling a vacant senior manager post.

(5) The selection panel must submit a report and recommendation on the selection process to the municipal council on the suitability of candidates who comply with the relevant competency requirements of the post as set out in Annexures A and B, in order of preference.

Resolution of municipal council on appointment of senior managers and reporting

17. (1) Before making a decision on an appointment, a municipal council must satisfy itself that—

(a) the candidate meets the relevant competency requirements for the post, as set out in Annexures A and B to these regulations;

(b) screening of the candidates has been conducted in terms of regulation 14; and

(c) the candidate does not appear on the record of staff members dismissed for misconduct as set out in Schedule 2 to these regulations.

(2) A municipal council must, subject to subregulation (1), take a decision on the appointment of a suitable candidate.

(3) A municipal council must—

(a) inform all interviewed candidates, including applicants who were unsuccessful, of the outcome of the interview; and

(b) within 14 days of the decision referred to in subregulation (2), submit a written report to the MEC for local government regarding the appointment process and outcome.

(4) The report contemplated in subregulation (3)(b) must contain—

(a) details of the advertisement, including date of issue and the name of newspapers in which the advert was published, and proof of the advertisement or a copy thereof;

(b) a list of all applicants;

(c) a report contemplated in regulation 14(2) on the screening process and the outcome thereof;

(d) the municipal council's resolution approving the selection panel and the shortlisted candidates;

(e) competency assessment results;

(f) the minutes of the shortlisting meeting;

(g) the minutes of interviews, including scoring;

(h) the recommendations of the selection panel submitted to the municipal council;

(i) the details of executive committee members and recommendations, if the selection panel comprised of all members of the executive committee;

(j) the recommendation of the executive committee or executive mayor to the municipal council, if any;

(k) the municipal council resolution approving the appointment of the successful candidate;

(l) the application form, curriculum vitae, proof of qualifications and other supporting documentation of the successful candidate;

(m) a written confirmation by the successful candidate that he or she does not hold political office as contemplated in section 56A of the Act, as at the date of appointment;

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(n) the letter of appointment, outlining the term of contract, remuneration and conditions of employment of the senior manager; and
(o) any other information relevant to the appointment.

Re-employment of dismissed persons

18. (1) A person who has been dismissed for misconduct in a municipality may not be employed as a senior manager in any municipality before the expiry of a period, as set out in column 3, in respect of such category of misconduct as set out in column 2 of Schedule 2.

(2) Subregulation (1) does not apply to a senior manager who has lodged a dispute in terms of applicable legislation.

(3) If a senior manager is dismissed for more than one categories of misconduct as set out in subregulation (1), the periods set out in column 3 of the table attached as Schedule 2, run concurrently.

(4) For purposes of subregulation (1), a person dismissed for misconduct is prohibited from re-employment in any municipality for a period as set out in column 3 of Schedule 2 in respect of such category of misconduct calculated from the date of dismissal or conviction.

(5) Any senior manager who has been dismissed for any misconduct other than the categories of misconduct as set out in column 2 of the table attached as Schedule 2 may not be subjected to a waiting period before such a staff member may be re-employed in a municipality.

(6) A municipality must maintain a record of staff members dismissed for misconduct and staff members who resigned prior to the finalisation of any disciplinary proceedings.

(7) A record contemplated in subregulation (6) must be submitted within 14 days of such dismissal or resignation to the MEC for local government and the Minister.

(8) The record contemplated in subregulation (6) must include the following information:

(a) The name and surname of the staff member;
(b) the name of municipality;
(c) the post title; and
(d) the nature of the misconduct, including—
  (i) the date of suspension, if applicable;
  (ii) the conditions of suspension;
  (iii) the date of commencement of the disciplinary hearing;
  (iv) information regarding any pre-dismissal arbitration;
  (v) the finding and category of misconduct;
  (vi) the date on which the misconduct was referred for arbitration;
  (vii) costs incurred by the municipality towards the finalisation of the disciplinary case;
  (viii) the date of resignation or dismissal of the senior manager; and
  (ix) whether the dismissal has been appealed and the status of the appeal, if applicable.

Re-advertisement of posts

19. (1) If no suitable candidate has been identified, the municipal council—
(a) must inform all shortlisted candidates that their applications were unsuccessful; and
(b) may re-advertise the post.

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Annexure MC 6
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THE OFFICE OF THE MAYOR

Our ref: TDB/1/12/2020

OFFICE OF THE MAYOR

ITEM 1

REPORT OF THE MAYOR: REPORT OF THE MAYOR ON THE APPOINTMENT OF AN ACTING MUNICIPAL MANAGER IN TERMS OF LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT 32 OF 2000

1. PURPOSE

The purpose of the is to inform the Council of resignation of the Municipal Manager and to obtain approval to appointment an Acting Municipal Manager in terms of Local Government: Municipal Systems Act 32 of 2000, section 54A (1) (a) and (b) for a prescribed period.

2. LEGAL FRAMEWORK

2.1. Local Government: Municipal Systems Act 32 of 2000 (hereinafter referred to as MSA) section 54A appointment of municipal managers and acting municipal managers stipulates the following;
Section 54A (1) states that the municipal council must appoint-

a) a municipal manager as head of administration of the municipal council; or
b) an acting municipal manager under circumstances and for a period as prescribed.

2.2. Further the MSA section 54A (2A) (a) stipulates that a person appointed in terms of subsection (1) (b) may not be to act for a period that exceeds three months.

2.3. The MSA section 54A (2) stipulates that a person appointed as municipal manager in terms of subsection (1) must at least have the skills, expertise, competencies and qualifications as prescribed.

2.3.1. The MSA: REGULATIONS ON THE APPOINTMENT AND CONDITIONS OF EMPLOYMENT OF SENIOR MANAGERS, (Annexure B) under MINIMUM COMPETENCY REQUIREMENTS FOR SENIOR MANAGERS details the prescribed requirements for the Municipal Manager;

a) That a person to be appointed as Municipal Manager must have-
Higher education qualification: Bachelor Degree in Public Administration / Political Sciences / Social Sciences / Law or equivalent.

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b) Work-related experience and type of experience: 5 years relevant experience at a senior management level.

3. BACKGROUND

3.1. During June 2018 the Municipal Council resolved to appoint Mr M.A. Metswamere as a substantive Municipal Manager on a fixed term as prescribed.

3.2. Mr M.A. Metswamere had on 30 November 2020 tendered his resignation effective immediately as the Municipal Manager of Ditsobotla Local Municipality citing personal reason. The resignation was submitted to the Office of the Mayor and Corporate Services on 30 November 2020 in the afternoon.

3.3. As a matter of principle as the Mayor on behalf of Municipal Council have received the letter of resignation and hereby accordingly submit it to Municipal Council.

3.4. The letter of resignation is affixed hereto as *Annexure A* to this report.

4. DISCUSSION

4.1. This report seeks to obtain Municipal Council's approval to appoint an Acting Municipal Manager in terms of section 54A (1) (b) of the Local Government: Municipal Systems Act 32 of 2000 for a prescribed period.

4.2. The said act in terms of section 54A (2A) provides that a person appointed in terms of section 54A (1) (b) may not be appointed to act for a period that exceeds three months.

4.3. Accordingly, the municipal council's administration consists of three substantive senior managers namely; Chief Financial Officer, Director: Corporate Services, and Director: Planning and Development.

4.4. To give effect to the provisions of MSA and regulations on the appointment and conditions of employment for senior managers, the said three senior managers have been profiled as following;

POSITION	NAME	QUALIFICATION(S)	EXPERIENCE IN SENIOR MANAGEMENT LEVEL
Chief Financial Officer	Mr L.S. Mokoena	Bachelor of Commerce in Accounting Professional Stream Postgraduate Diploma in Management (Business Financial Management) Certificate in Municipal Financial	Ditsobotla Local Municipality – 02/2019 Ngaka Modiri Molema Municipality- Manager Office of the CFO-11/2013 to 01/2019 Ngaka Modiri Molema

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		Management	Municipality- Snr Accountant: Income / Acting Snr Accountant: Internal Control- 2011 to 2013 Ngaka Modiri Internal Auditor- 2008 to 2011 Ngaka Modiri Molema Municipality- Finance Intern- 2007 to 2008 Jesuit Refugee Services-Financial Administrator- 04/2005 to 08/2005
Director: Corporate Services	Mr O. Letebele	Baccalaureus Administration Honours Advanced Diploma in Public Administration Certificate in Municipal Finance Management (14 Unit standards completed)	Ditsobotla Local Municipality – Director Corporate Services 10/2020 to Current Lekwa Teemane Local Municipality- Director: Corporate Services- 11/2012 to 10/2017 Lekwa-Teemane Local Development Agency – Programme Manager: 08/2011 to 10/2012 Fair Share-SOG-UWC – Programme Manager- 04/2006 to 07/2011 Fair Share-SOG-UWC – Limpopo Provincial Coordinator- 10/2003 to 03/2006 Bloemhof Legal Education & Development Centre- Centre

			Coordinator- 03/2000 to 02/2003
Director: Planning and Development	Mr J. Letlhaku	Master of Business Administration Honours Bachelor of Commerce in Economics Bachelor of Administration in Economics	Ditsobotla Local Municipality – Director Planning and Development 10/2020 to current Mamusa Local Municipality- Manager: SCM- 12/2018 to 09/2020 Dept of Education and Sports- Educator- 05/2018 to 12/2018 World Vision SA- Design, Monitoring & Evaluation Specialist- 09/2015 to 02/2017 Ngaka Modiri Molema District Municipality- Manager: Research & Monitoring- 02/2014 to 2015 Research & Monitoring Specialist- 07/2012 to 01/2014 Accountant: Projects & Sundry- 03/2012 to 06/2012 Financial Management Internship- 03/2010 to 02/2012

5. RECOMMENDATION(S)

Having considered the legal framework in terms of the Local Government: Municipal Systems Act, 32 of 2000, it is recommended accordingly;

5.1. That Municipal Council note the resignation of Mr M.A. Metswamere as the Municipal Manager of the Ditsobotla Local Municipality with effect from the 1 December 2020.

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5.2. That Municipal Council appoint an Acting Municipal Manager in terms of section 54A (1) (b).

5.3. That a person appointed in terms section 54A (1) (b) of the said act must not exceed three months as prescribed in terms of section 54A (2).

5.4. That a person appointed in terms of section 54A (1) (b) of the said act must be with effect from the 2 December 2020.

5.5. That the Mayor ensures that the erstwhile Municipal Manager submits a hand-over report to a person appointed to act as Municipal Manager.

Submitted for consideration.

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IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NO:

In the matter between:

MEC FOR THE DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, NORTH WEST
Applicant

and

DITSOBOTLA LOCAL MUNICIPALITY First
Respondent

MOTLHANKA PATRICK MOREO N O Second
Respondent

MOSIDI ESTHER MMOTA N O Third
Respondent

TSIETSI ISAAC SHEMA Fourth
Respondent

BUTHELEZI CONFIRMATORY AFFIDAVIT

I the undersigned,

TEBOGO DANIEL BUTHELEZI,

M.L GAA AH

hereby make oath and declare that:

1. I am a major male, previously elected as councillor and mayor of the Ditsobotla Local Municipality, presently residing at house number 6, 6th Avenue, Burgersdorp, Lichtenburg.

2. The facts I depose to in this affidavit are within my personal knowledge and, to the best of my belief, both true and correct.

3. I have read the founding affidavit of **MEC MMOLOKI SAVIOUR CWAILE** in this application and confirm the contents of that affidavit insofar as they relate to me.

Deponent

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at MAHIKENG on the 5TH day of **FEBRUARY 2021**, the regulations contained in Government Notice R1258 dated 21 July 1972, as amended, having been complied with.

Commissioner of Oaths

Full names: _____

ANITA HARDING
Practicing Attorney
Commissioner of Oaths
Motheo House,56 Shippard Street
Mahikeng, 2745
Tel: 018 381 0495

Capacity : _____

Date: 5/2/2021

Address : _____

_____

_____

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Ditsobotla Plaaslike Munisipaliteit
Local Municipality

☎018-633 3800 – 633 3999 ✉7
Faks/Fax: 018-632 5247 Burgersentrum/Civic Centre
Dr Nelson Mandela Rylaan/Drive
Lichtenburg 2740

Spreek/Refer

U Verw./Your Ref.

OnsVerw./Our Ref.

14 January 2021

EXTRACT FROM THE MINUTES OF THE SPECIAL COUNCIL MEETING HELD ON 2 DECEMBER 2020

REPORT OF THE MAYOR ON THE APPOINTMENT OF AN ACTING MUNICIPAL MANAGER IN TERMS OF LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT 32 OF 2000 (2/12/2020)
(This Item was discussed and resolved in committee. All Officials were excused except the secretary)
(A28 RECOMMENDATION)

A28 RESOLUTION

Having considered the legal framework in terms of the Local Government: Municipal Systems Act, 32 of 2000, it is resolved as follows:

a) That Council take note of the resignation of Mr. M.A. Metswamere as the Municipal Manager of the Ditsobotla Local Municipality with effect from the 1st of December 2020.

b) That Council appoint an Acting Municipal Manager in terms of Section 54A (1) (b).

c) That a person appointed in terms Section 54A (1) (b) of the said act must not exceed three months as prescribed in terms of Section 54A (2).

d) That a person appointed in terms of section 54A (1) (b) of the said act must be with effect from the 2nd of December 2020.

e) That the Mayor ensures that the erstwhile Municipal Manager submits a hand-over report to a person appointed to act as Municipal Manager.

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EXTRACT FROM THE MINUTES OF THE SPECIAL COUNCIL MEETING HELD ON 2 DECEMBER 2020

f) That Council should appoint a suitable candidate relevant to the Municipal Systems Act and the regulations on the appointment and conditions of employment of senior managers under minimum competency requirements for senior managers which details the prescribed requirements for the Municipal Manager.

g) That a report with regard to the above be addressed to the MEC.

h) That Council nominated two candidates to act as Municipal Manager, the following names were proposed Mr. Shema and Mr. Letebele and it was seconded.

The DA requested the Speaker for a two minutes caucus and the ANC agreed and it was granted by the Speaker.

i) That cognisance be taken that the recruitment and selection policy was addressed by Council and the relevant Sections were quoted in section 5.1.10. It was resolved that this section be observed.

The Speaker then divided the house and Councillors voted by the showing of hands on the two proposed names to act as Municipal Manager.
Eighteen (18) Councillors voted for the appointment of Mr. T. Shema and twelve (12) Councillors voted for the appointment of Mr. O. Letebele as Acting Municipal Manager.

That it be noted that the DA opposed the decision due to the Systems Act and relevant Regulations not to appoint a junior manager in a position of the Municipal Manager.

That the counter vote of Cllr. Mvundisi be noted against the appointment of Mr. Shema as Acting Municipal Manager.

That it be noted that the ACDP Political Party opposed the appointment of Mr. Shema due to the regulations.

j) That Council appointed Mr. T. Shema as the Acting Municipal Manager for a period of not exceeding three months.

Certified a true extract from the minutes.

Electronically Signed
MR. G.W. VAN NIEKERK
UNIT MANAGER: ADMINISTRATION

M.L GVN

TSIETSI SHEMA

P.O BOX 1513
LICHTENBURG
2740
Contact no: 0762305262/0834929521
Email: shematsietsi@yahoo.com

PROFESSIONAL PROFILE

I am the admitted Attorney of the High Court of South Africa with an excellent communication skill, good interpersonal relations and proficiency in Local Governance with more than 10 years' work experience.

EDUCATION AND PROFESIONAL QUALIFICATION

Fist Qualification
B.A LAW – 2001
University of Western Cape

Second Qualification
LLB – 2003
University of Western Cape

SPECIAL LEGAL TRAINING

LEGAL EDUCATION AND DEVELOPMENT

School for Legal Training- 25 June 2002 to 23 November 2002
Law Society of South Africa

Secondary Education
Tau Rapulana High School - 1993
Matric Certificate (Grade 12)

EMPLOYMENT HISTORY

2016 till today

DITSOBOTLA LOCAL MUNICIPALITY

Manager Office of the Speaker

- Directly supervises Officials in the Speaker's Office
- Manage Ward committee Relations within the Municipality
- Ensure effective and sufficient recording of daily activities of the Office
- Compile Monthly Reports
- Ensure the timely completion of financial reports

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- Report on the performance of the Office
- Ensure adherence to corporate governance within the office Managers
- Promote good working relations with stakeholders
- Receive Reports and Advice the Speaker

And Acting Legal Manager

- Reviewing or Develop By-Law and Policy
- Provide Legal Advice
- Litigate
- Research

2014 TO 2016

NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY

RESEARCH MANAGER

- Identifies and defines the immediate short and long term objectives/plan and implementation of best practice models in the office of the Executive Mayor
- Conduct research about Policy
- Overseeing implementation of Policies
- Ensure regular review of Policies
- Evaluating and advice on the applicability of specific key performance indicators
- Developing and managing community and stakeholders interactive programmes
- Ensuring strong intergovernmental links and continuous oversight of their constitutional mandate
- Supporting Stakeholders forum

2015 TO 2016

NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY

ACTING SENIOR MANAGER OFFICE EXECUTIVE MAYOR

- Develop the Business Plan for the Office aligned with Municipal Strategic mandate
- Manage the activities of the Special Project, MAYCO, Municipal Public Participation Account Office, Speakers Office and Chief Whips Office
- Directly supervises Managers in the Mayor's Office
- Manage Stakeholder Relations within the Municipality
- Prepare and submit monthly progress reports to the Municipal Manager
- Ensure effective and sufficient recording of daily activities of the Office
- Compiles Monthly Reports
- Ensure the timely completion of financial reports
- Report on the performance of the Office
- Ensure adherence to corporate governance within the office Managers
- Promote good working relations with stakeholders
- Receive Reports from Acting Municipal Manager and Advice the Mayor

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PRACTICING ATTORNEY

2013 TO 2014

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- Develop a Business Plan for the Law Firm
- Manage the activities of the Law Firm

Contract:
Review, Draft, Advice and Litigates
Policy:
Review, Draft and Advice

DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT
LEGAL ADMIN OFFICER
2008 TO 2012

Implemented sector related legislation instrument. Developed and reviewed sector related legislative instruments. Analysed and simplified the legislative instruments. Render legal advisory services to the Head of Department. Indentify and compile guidelines for implementation of sector related legislative instrument

DEPUTY CHAIPERSON OF THE NORTH WEST LIQUOUR BOARD
2011 TO 2012

- Issuing of liquor license
- Review the process of issuing/ cancelling licenses
- Enforce compliance to the licenses holders
- Develop and review legislation of Liquor in the North West Province

---

TSWAING LOCAL MUNICIPALITY
PROSECUTOR
2006 TO 2008

Investigate report of misconduct
Advice on findings of the investigations
Prosecute when necessary

DITSOBOTLA LOCAL MUNICIPALITY

WARD COUNCILLOR
2006 to 2011

MEMBER OF THE INFRASTRUCTURE COMMITTEE
Propose, request financing for the projects, monitor and maintain infrastructure of the Municipality.

MEMBER OF THE RULES COMMITTEE
Review policies whether they meet the set requirements, develop, workshop councillor, monitor and enforcement compliance of policies
LED COMMITTEE – Review the LED policy; participate in the decision making aiming at creating jobs by making local economy grow.

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LABOUR FORUM – Ensure that issues of bargain, policies and legislations are implemented correctly

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LEGAL AID BOARD
CANDIDATE ATTORNEY
2004 to 2006

Responsibilities: Court Duties
Representing Clients in Criminal and Civil Matters

Office Duties
Client consulting
Managing advice offices
Articles served and completed

REFERENCES

Lichtenburg Justice Centre	Mr. L Mdlege Contact number: 071 689 0596
Itsoseng Magistrate Court	Mr. M. Motlhajwa Contact Number: 084 714 9899

TSIETSI SHEMA

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South African Certification Council

Suid-Afrikaanse Sertifiseringsraad

SENIOR CERTIFICATE
SENIOR SERTIFIKAAT

DEPARTMENT OF JUSTICE SERVICE
DIVISION PROPERTY AND SECURITY SERVICES
19 AUG 2020
D.S.S. NW - ST... SECTION
AFRIKAA...

Awarded to/Toegeken aan

IZAAC TSIETSI SHEMA

Date of Birth 1970-11-14 *Geboortedatum*

Subjects passed/Vakke geslaag

Tswana : First Language / Eerste Taal	HG	E 40%-49%
Afrikaans : Second Language / Tweede Taal	HG	F 33,3%-39%
English : Second Language / Engels : Tweede Taal	HG	E 40%-49%
Biology / Biologie	SG	F 33,3%-39%
History / Geskiedenis	SG	F * 33,3%-39%
Agricultural Science / Landbouwetenskap	SG	F 33,3%-39%
Aggregate / Groottotaal		F 720-839
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ENDORSEMENT
None

ENDOSSEMENT
Geen

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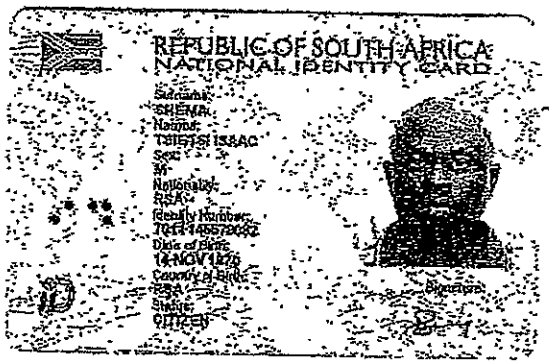
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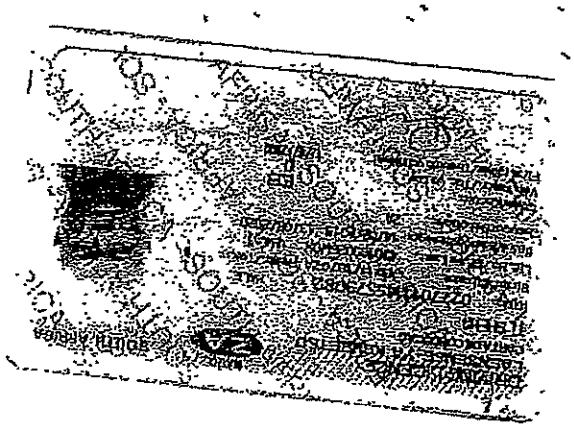
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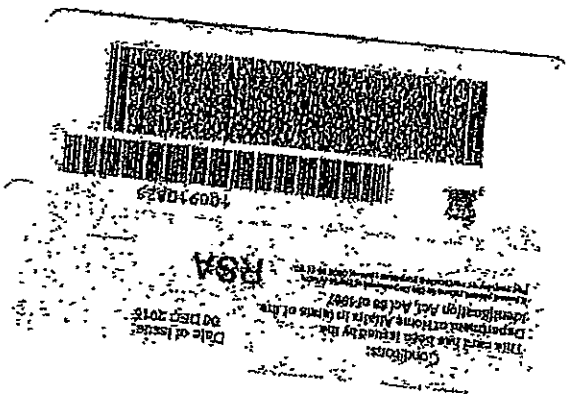
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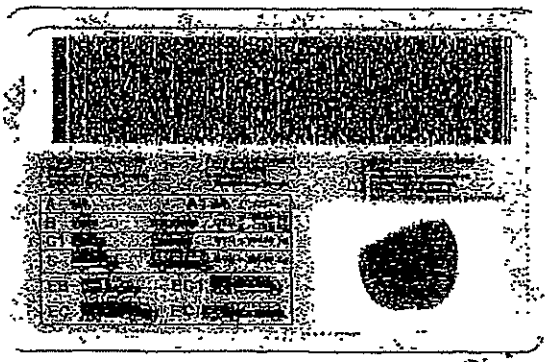
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SOUTH ... POLICE SERVICE
DIVISION: PROTECTION AND SECURITY SERVICES
19 AUG 2020
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... M.L. THIPAMPENG

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University of the Western Cape

The Degree of

Baccalaureus Artium

(Law)

was conferred upon

TSIETSI SHEMA

on 28 SEPTEMBER 2001

Vice-Chancellor

Registrar

POLICE SERVICE
PROTECTION AND SECURITY SERVICES
19 AUG 2020
PSS, PPV - STATIC PROTECTION
AFRIKAANS

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SIGNATURE

RANK

M.L. RAIPAMPERG

M.L

University of the Western Cape

The Degree of

Baccalaureus Legum

was conferred upon

TSIETSI SHEMA

on 25 SEPTEMBER 2003

Registrar

Vice-Chancellor

POLICE SERVICE
CORRECTION AND SECURITY SERVICES
19 AUG 2020
PSS - STATIC PROTECTION
SAPS/KRIMINASIEL IDENTIFIKASIE

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RANG / RANK Sgt
VOORNAME EN VAN / FULL NAME M.L. Tsietsi

Ditsobotla Plaaslike Munisipaliteit
Local Municipality

☎018-633 3800 – 633 3999
Faks/Fax: 018-632-5247

✉7
Burgersentrum/Civic Centre
Dr Nelson Mandela Rylaan/Drive
Lichtenburg 2740

Our ref. MTDB/14/01/2021

THE MEMBER OF EXECUTIVE COUNCIL
Cooperative Governance, Human Settlement & Traditional Affairs
2nd Floor West Wing, University Drive
Garona Building
Private Bag X2145
MMABATHO
2735

14 January 2021

Per e-mail: tlalirp@gmail.com

ATTENTION: HON. M. S. CWAILE

REPORT ON THE INTENDED MOTION OF NO CONFIDENCE TO REMOVE THE MAYOR AND THE EXECUTIVE COMMITTEE OF THE DITSOBOTLA LOCAL MUNICIPALITY, AND THE CONDUCT OF THE ACTING MUNICIPAL MANAGER

This subject matter has reference

1. **PURPOSE**
   The purpose of this report is to inform the Member of the Executive Council responsible for Cooperative Governance, Human Settlement and Traditional Affairs of the intended motion of no confidence against the Mayor and the Executive Committee, and the conduct of the Acting Municipal Manager.

2. **BACKGROUND**
   The effects and or actions of the council sitting on 10 December 2020 and subsequent High Court judgement on the 31 December 2020 bear reference.

   This report hereby notifies the MEC that once again the speaker of council has acted in a manner that is inconsistent and fails to uphold the order in council by ensuring that council complies with its standing rules of order and the following bears reference;

   - Pertaining to the fact that the resolution on motion of confidence still stands in view of High Court order number 4 which states that the application to set aside the motion of no confidence be instituted within the period of 30 days from the date of the judgement and therefore the matter has judicial decision pending.
   - Further the attention of the MEC is drawn to the council standing rules of order, clause 14.8 a rule which reads

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"no member shall propose a motion similar to a motion which was dealt with in terms of subsection 7 before a period of 3 months after it has been dealt with has elapsed"-

a) Which is intended to rescind or amend a resolution passed by the council within the pending 3 months, or
b) Which has the same purpose as a motion which was negative within the preceding 3 months.

It is explicit that based on the speaker's action to have issued notice to convene special sitting of council and made the motion similar to a motion for which its purpose was negative and there is a pending judicial decision, do so in complete disregard of the law and the rules of order that governs the business of council and therefore to protect my rights will approach court of law in this regard.

On the conduct of the Acting Municipal Manager:

The Acting Municipal Manager has consistently failed to act in accordance with the provision of the Municipal Systems Act section 55 wherein it confers the role to him to advise the political structures (council and its committees) and political office bears (mayor, speaker and council whip) of the municipality.

His failure to act properly as guided by the legislation has been exposed by his inability to advise council during its sitting against taking decisions that resulted in incurring unauthorized, irregular, fruitless and wasteful expenditure i.e. the ensued High Court application with costs to the municipality.

On the 13 January 2021 the Chief Financial Officer of the municipality addressed a letter to me and the Audit Committee reporting the improper conduct by the Acting Municipal Manager that the Acting Municipal Manager has instructed ABSA bank to revoke and remove him (CFO) from the municipal bank accounts. The Municipal Finance Management Act section 11 (2) states that accounting officer may not authorise any official other than the chief financial officer to withdraw money or authorise withdrawal of money from the municipality's primary bank account.

The Acting Municipal Manager is on a rampage harassing senior and middle managers with suspensions into silence i.e. CFO, Director Corporate Services, Manager: Office of the Mayor, Manager: Water & Sanitation, Manager: Expenditure, Accountant Supply Chain Management etc. were issued with notices of intend to suspend.

Timeline???

The municipality has failed to submit to Auditor-General South Africa for auditing annual financial statements as provided for by the Municipal Finance Management Act section 126. The same act bestows the responsibility in terms section 126 on the accounting officer to prepare and submit the annual financial statements to the Auditor-General South Africa for auditing.

The Acting Municipal Manager has made it his commitment not to cooperate, report and account to me as the Mayor of the municipality. This conduct happens despite my series of meetings with him which he deliberately disregarded its decisions which we both agreed to and disregarded the decision of the Executive Committee to halt the intend to suspend CFO and Director Corporate Service.

The Acting Municipal Manager of late decided to disregard the provisions of Municipal Structures Act read with Council Standing Rules of Order and my authority as the Mayor/Chairperson of the Executive Committee. The same provides that the Chairperson of

the Executive Committee decides where and when to convene the meeting of the Executive Committee.

3. **CONCLUSION**

It is against this background that I am of the firm view that the incumbent Acting Municipal Manager and the Speaker of Council find it convenient to use public funds in total disregard of the law and governing statutory legislation.

I therefore bring this to the attention of the MEC to raise alarm of the persistent conduct by the Speaker to act in a manner that brings the burden of unauthorised, irregular, fruitless and wasteful expenditure as a result of irregular decisions by Council for which she is the custodian of its rules.

The Council for a period between 2 and 10 December 2020 took decisions that do not conform to the legislation and rules of order of Council i.e. appointment of the incumbent Acting Municipal Manager, Acting Directors for Technical Services and Community Services without inherent qualifications, and adopting irregular motions.

I therefore call on the urgent intervention of the MEC in this regard.

For any enquiries and or further information in this regard kindly contact Manager: Office of the Mayor - Mr Thabo Sebothenyane on cell: (076) 401 5420 and e-mail: thabosebothenyane@gmail.com .

Hope you find this in order

Yours sincerely

CLLR T.D. BUTHELEZI

TO : MM MANAGER
MR. R.T. MTSHALI

FROM : ACTING MUNICIPAL MANAGER
MR. T. SHEMA

DATE : 07th DECEMBER 2020

SUBJECT : APPOITMENT TO ACT AS DIRECTOR INFRASTRUCTURE

The above matter refers.

This letter serves to appoint you to act as Director Infrastructure for a period not exceeding three (3) months in terms of the approved Policy on Acting reading with the applicable SALGBC Collective Agreement on Conditions of Service. Your appointment to act as Director Infrastructure is effective from 01 December 2020

MR. R.T. MTSHALI

3. Ditsobotla Local Municipality

3.1 Financial System Challenges

Ditsobotla Local Municipality duly migrated from SEBATA FMS to SEBATA EMS system which is MSCOA compliant.

The migration was done with an understanding of the national directive that the Municipality must go live on 01 July 2017 and be MSCOA compliant. The service provider was unable to successfully implement the MSCOA system resulting in the Municipality not having a credible General Ledger and Trial Balance and opening balance not being migrated.

The Municipality had numerous meetings with the service provider to ensure that all challenges regarding the systems are addressed. To date, the Municipality has still not resolved challenges with the service provider

3.2 Coronavirus 19 (Covid-19) Pandemic

The Covid-19 situation is still affecting the operations of the Municipality, because whenever an employee tests positive for COVID19, the Municipality is forced to close its offices for fumigation of the premises. The situation has vastly impacted the 2019/20 AFS preparation process because the affected sections and employees could not be accessed as they were in quarantine. The Covid-19 cases are not foreseen, but the Municipality continues to follow all the required Health and Disaster Management Regulations and procedures to remedy every dire situation

3.3 GRAP 17 Immovable Assets And Provisions For Post Employment Benefits And Landfill Sites

The Municipality's Annual Financial Statements (AFS) Preparation Team, which consists of the resources from Provincial Treasury, carefully assessed the situation and the quantity of work that still needs to be finalised. It was then that the AFS preparation team realised that it would not be ready to submit the Annual Financial Statements on 31 October 2020. Furthermore, the Municipality also realised after assessment that it does not have experts in the fields of Engineering for unbundling of immovable assets and Actuaries for post-employment benefits and landfill sites. Likewise, the Municipality requested further assistance from Provincial Treasury regarding the three components.

Expected date of submission- 31 December 2020

MOTIONS

14.1 Subject to the provisions of any other law –
a. every notice of motion shall be in writing and such notice shall be signed by the member submitting it;
b. motion shall be given to the Council Secretary who shall enter it in a book kept for that purpose which shall be open to inspection by any member;
c. notice of motion shall not be specified in the summons for a meeting unless it is received at least five days prior to such a meeting unless leave from the Speaker is sought to submit same in a shorter period.
d. In the event of the absence of a mover as envisaged in (a) above from the relevant Council meeting when called upon by the Speaker to move a motion standing in his/her name on the agenda, any other Councillor of his/her party may move such motion in his/her name, unless the original mover has notified the Municipal Manager in writing of a substitute to move the motion.

14.2 At the request of a member who gave notice of a motion, the Council Secretary shall acknowledge receipt thereof in writing;

14.3 Every motion shall be relevant to the administration of/or condition in the Municipality or shall deal with a matter in respect of which the Council has jurisdiction.

14.4 A motion shall only be regarded as having been submitted to the council for decision if the proposal introducing that motion was duly seconded.

14.5 A member submitting a motion or a member assigned by her/him in writing shall move such motion and shall have the right of reply.

14.6 Every motion as contemplated in subsection (1)(a), shall on receipt be dated and numbered and shall be entered by the Council Secretary upon the agenda in the order in which it is received.

14.7 No member or party shall have more than two motions as contemplated in subsection (a) entered upon the agenda with the exception of a deferred motion, and no member shall have more than five motions during any one year of the Executive Committee term.

14.8 No member shall propose a motion similar to a motion which was dealt with in terms of the provisions of subsection (7) before a period of three months after it has been dealt with has elapsed
a. which is intended to rescind or amend a resolution passed by the Council within the preceding three months, or
b. which has the same purpose as a motion which was negative within the proceeding three months

14.9 Notwithstanding the provisions of subsections (8), the Council may at any time, following a recommendation by the Chairman of the Executive Committee, rescind or amend any resolution passed by it.

14.10 In dealing with motions the Speaker shall ascertain which motions are unopposed and these shall be passed without debate and thereafter the Speaker shall call the opposed motions in their order on the paper.

IRREGULAR MOTIONS OR PROPOSALS

15. The Speaker shall disallow a motion or proposal -
a. which in his reasonable opinion
   i. might lead to the discussion of a matter already dealt with in the agenda or which has no bearing on the administration of or conditions in the Municipality, or
   ii. advances arguments, expresses an opinion, or contains unnecessary factual, incriminating, disparaging or improper suggestions.

b. in respect of which –
   i. the Council has no jurisdiction;
   ii. a decision by a judicial or administrative tribunal is pending;

c. which , if passed, would be contrary to the provisions of these by-laws or of any other law;
Provided that if such motion or proposal in the opinion of the Speaker, justifies further investigation, it shall be dealt with in terms of his authority by the Office of the Speaker.

WITHDRAWAL OF MOTION OR PROPOSAL

16. A mover may withdraw or amend a motion or proposal.

MOTION OR PROPOSAL AFFECTING BUDGET TO BE REFERRED TO THE CHAIRMAN OF THE EXECUTIVE COMMITTEE / FINANCE COMMITTEE

17. A motion or proposal, other than a proposal as contemplated in section 12(5)(c) that the Chairman of the Executive Committee reconsider his resolution, which is designed to increase or decrease the approved budget at the Council, shall not be adopted before the Chairman of the Executive Committee has reported thereon to the Council.

MOTION OR PROPOSAL AFFECTING A BY-LAW OR LAW TO BE REFERRED TO CHAIRMAN OF EXECUTIVE COMMITTEE

18. A motion or proposal other than a recommendation of the Chairman of the Executive Committee affecting the making or amendment of a law or a by-law shall, before the Council, adopts a resolution thereon, be submitted to the Chairman of the Executive Committee for a report thereon.

M·L

DITSOBOTLA LOCAL MUNICIPALITY

INTERNAL MEMORANDUM

TO : MR. T. I SHEMA
MUNICIPAL MANAGER

FROM : MR. L.S. MOKOENA
CHIEF FINANCIAL OFFICER

DATE : 10 DECEMBER 2020

SUBJECT : FORMAL COMPLAIN OF POSSIBLE CONSTRUCTIVE DISMISSAL AND PREEMPTED RESULTS ON THE COMMENTS MADE BY COUNCILORS IN A COUNCIL MEETING OF THE 10TH DECEMBER 2020.

1. PURPOSE

To formally lay a complain to the Acting Municipal Manager of possible constructive dismissal and preempted results on the comments made by Councilors in a Special Council meeting of the 10th December 2020.

2. LEGISLATIVE BACKGROUND

Municipal Finance Management Act, 2003 (Act No.56 of 2003) Section 60 states that.
Municipal managers to be accounting officers
The municipal manager of a municipality is the accounting officer of the municipality for the purposes of this Act, and, as accounting officer, must-

(a) exercise the functions and powers assigned to an accounting officer in terms of this Act; and

(b) provide guidance and advice on compliance with this Act to-

(i) the political structures, political office-bearers and officials of the municipality;

3. DISCUSSION

3.1. On the 10th December 2020 during the Council meeting, Councilor Mokosho made formal untoward statements against me in a recorded council meeting, also in my presence. Councilor Mokosho uttered a statement to discredit me and attached the report that had nothing to with the finance committee nor finance department as reference. In his statement at the said Council Meeting, he ordered you to bring a report of suspension of people from finance department, that was echoed by Councilors Matshogo, Itlhopeng and Mokone, whereby Councilor Mokoneng sad the Chief Financial Officer in particular.

3.2. In the Executive Committee(EXCO) held on the same date, I raised a concern that the Council Support Administration on the matters of the MEC for Finance cannot report it as the report of the CFO as that is misleading and malicious. The letter on the financial crisis of the Municipality was addressed to the Mayor and was forwarded to you as the Acting Municipal Manager, Manager Budget and Myself for the first time on the 7th December 2020.

3.3. Moreover, on the 04th of December 2020 the Provincial Treasury department met with Ditsobotla Local Municipality in your presence as the Head of Administration and gave you background of the reasons to correct the financial plan. In that meeting, Provincial Treasury equally reiterated that the financial plan is not a finance department's responsibility but the said department only plays a coordinated role in line with MFMA section 77 (2). To my dismay, the financial plan was also tabled to both the EXCO and Council as the report of the CFO. I also regard this as an effort to discredit me as the CFO and attach institutional challenges that must be spear headed by the Accounting Officer to his subordinate.

3.4. As a former Acting Legal Manager, I think you know the challenges faced by the Municipality regarding the historic debt of Eskom and their unwillingness to reach an agreement with the Municipality. This resulted in the Municipality having an unfunded budget and the reasons to do the financial plan. Equally I think you know about the challenges of Sebata as the former financial system provider on billing issues and the general ledger (GL).

GNA

M.L AH

3.5. I was expecting you Mr. Shema as the Accounting Officer to advise Council on all the matters relating to Administration as the Head in line with Section 60(b)(i) of the Municipal Finance Management Act, 2003 (Act No.56 of 2003). That also includes advising the Speaker to put Council in Committee when names of the officials are discussed. But this did not happen as I was discussed in Council during my presence, which was prejudicial to me and indicated the possibility of constructive dismissal or preempted suspension as instructed by Councilor Mokosho. This may also be classified as an unfair labour practice as outlined in Labour Relations Act,1995 (Act No.66 of 1995)

3.6. The process that unfolded had a negative effect on me and my performance as a Senior Manager directly reporting to you. It is also my humble and considered advice, that as we enter the festive season, the Accounting Officer must ensure that no service provider will render services without an official order of the Municipality or a letter of commitment from the Accounting Officer. This is as a result of the cost containment policy approved by Council on the 10th December 2020 and the dire financial state Ditsobotla Local Municipality finds itself in.

Kind regards,

MR. L.S. MOKOENA
CHIEF FINANCIAL OFFICER

Ditsobotla Plaaslike Munisipaliteit / Local Municipality

☎018-633 3800 ~ 633 3999

Faks/Fax: 018-632 5247

527
Burgersentrum/Civic Centre
Dr Nelson Mandela Rylaan/Drive
Lichtenburg 2740

Spreek/Refer
U Verw./Your Ref.
/Ons Verw./Our Ref: 17/12/20

MR LETLHOGONOLO MOKOENA **BY HAND**
THE CHIEF FINANCIAL OFFICER
DITSOBOTLA LOCAL MUNICIPALITY

Dear Sir

RE: SUBJECT MATTER: NOTICE OF INTENTION TO SUSPEND THE CHIEF FINANCIAL OFFICER OF DITSOBOTLA LOCAL MUNICIPALITY – MR LETLHOGONOLO MOKOENA

1. The above subject matter bears reference.

2. You were appointed in the position of the Chief Financial Officer in February 2019, alternatively July 2020 and as a result of your appointment, the Municipality required or expected you to execute your responsibilities and or obligations in terms of the relevant policies regulations and legislation and you have failed and neglected in this regard.

3. In terms of Section 77(1) and (2) of the Municipal Finance Management Act ("MFMA"), as the Chief Financial Officer you are part of the top management of the Municipality and equally you are required to assist the Accounting Officer in managing and co-ordinating the financial administration of the Municipality, but contrary to the above you have failed in the following aspects;-

3.1 to ensure and or assist the Accounting Officer to take all reasonable steps to ensure that the Municipality has effective revenue collection system in line with section 64(1) and (2)(a) of the MFMA;

3.2 to also ensure that all money owing by the Municipality is paid within 30 days of receiving the relevant invoices or statement in line with section 65(1) and (2) (e) of the MFMA.

4. In terms of Section 78(1)(a) of the MFMA as the official of the Municipality exercising Financial Management responsibilities, you must take all reasonable steps to ensure that the system of financial management and internal control established for the Municipality is carried out diligently and in terms of section 81(1) (e) you must perform such budgeting, accounting, analysis, financial reporting, cash management, debt management, supply chain management, financial management, review and other duties as may be delegated by the Accounting Officer to the Chief Financial Officer, but contrary to the above you have failed in the following aspects;-

4.1 to ensure that the financial problems of the Municipality are brought to the attention of the MEC for Local Government and MEC for Finance in the province and organised local government in line with Section 135(1) and (2) – (c) of the MFMA.

5. Based on the above, you are hereby given notice of intention to place you on a precautionary suspension pending an extensive investigation on the allegations preferred against you or any other allegations which might come to the attention of the Municipality during the investigation should the Municipality decide to place you on suspension and continue with the investigation.

6. Further to the above, kindly respond in writing within a period of 7 days from date of this letter as to why you should not be placed on a precautionary suspension as indicated above, alternatively provide the Municipality with a written or detailed response or clarity on the aforesaid allegations.

We trust the above to be in order.

Yours faithfully

MR TSIETSI SHEMA
ACTING MUNICIPAL MANAGER
DITSOBOTLA LOCAL MUNICIPALITY
Date: 17/12/2020

IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NO:

In the matter between:

MEC FOR THE DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, NORTH WEST	Applicant
and	
DITSOBOTLA LOCAL MUNICIPALITY	First Respondent
MOTLHANKA PATRICK MOREO N O	Second Respondent
MOSIDI ESTHER MMOTA N O	Third Respondent
TSIETSI ISAAC SHEMA	Fourth Respondent

MOKOENA CONFIRMATORY AFFIDAVIT

I the undersigned,

LETLHOGONOLO SYDNEY MOKOENA,

hereby make oath and declare that:

M.L AH AH

hereby make oath and declare that:

1. I am a major male, employed by the Ditsobotla Local Municipality as Chief Financial Officer, presently residing at house number 27 Collins Street, Zinniaville, Rustenburg.

2. The facts I depose to in this affidavit are within my personal knowledge and, to the best of my belief, both true and correct.

3. I have read the founding affidavit of **MEC MMOLOKI SAVIOUR CWAILE** in this application and confirm the contents of that affidavit insofar as they relate to me.

Deponent

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at MAHIKENG on the 5TH day of **FEBRUARY 2021**, the regulations contained in Government Notice R1258 dated 21 July 1972, as amended, having been complied with.

M.L

Commissioner of Oaths

Full names: _____

Capacity : _____

ANITA HARDING
Practicing Attorney
Commissioner of Oaths
Mothea House,56 Shippard Street
Mahikeng, 2745
Tel: 018 381 0495
Date: 5/2/2021

Address : _____

_____

_____

M.L

GNA

MG 1054 13

MOTSHABI & ASSOCIATES
INCORPORATED

12 Havenga Street, Golf View, Mahikeng 2745 • P.O. Box 4228, Mmabatho, 2735
Tel: 018 381 8187 • Fax: 018 381 8131
Email: info@motshabiinc.com / secretary@motshabiinc.com

Our Ref: Mr P.V. Motshabi/D 0887/CIV
Your Ref:
Date: 18th November 2020

SEBATA BUSINESS SOLUTIONS
Private Bag X 9996
SANDTON

Dear Sir (Mr. B. Ndlovu)

Re: **DITSOBOTLA LOCAL MUNICIPALITY // YOURSELF**

1 We refer to the above matter.

2 We are acting on behalf of Ditsobotla Local Municipality, who has instructed us to write this letter to you to bring the following to your attention.

2.1. You have to date failed to close the General Ledger of the 2019-20 financial year.

2.2. Our client is unable to draw a complete general ledger and trial balance.

2.3. The three (3) months for migrating from FMS to EMS remains incomplete.

3. These issues were brought to your attention by our client in the email dated 10th November 2020.

MOTSHABI & ASSOCIATES
INCORPORATED

12 Havenga Street, Golf View, Mahikeng 2745 • P.O. Box 4228, Mmabatho, 2735
Tel: 018 381 8187 • Fax: 018 381 8131
Email: info@motshabiinc.com / secretary@motshabiinc.com

4. On the 11th November 2020, you responded to the email of 10th November 2020 but the problem remains unresolved.

5. As you are aware, our client reports to the National Treasury and the system that they use should be MSCOA complaint and the current delays by yourself compromises this critical legislated obligation. The Annual Financial Statements are also not submitted due the incomplete general ledger and trial balance.

6. We hereby demand that you resolve all the issues previously raised by our client directly with you and also repeated herein.

7. Should you fail to comply with this demand within seven (7) days hereof we will approach court for the necessary relief.

Yours faithfully

MOTSHABI & ASSOCIATES INCOPORATED

Per: P.V. Motshabi

M·L

ANNEXURE MC 14
1056

MESALE PROJECTS (PTY) LTD

Reg. No.: 2012/009709/07 Income Tax No.: 9465092170

17 Pikkewyn Avenue, Birch Acres, 1618
PO Box 1871, Tembisa, 1628
Office: 011 393 1189 Fax: 086766 7572
Cell: 072697 8329 / 083621 2689
Email: info@mesale.co.za
VAT No.: 4470265820NHBRC: 3000146762

TAX INVOICE

POSTAL ADDRESS	STREET ADDRESS	CONTACT NUMBERS
PO Box 1871 Tembisa 1628	17 Pikkewyn Avenue Birch Acres Kempton Park, 1618	Tel.No.: (011) 074 6400 Fax. No.: (086) 766 7572 Email: info@mesale.co.za

VAT No.	ACCOUNT DETAILS	INVOICE NO.:
4470265820	Bank:Standard Type: Current. Branch:Midrand Acc No.: 062782673	MP0310_1/INV0241

INVOICE TO:

CONTACT PERSON	ADDRESS	CONTACT NUMBERS
Goitsemodimo Hlwathika Mr Thammi Mtshali	DITSOBOTLA LOCAL MUNICIPALITY CIVIC CENTRE DR Nelson Mandela Drive LICHTENBURG, 2740 VAT NO: 4410109930	018 633 5247

PROJECT DESCRIPTION

CONSTRUCTION OF ABLUTION BLOCK AND FENCING OF CEMETERY AT ITSOSENG

CERTIFICATE	CONTRACT NUMBER.:
2	DLM/PMU/ABLU/SCM/14/2019/2020

CONTRACT AMOUNT	INVOICE DATE
R 3 391 182,33	14/12/2020

	Description	CLAIM THIS AMOUNT
	Invoice as per Payment Certificate 2	R 1 992 569,00
SUB-TOTAL A		R 1 992 569,00
Retention @ 10%		R 199 256,90
(LESS) SUB-TOTAL B		R 1 793 312,10
V.A.T @ 15%		R 268 996,82
TOTAL OUTSTANDING		R 2 062 308,92

BA MAFOKO (Director)

On behalf of MESALE PROJECTS

M.L K.I

DITSOBOTLA LOCAL MUNICIPALITY

INTERNAL MEMORANDUM

TO : **MR. T. SHEMA**
ACTING MUNICIPAL MANAGER

COPY : **MR. L.S. MOKOENA**
CHIEF FINANCIAL OFFICER

FROM : **MR. T MTSHALI**
ACTING DIRECTOR INFRASTRUCTURE

DATE : **17 DECEMBER 2020**

SUBJECT : **REQUEST FOR PAYMENT TO MESALE PROJECTS FOR THE CONSTRUCTION OF ABLUTION BLOCK AND FENCING OF CEMETERY AT ITSOSENG.**

1. PURPOSE

The Purpose of this payment is for Construction of Ablution Block and Fencing of Cemetery at Itsoseng.

2. BACKGROUND

The scope entails installation of a 1.5 km long section of Clearvu fence and 6 precast VIP toilets.

3. DISCUSSION

The consultant has completed with the following as per attached certificate:
Site Establishment 100%
Construction work 100%
Snagging 0%
Close-out Report 0%

4. FINANCIAL IMPLICATIONS

Payment Requested: R 2 062 308.92 this amount will be taken from the MIG grand.

5. LEGAL IMPLICATIONS

There are no legal implications.

M.L R.T

6. RECOMMENDATIONS

Payment Requested: R 2 062 308.92 this amount will be taken from the MIG grand.

MR. I MOKGOTHU
PMU TECHNICIAN
DATE 18/12/2020

Considered ✓	Not Considered

MR. T. MTSHALI
ACTING INFRASTRUCTURE DIRECTOR
DATE 17/12/2020

BUDGET OFFICE (Confirmation of funds)

Funds available for this project = 5102/4.
Please do a virement as approved by MM for slow moving projects as we discussed. Regs

~~Recommended~~	Not recommended ✓

The project is no recommended due to insufficient budget. Only municipal council can approve adjustment budget this request will constitute unauthorized expenditure, which might lead to irregular spending there as the CFO I do not recommend the request even if the AMM approved.

11/01/21

Approved	~~Not Approved~~

MR. T. SHEMA
ACTING MUNICIPAL MANAGER
DATE: 18/12/2020

M.L

DITSOBOTLA LOCAL MUNICIPALITY

INTERNAL MEMORANDUM

TO : **MR. T. SHEMA**
ACTING MUNICIPAL MANAGER

COPY : **MR. L.S. MOKOENA**
CHIEF FINANCIAL OFFICER

FROM : **MR. T MTSHALI**
ACTING DIRECTOR INFRASTRUCTURE

DATE : **17 DECEMBER 2020**

SUBJECT : **REQUEST TO ADJUST THE BUDJECT TO SETTLE PAYMENT FOR ITSOSENG CEMETEREY**

The above project was budgeted for R1 500 000 for this financial year 2020/2021 to date the available budget is R510 244.00

The contractors claim amounts to R2 062 308.92 due to the limited budget we are unable to process the claim.

We therefore recommend that the funds for this project be taken from that have from the Itsoseng Roads and Storm water.

We hope you find the above in order

MR. T MTSHALI
ACTING DIRECTOR INFRASTRUCTURE
DATE 18/12/2020

APPROVED	NOT APPROVED

MR. T.SHEMA
ACTING MUNICIPAL MANAGER
DATE 18/12/2020

22/12/20

MR. TSIETSI SHEMA
THE ACTING MUNICIPAL MANAGER
DITSOBOTLA LOCAL MUNICIPALITY

BY EMAIL

Dear Sir

RE: RESPONSE TO NOTICE OF INTENTION TO SUSPEND MYSELF AS THE CHIEF FINANCIAL OFFICER

1. The above matter refers to your notice dated 17th December 2020.

2. Legislative background

2.1 Municipal Systems Act No 32 of 2000, Section 56, stipulates that the appointment of managers directly accountable to

municipal managers must be done as follows:

(a) A municipal council, after consultation with the municipal manager, appoints a manager directly accountable to the municipal manager,

2.2. While, schedule 6 of the government gazette no 34213 on disciplinary procedure and precautionary suspension on senior manager stated as follows:

M.L AM GMA

(1) The municipal council may suspend a senior manager on full pay if it is alleged that the senior manager has committed an act
of misconduct, where the municipal council has reason to believe that-

(a) the presence of the senior manager at the workplace may -
(i) jeopardise any investigation into the alleged misconduct;
(ii) endanger the well-being or safety of any person or municipal property; or
(iii) be detrimental to stability in the municipality; or
(b) the senior manager may-
(i) interfere with potential witnesses; or
(ii) commit further acts of misconduct.

(2) Before a senior manager may be suspended, he or she must be given an opportunity to make a written representation to the municipal council why he or she should not be suspended, within seven [7] days of being notified of the council's decision to suspend him or her.

(3) The municipal council must consider any representation submitted to it by the senior manager within seven [7] days.

(4) After having considered the matters set out in sub regulation (1), as well as the senior manager's representations contemplated in sub-regulation (2), the municipal council may suspend the senior manager concerned.

(5) The municipal council must inform -
(a) the senior manager in writing of the reasons for his or her suspension on or before the date on which the senior manager is suspended; and

M.L

(b) the Minister and the MEC responsible for local government in the province where such suspension has taken place, must be notified in writing of such suspension and the reasons for such within a period of seven [7] days after such suspension.

3. Discussion

3.1 Given the above legislations Mr Shema it is evident to me that your letter dated the 17th December 2020 is unprocedural and unlawful. I therefore, would like to request you to retract your Notice of Intention to suspend myself as the Chief Financial Officer of Ditsobotla Local Municipality as it is unprocedural and unlawful.

3.2 Should you continue with the Notice of intention to suspend myself as the Chief Financial Officer of Ditsobotla Local Municipality, you will force myself to approach Labour Court on urgency basis to seek relief from this unlawful and unprocedural process.

3.3 I must equally bring to your attention the letter I wrote to you on the 10th December 2020 that you failed to respond to, but subsequently served me with the notice of intention to suspend, this clearly indicates to me that you as the Acting Municipal Manager are on a witch hunt to get rid of me as the Chief Financial Officer, even if it means flouting the processes.

3.4 Imperative to the above, is that you Mr Shema are the former Acting Legal Manager and Manager office of the Speaker. The two positions require sound legal mind and its expected of you to be able to advice on all legal matters, and get council resolution if you are to suspend the senior managers, given that they are not appointed by yourself.

M.L

3.5 In your letter dated the 17th December 2020, you are not referring to any report tabled to the Municipal Council and the resolution that recommended my notice of intention to suspend myself as the Chief Financial Officer of Ditsobotla local Municipality.

3.6 I deem this as a harassment that will equally affect my performance as the Chief Financial Officer of the Ditsobotla Local Municipality. Moreover, the allegations are vague, baseless and not specific to the point, for me to respond adequately and to the best of my ability.

Hope you find this in order.

Your s faithfully

MR. L.S. MOKOENA
CHIEF FINANCIAL OFFICER
DITSOBOTLA LOCAL MUNICIPALITY

M.L

GOVERNMENT NOTICE

DEPARTMENT OF CO-OPERATIVE GOVERNANCE

21 April 2011

No. 344

LOCAL GOVERNMENT: DISCIPLINARY REGULATIONS FOR SENIOR MANAGERS, 2010

I, Emmanuel Nkosinathi Mthethwa, Acting Minister for Cooperative Governance and Traditional Affairs, after consultation with the MEC's responsible for local government, organised local government and the bargaining council designated for municipalities, hereby, under section 120 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), make the regulations in the Schedule.

M.L AM GMA

SCHEDULE

ARRANGEMENT OF REGULATIONS

CHAPTER 1

INTERPRETATION

1. Definitions

CHAPTER 2

DISCIPLINARY CODE AND PROCEDURES

2. Purpose and application
3. Principles
4. Policy
5. Disciplinary procedures
6. Precautionary suspension
7. Less serious misconduct
8. Serious misconduct
9. Notice of disciplinary hearing
10. Conducting disciplinary hearing
11. Pre-dismissal arbitration
12. Sanctions
13. Dispute resolution mechanisms

CHAPTER 3

PROCEDURES FOR DEALING WITH SUBSTANDARD PERFORMANCE

14. Purpose
15. Policy and principles
16. Procedures for dealing with substandard performance

CHAPTER 4

GENERAL

17. Transitional arrangements
18. Recording
19. Reporting
20. Repeal
21. Short title

Annexures A to G

M.L

CHAPTER 1

INTERPRETATION

Definitions

1. (1) In these Regulations, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, unless the context indicates otherwise –

(a) **"bargaining council"** means the bargaining council designated for municipalities in terms of the Labour Relations Act, 1995;

(b) **"days"** means calendar days;

(c) **"employment contract"** means a contract contemplated in section 57 of the Act;

(d) **"fellow staff member"** means an employee of the municipality other than the senior manager charged with misconduct;

(e) **"financial misconduct"** means any misappropriation, mismanagement, waste, or theft of the finances of a municipality and also includes any form of financial misconduct specifically set out in section 171 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

(f) **"mayor"** includes an executive mayor;

(g) **"misconduct"** means any of the misconduct set out in Annexure A of these Regulations, and also includes less serious misconduct and serious misconduct as set out in Part I and II of Annexure A;

(h) **"Municipal Performance Regulations for municipal managers and managers directly accountable to municipal managers, 2006"** means the regulations as published in GN R805 in GG 29089 of 1 August 2006;

(i) **"performance agreement"** means the agreement contemplated in section 57 of the Act;

(j) **"senior manager"** means –

(i) a municipal manager referred to in section 82(1) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); or

(ii) a manager referred to in section 56 of the Act;

(k) "**substandard performance**" means poor work or unacceptable performance or failing to meet the required standard set for the post; and

(l) "**the Act**" means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

In these Regulations a word or expression which is a derivative or other grammatical form of a word or expression defined in sub-regulation (1), has a corresponding meaning unless the context indicates that another meaning is intended.

M.L A.H GNJ

CHAPTER 2

DISCIPLINARY CODE AND PROCEDURES

Purpose and application

2. (1) This Disciplinary Code –

(a) applies to all –

(i) municipalities;

(ii) senior managers; and

(b) is intended to –

(i) provide an internal mechanism for management of misconduct;

(ii) establish standard procedures for the management of misconduct;

(iii) support constructive labour relations;

(iv) ensure a common understanding of misconduct and discipline;

(v) promote mutual respect between senior managers and council;

(vi) promote acceptable conduct;

(vii) avert and correct unacceptable conduct; and

(viii) prevent arbitrary or discriminatory actions.

(c) prevails in the event of any inconsistency with any systems and procedures adopted by a municipality in terms of section 67(1)(h) of the Act to the extent that those procedures apply to senior managers.

Principles

3. (1) This Disciplinary Code is informed by the following principles:

(a) Discipline –

(i) is fundamentally a corrective measure and not punitive; and

(ii) must be applied in a prompt, fair, consistent and progressive manner.

(2) This Disciplinary Code is necessary for the efficient delivery of services, and ensure that senior managers –

(a) have a fair hearing in a formal or informal setting;

(b) are timeously informed of allegations of misconduct made against them; and

(c) receive written reasons for any decisions taken against them.

(3) A disciplinary hearing must –

(a) take place in the area of jurisdiction of the municipality; and

(b) be concluded within the shortest possible time.

(4) Except in exceptional circumstances, a disciplinary action may not be taken against a senior manager until a full investigation has been carried out.

Policy

4 (1) If a senior manager is alleged to have committed misconduct, the municipal council must institute disciplinary proceedings in accordance with this Disciplinary Code.

(2) The maintenance of discipline is the responsibility of the municipality.

(3) Discipline must be effected with due regard to –

(a) the Code of Conduct for municipal staff members as contained in Schedule 2 of the Act; and

(b) the Code of Good Practice provided for in Schedule 8 of the Labour Relations Act, 1995 (Act No. 66 of 1995).

(4) The principles of natural justice and fairness must be adhered to notwithstanding criminal or civil action having been instituted.

(5) Disciplinary procedures may not be dispensed with as a result of criminal, civil or other action having been instituted, or pending the outcome of such action.

Disciplinary procedures

5. (1) Any allegation of misconduct against a senior manager must be brought to the attention of the municipal council.

(2) An allegation referred to in sub-regulation (1) must be tabled by the mayor or the municipal manager, as the case may be, before the municipal council not later than seven [7] days after receipt thereof, failing which the mayor may request the Speaker to convene a special council meeting within seven [7] days to consider the said report.

(3) If the municipal council is satisfied that –

(a) there is a reasonable cause to believe that an act of misconduct has been committed by the senior manager, the municipal council must within seven [7] days appoint an independent investigator to investigate the allegation[s] of misconduct; and

(b) there is no evidence to support the allegation[s] of misconduct against the senior manager, the municipal council must within seven [7] days dismiss the allegation[s] of misconduct.

(4) The investigator appointed in terms of sub-regulation (3)(a) must, within a period of thirty [30] days of his or her appointment, submit a report with recommendations to the mayor or municipal manager, as the case may be.

(5) The report contemplated in sub-regulation (4) must be tabled before the municipal council in the manner and within the timeframe as set out in sub-regulation (2).

(6) After having considered the report referred to in sub-regulation (4), the municipal council must by way of a resolution institute disciplinary proceedings against the senior manager.

(7) The resolution in sub-regulation (6) must –
(a) include a determination as to whether the alleged misconduct is of a serious or a less serious nature;
(b) authorise the mayor, in the case of municipal manager, or municipal manager, in the case of the manager, directly accountable to the municipal manager to –

(i) appoint –
(aa) an independent and external presiding officer; and
(bb) an officer to lead evidence; and
(ii) sign the letters of appointment.

Precautionary suspension

6. (1) The municipal council may suspend a senior manager on full pay if it is alleged that the senior manager has committed an act of misconduct, where the municipal council has reason to believe that –

(a) the presence of the senior manager at the workplace may –
(i) jeopardise any investigation into the alleged misconduct;
(ii) endanger the well-being or safety of any person or municipal property; or
(iii) be detrimental to stability in the municipality; or
(b) the senior manager may –
(i) interfere with potential witnesses; or
(ii) commit further acts of misconduct.

(2) Before a senior manager may be suspended, he or she must be given an opportunity to make a written representation to the municipal council why he or she should not be suspended, within seven [7] days of being notified of the council's decision to suspend him or her.

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(3) The municipal council must consider any representation submitted to it by the senior manager within seven [7] days.

(4) After having considered the matters set out in sub-regulation (1), as well as the senior manager's representations contemplated in sub-regulation (2), the municipal council may suspend the senior manager concerned.

(5) The municipal council must inform –

(a) the senior manager in writing of the reasons for his or her suspension on or before the date on which the senior manager is suspended; and

(b) the Minister and the MEC responsible for local government in the province where such suspension has taken place, must be notified in writing of such suspension and the reasons for such within a period of seven [7] days after such suspension.

(6) (a) If a senior manager is suspended, a disciplinary hearing must commence within three months after the date of suspension, failing which the suspension will automatically lapse.

(b) The period of three months referred to in paragraph (a) may not be extended by council.

Less serious misconduct

7. (1) If the municipal council decides that the alleged misconduct is of a less serious nature, the –

(a) mayor must, in the case of the municipal manager –

(i) bring the alleged misconduct to the senior manager's attention; and

(ii) give the senior manager the opportunity to respond to the allegations.

(b) municipal manager must, in the case of the manager directly accountable to the municipal manager –

(i) bring the alleged misconduct to the senior manager's attention; and

(ii) give the senior manager the opportunity to respond to the allegations.

(2) If after having considered the response from the senior manager, the mayor, in the case of the municipal manager, or the municipal manager, in the case of the manager directly accountable to the municipal manager, decides that the senior manager is guilty of misconduct, the mayor or the municipal manager, as the case may be, may, only after due processes, impose any of the following sanctions with or without conditions:–

(i) corrective counselling;

(ii) verbal warning;

(iii) written warning in a format compliant with Annexure B; or

(iv) final written warning in a format compliant with Annexure C.

(3) A copy of a written warning must be given to the senior manager, who must acknowledge receipt thereof by signing it.

(4) If the senior manager refuses to sign the written warning, the mayor or the municipal manager, whatever the case may be, must hand over the warning to the senior manager in the presence of a fellow staff member, who shall sign as confirmation that the written warning was conveyed to the senior manager.

(5) The written warning must be filed in the senior manager's personal file which remains valid for a period of six months.

(6) If during the six-months period, the senior manager is found guilty of a similar or related misconduct, the written warning may be taken into account in deciding on an appropriate sanction; or

(7) If at the expiry of the six-months period, the senior manager has not been found guilty of a similar or related misconduct, the written warning must be expunged from the senior manager's personal file and destroyed.

Serious misconduct

8. (1) The officer leading evidence who has been appointed in terms of sub-regulation 5(7)(b) –

(a) must, within 30 days of his or her appointment, formulate and serve charges of the alleged misconduct in a format compliant with Annexure D; and

(b) may summons any witness to appear before the disciplinary hearing in a format substantially compliant with Annexure E.

(2) The charge sheet contemplated in sub-regulation (1) must inform the senior manager of –

(a) the alleged act or acts of misconduct;

(b) the time, date and venue at which the hearing will be conducted;

(c) the name of the presiding officer and the officer leading evidence;

(d) the address at which notices and correspondence may be served on such officer;

(e) the right to appoint a representative of his or her choice, who may be a fellow staff member, shop steward, union official or any other suitably qualified person;
(f) the right to request further particulars or access to documentation or copies thereof from the officer leading evidence, in writing, within seven [7] days of receipt of the charge sheet;
(g) the right to an interpreter, whose presence must be requested by notice in writing, addressed to the officer leading evidence within seven [7] days of receipt of the charge sheet;
(h) the right to call witnesses to testify on his or her behalf;
(i) the fact that any request for a postponement should be directed to the officer leading evidence in writing not later than seven [7] days after receipt of the charge sheet; and
(j) the fact that the enquiry may be conducted in his or her absence if the senior manager or his or her representative fails to attend the hearing, which includes the making of a finding and the possible imposition of a suitable sanction.

(3) The charge sheet contemplated in sub-regulation (1) must be delivered by hand or registered mail to the senior manager together with the notice of the disciplinary hearing.

(4) Where a senior manager is accused of a financial misconduct which constitutes a criminal offence, the mayor or municipal manager, as the case may be, must report the matter to the South African Police in terms of the Municipal Finance Management Act, 2003.

Notice of disciplinary hearing

9. (1) The notice contemplated in sub-regulation 8(3) must be given to the senior manager in writing at least seven [7] days before the date of the hearing.

(2) The notice of the disciplinary hearing contemplated in sub-regulation (1) must substantially be compliant with Annexure F.

(3) If the notice was sent by registered mail, the date on which the registered letter was signed for will be regarded as the date of receipt by the senior manager.

(4)(a) If the notice is delivered by hand the senior manager must acknowledge receipt of the notice by signing a copy of the notice.
(b) If the senior manager refuses to sign the notice as acknowledgement of receipt of such a notice, it must be given to the senior manager in the presence of a fellow staff member, who

must sign in confirmation that the notice was conveyed to the senior manager.

Conducting disciplinary hearing

10. (1) The disciplinary hearing must commence –

(a) within three months of the resolution to institute disciplinary action; and

(b) on a date not less than seven [7] days and not more than ten (10) days from the date of service of the charge sheet and the written notice of the disciplinary hearing on the senior manager.

(2) The hearing must be conducted by the presiding officer who may determine the procedures to be followed, provided that the –

(a) rules of natural justice are adhered to at all times;

(b) matter is speedily resolved with the minimum of legal formalities;

(c) presiding officer in discharging his or her obligations –

(i) exercises care, diligence and acts impartially; and

(ii) does not consult or confer with any of the parties or their representatives on the merits or demerits of the case.

(3) The officer leading evidence –

(a) must commence the disciplinary hearing by reading out the charges to the senior manager;

(b) may call witnesses and produce book[s], document[s] or object(s);

(c) may cross-examine any witness called to testify on behalf of the senior manager;

(d) may inspect any book[s], document[s] or object[s] produced by the senior manager; and

(e) must present arguments on the merits of the case.

(4) The senior manager has the right to –

(a) be heard in person or through a representative;

(b) call witnesses and produce book[s], document[s] or object[s];

(c) cross-examine any witness called to testify by the officer leading evidence; and

(d) inspect any book[s], document[s] or object[s] produced by the officer leading evidence.

(5) The presiding officer –

(a) may, at any time during the hearing –

(i) ask any party any questions to clarify any matter;

(ii) ask any party or his or her witnesses any question on any matter relevant to the charges;

(iii) proceed with the hearing if no satisfactory reasons are furnished for the absence of the party against whom charges of misconduct are being brought;

(iv) make such interim determinations or rulings as he or she deems necessary; and

(b) must –

(i) after having considered the evidence before him or her, make a finding;

(ii) in the event of a verdict of guilt, invite and hear any plea in mitigation or aggravation of sanction by the senior manager prior to imposing a sanction; and

(iii) impose an appropriate sanction.

(6) The presiding officer must, by not less than ten [10] days after the last day of the hearing, provide the municipality and senior manager or his or her representative with –

(a) written reasons for the finding contemplated in sub-regulation (5)(b)(i); and

(b) a copy of the sanction.

Pre-dismissal arbitration

11. (1) The municipal council may, with the consent of the senior manager, request the Commission for Conciliation Mediation and Arbitration to conduct an arbitration into allegations of misconduct or poor performance against a senior manager as provided for under section 188A of the Labour Relations Act, 1995 (Act No. 66 of 1995).

(2) The decision of the arbitrator appointed in terms of sub-regulation (1) shall be final and binding and only subject to review by the Labour Court.

(3) The provisions of section 138 of the Labour Relations Act, read with the changes required by the context, apply to any pre-dismissal arbitration.

Sanctions

12. (1) The presiding officer may impose any, or a combination of the following sanctions, with or without conditions:

(a) suspension without pay for no longer than three months;

(b) demotion;

(c) transfer to another post;

(d) reduction in salary, allowances or other benefits;

(e) an appropriate fine; or

(f) dismissal.

(2) The presiding officer must –

(a) impose a sanction within ten [10] days of the completion of the hearing;

(b) advise the municipal council and the senior manager in writing of the finding and sanction;

(c) advise the senior manager of the right to lodge a dispute;

(d) formally document the sanction, a copy of which must be handed to the senior manager in a format compliant with Annexure G; and

(e) submit a record of the proceedings to the municipal council, within ten [10] days after imposing the sanction.

(3) The municipality must –

(a) implement the sanction imposed by the presiding officer; and

(b) report the outcome of any disciplinary hearing within fourteen [14] days after the finalisation of such disciplinary hearing to the Minister and MEC responsible for local government in the province.

(c) where financial misconduct is involved, report to the MEC responsible for finance in the province and the Auditor-General as prescribed in the Municipal Finance Management Act, 2003.

Dispute resolution mechanisms

13. (1) A senior manager has the right to refer a dispute against any disciplinary finding and/or sanction imposed on him or her at a disciplinary hearing to the Bargaining Council, Commission for Conciliation, Mediation and Arbitration or an accredited agency in terms of section 133 of the Labour Relations Act 1995 (Act No. 66 of 1995).

(2) A dispute contemplated in sub-regulation (1) must be lodged within thirty [30] days of receipt of a written notification of the sanction.

CHAPTER 3

PROCEDURES FOR DEALING WITH SUBSTANDARD PERFORMANCE

Purpose

14. (1) These procedures –
(a) apply to all municipalities and senior managers; and
(b) are intended to -
(i) create an enabling environment to facilitate effective performance by the senior managers;
(ii) provide the senior managers with access to skills development and capacity building opportunities in order to promote efficient and effective performance;
(iii) provide remedial and developmental support to assist the senior managers to deal with substandard performance; and
(iv) ensure that the municipal council and senior managers work collaboratively to generate solutions to problems and improve the performance of senior managers.

Policy and principles

15. (1) These procedures must be read in conjunction with regulation 32 of the Municipal Performance Regulations for municipal managers and managers directly accountable to municipal managers, 2006.

(2) The Code of Good Practice provided for in Schedule 8 of the Labour Relations Act, 1995, constitutes part of this procedures, in respect of poor work performance.

(3) The municipality must assess the senior managers' performance by considering –
(a) the extent to which the substandard performance impacts on the work of the municipality and the achievement of municipal goals;
(b) the extent to which the senior manager fails to meet the required performance standards set by the municipal council;
(c) the extent to which the senior manager lacks the necessary skills, competencies and expertise to meet the performance objectives and targets for his or her post as contained in the performance agreement; and
(d) the nature of the senior manager's work and responsibilities.

Procedures for dealing with substandard performance

16. (1) If the municipality has reason to believe that a senior manager is not performing in accordance with the minimum performance standards of his or her post, the mayor, in the case of the municipal manager or the municipal manager, in case of the manager directly accountable to the municipal manager must –

(a) convene a meeting to give feedback to the senior manager on his or her performance;

(b) furnish the senior manager with reasons why it is necessary to initiate this procedure.

(2) In the meeting contemplated in sub-regulation (1)(a), the mayor or the municipal manager, as the case may be, must –

(a) explain the requirements, level, skills and nature of the post;

(b) evaluate the senior manager's performance in relation to the performance agreement;

(c) explain the reasons why the performance is considered substandard; and

(d) afford the senior manager or his or her representative an opportunity to respond to the performance outcomes referred to in paragraph (c); and

(3) After considering the senior manager's reasons, the mayor or the municipal manager may, if necessary –

(a) initiate a formal programme of counselling and training to enable the senior manager to reach the required standard of performance, which must include –

(i) assessing the time that it will take for the senior manager to deal with substandard performance;

(ii) establishing realistic timeframes within which the municipality will expect the senior manager to meet the required performance standards; and

(iii) identifying and providing appropriate training for the senior manager to reach the required standard of performance.

(b) establish ways to address any factors that may affect the senior manager's performance that lie beyond the senior manager's control.

(4) If the senior manager fails to meet the required performance standard for the post after being subjected to a formal programme of counselling and training as contemplated in sub-regulation (3), the –

(a) mayor, in the case of the municipal manager, or municipal manager, in the case of the manager directly accountable to the municipal manager, may –

(i) regularly evaluate the senior manager's performance; or

(ii) provide further remedial or developmental support to assist the senior manager to eliminate the substandard performance.

(5) If the senior manager's performance does not improve after he or she received appropriate performance counselling and the necessary support and reasonable time to improve his or her performance as contemplated in sub-regulation (4), or he or she refuses to follow a formal programme of counselling and training contemplated therein –

(a) the mayor, in the case of the municipal manager, or the municipal manager, in the case of the manager directly accountable to the municipal manager, must bring the allegations of substandard performance against the senior manager to the attention of the municipal council in the form of a report.

(b) the mayor or the municipal manager, whatever the case may be, must table the report contemplated in paragraph (a) before the municipal council not later than seven [7] days after receipt thereof, failing which the mayor may request the Speaker to convene a special council meeting within seven [7] days to consider the said report.

(6) If the municipal council is satisfied that sufficient evidence exist to institute disciplinary proceedings against the senior manager on the basis of the alleged substandard performance -

(a) the municipal council must do so by way of a resolution; and

(b) the mayor, in the case of the municipal manager, or the municipal manager, in the case of the manager directly accountable to municipal manager, must -

(i) furnish the senior manager with written reasons why it is necessary to initiate this procedure; and

(ii) invoke the provisions of regulation 8 of these Regulations.

CHAPTER 4

GENERAL

Transitional arrangements

17. (1) Any disciplinary process instituted prior to the commencement of these Regulations must –

(a) be finalised in terms of the Code and Procedures or any policies which were applicable at the time when the proceedings were instituted]; or

(b) by mutual agreement in writing between the senior manager and the municipal council, be finalised in terms of these Regulations.

Recording

18. (1) The proceedings at the hearing must be recorded by means of a mechanical or electronic device or any other method and must be transcribed in writing.

(2) Records of the proceedings contemplated in sub-regulation (1) must be kept in safe custody by the municipal council and may only be disposed of in terms of the National Archives of South Africa Act, 1996 (Act No. 66 of 1995); and

(3) A copy must be provided to the senior manager on written request.

Reporting

19. (1) Municipalities must provide quarterly reports on the status of disciplinary cases to the MEC responsible for local government in the province.

(2) The MEC must, within fourteen [14] days of receipt of the report referred to in sub-regulation (1), submit the report to the Minister.

(3) The format for reporting contemplated in sub-regulation (1) must include –

(a) the date the allegation of misconduct was brought to the attention of the municipal council;

(b) the date the municipal council made a resolution to institute disciplinary proceedings against the senior manager;

(c) if the senior manager is suspended, –

(i) the date of suspension;

(ii) the reason for suspension; and

(iii) the conditions of suspension.

(e) the status of the alleged misconduct, including –
  (i) the date of commencement of the disciplinary hearing;
  (ii) pre-dismissal arbitration (if any);
  (iii) the finding;
  (iii) the sanction; and
  (iv) the number of disciplinary cases that were finalised after the senior manager has resigned;
  (v) the date on which the dispute was referred for arbitration (if applicable); and

(f) costs incurred by the municipality towards the finalisation of the disciplinary case.

Repeal

20. These Regulations repeal regulation 16 and 17(2) and (3) of the Municipal Performance Regulations for municipal managers and managers directly accountable to municipal managers, 2006.

Short title

21. These regulations are called the Local Government: Disciplinary Regulations for Senior Managers.

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ANNEXURE A

ACTS OF MISCONDUCT

A senior manager will be guilty of misconduct if he or she –

PART I

Less serious misconduct

1. absents himself or herself from duty without leave;
2. without written approval from his or her municipality, performs work for compensation in a private capacity for another person or organisation either during or outside working hours;
3. while on duty, conducts himself or herself in an improper, disgraceful and unacceptable manner;
4. demonstrates any rude, abusive, insolent, provocative, intimidating or aggressive behaviour to a fellow staff member;
5. participates, either individually or with others, in any form of action, which will have the effect of disrupting the operations of the municipality, other than actions contemplated by the Labour Relations Act, 1995 (Act No. 66 of 1995);
6. wrongfully discloses privileged information;
7. while on duty, is under the influence of intoxicating, illegal, unauthorised, habit-forming or stupefying drug, including alcohol;
8. displays disrespect towards others in the workplace or displays abusive or insolent behaviour;
9. intimidates or victimises fellow staff members;
10. prevents other staff members from belonging to any trade union or body; or
11. without permission, possesses or wrongfully uses the property of the municipality or that of an other staff member or a visitor.

PART II

Serious misconduct

1. fails to comply with or contravenes any Act, regulation, or legal obligation relating to the employment relationship;
2. bribes or commits a financial misconduct or fraud or corruption;
3. wilfully, intentionally or negligently damages or causes loss of municipal property;
4. endangers the lives of self or others by disregarding safety rules or regulations;

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5. prejudices the administration, discipline or efficiency of a municipality, office or institution of the municipality;
6. misuses his or her position in the municipality to promote or to prejudice the interest of any political party;
7. accepts any compensation in cash or otherwise from a member of the public or another staff member for performing his or her duties without written approval from the municipal council;
8. fails to carry out a lawful instruction without just or reasonable cause;
9. derelicts his or her duties, absents or repeatedly absents himself or herself from work without reason or prior permission;
10. commits an act of sexual harassment;
11. unfairly discriminates against others on the basis of race, gender, disability, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth, family responsibility, HIV status, political opinion or other grounds prohibited by the Constitution;
12. performs poorly or inadequately for reasons other than incapacity;
13. contravenes the Code of Conduct for municipal staff members contained in schedule 2 of the Act;
14. assaults, or attempts or threatens to assault, another staff member or person while on duty;
15. incites other municipal staff to engage in unprocedural and unlawful conduct;
16. operates any money lending scheme for employees for own benefit during working hours or from the premises of the municipality;
17. carries or keeps a firearm[s] or other dangerous weapon[s] on municipal premises, without the written authorisation of the municipal council;
18. refuses to obey security regulations;
19. gives false statements or evidence in the execution of his or her duties;
20. falsifies records or any other documentation;
21. participates in unprocedural, unprotected or unlawful industrial action,
22. fails or refuses to follow a formal programme of counselling contemplated in these Regulations; or
23. commits a common law or statutory offence while on municipal premises.

ANNEXURE B

WRITTEN WARNING

Name of senior manager:.....

Address:.....
.....
.....
.....

Pursuant to a meeting between yourself (hereinafter referred to as the senior manager) and the Mayor/municipal manager held on ..... (date), you are hereby formally issued with a written warning in terms of Regulation 6(2) in consequent of the following act of misconduct committed by you:
.....
.....
.....
.....
.....

Should you commit a similar or related misconduct, this written warning may be taken into account in determining a more serious sanction.

The written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

_____ _____
Mayor/Municipal manager Date

Receipt of the abovementioned charge sheet acknowledged.

_____ _____
Senior Manager Date

_____ _____
Witness (if applicable) Date

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ANNEXURE C

FINAL WRITTEN WARNING

Name of senior manager.....

Address:.....

Pursuant to a meeting between yourself (hereinafter referred to as the senior manager) and the Mayor/municipal manager held on..... (date), you are hereby formally issued with a final written warning in terms of regulation 6(2) in consequent of the following act of misconduct committed by you:

.....

.....

.....

.....

Should you commit a similar or related misconduct, this written warning may be taken into account in determining a more serious sanction.

This final written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

_____ _____

Mayor/Municipal manager Date

Receipt of the above-mentioned charge sheet acknowledged.

_____ _____

Senior Manager Date

_____ _____

Witness (if applicable) Date

A-4

M.L

GMA

ANNEXURE B

WRITTEN WARNING

Name of senior manager:.....

Address:.....
.....
.....
.....

Pursuant to a meeting between yourself (hereinafter referred to as the senior manager) and the Mayor/municipal manager held on ..... (date), you are hereby formally issued with a written warning in terms of Regulation 6(2) in consequent of the following act of misconduct committed by you:
.....
.....
.....
.....
.....

Should you commit a similar or related misconduct, this written warning may be taken into account in determining a more serious sanction.

The written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

_____ _____
Mayor/Municipal manager Date

Receipt of the abovementioned charge sheet acknowledged.

_____ _____
Senior Manager Date

_____ _____
Witness (if applicable) Date

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ANNEXURE C

FINAL WRITTEN WARNING

Name of senior manager.....

Address:.....
.....
.....
.....

Pursuant to a meeting between yourself (hereinafter referred to as the senior manager) and the Mayor/municipal manager held on..... (date), you are hereby formally issued with a final written warning in terms of regulation 6(2) in consequent of the following act of misconduct committed by you:
.....
.....
.....
.....
.....

Should you commit a similar or related misconduct, this written warning may be taken into account in determining a more serious sanction.

This final written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

_____ _____
Mayor/Municipal manager Date

Receipt of the abovementioned charge sheet acknowledged.

_____ _____
Senior Manager Date

_____ _____
Witness (if applicable) Date

ANNEXURE D

CHARGE SHEET

In the disciplinary hearing of

.....
(Name of Municipality)

and

.....
(Name of senior manager)

You, ..., (hereinafter referred to as "the senior manger") of the ..... Municipality (hereinafter referred to as "the municipal council"), are hereby charged with misconduct as follows:

Charge 1:
That you are guilty of misconduct by
.....
.....
.....
.....

In that:
You.....
.....
.....
.....

Charge 2:
That you are guilty of misconduct by
.....
.....
.....
.....

In that:
You.....
.....
.....
.....

Charge 3:
That you are guilty of misconduct by

.....
.....
.....
.....

In that:

You.....
.....
.....
.....

_____ _____
Person Leading Evidence Date

Receipt of the abovementioned charge sheet acknowledged.

_____ _____
Senior Manager Date

_____ _____
Witness (if applicable) Date

M.L
GMA

ANNEXURE E

SUMMONS TO APPEAR BEFORE A DISCIPLINARY HEARING

Name of witness.....

Address:.....
.....
.....
.....

You are hereby summoned to appear before the presiding officer of a disciplinary hearing as a witness in respect of ..... (Name of senior manager) who has been charged with the following misconduct:
.....
.....
.....
.....

The hearing has been scheduled as follows:

Date: .....

Time:.....

Venue: ..... Municipality

During the hearing you will be required to provide evidence orally or by way of document(s), book(s), or object(s) in your possession, custody or control, which may have a bearing on the matter.

Person Leading Evidence Date:

M.L

ANNEXURE F

NOTICE OF DISCIPLINARY HEARING

In the disciplinary hearing of

.....

(Name of Municipality)

and

.....

(Name of senior manager)

1. You, ... are hereby given notice to attend a disciplinary hearing in terms of regulation 8 scheduled as follows:

   Date: .....

   Time: .....

   Venue: ..... Municipality

   Charges: refer to attached charge sheet (Annexure D)

2. You attention is drawn to the following:

   (a) You have the right to be represented by a fellow employee or any other suitably qualified person, provided that any costs incurred will be borne by you.
   (b) If you or your representative should fail to attend the hearing at the scheduled time and venue, the hearing may proceed in your absence.
   (c) You will be required to plead to the charges set out against you in the charge sheet.
   (d) The municipality will call witnesses and adduce evidence, orally or by way of documents, and you or your representative will have the right to cross-examine the witnesses called on behalf of the municipality, subject to the rights of any such witnesses.
   (e) You have the right to present your case and to call witnesses and adduce evidence, orally or by way of documents.

1092

(f) The proceedings will be conducted in English, and should you require an interpreter, you must inform the prosecutor in writing thereof, within 5 days of the date of receipt hereof.

(g) Your attention is specifically drawn to the fact that the municipal council has appointed ....., to act as the person leading evidence and ..... to act as the presiding officer in the hearing.

(h) Any request for further particulars or access to documentation or copies thereof must be directed to the person leading evidence, in writing, within 7 days of the date of receipt of the charge sheet.

(i) Any request for a postponement must be directed to the person leading evidence, in writing, forthwith but not later than 7 days after the date of receipt of the charge sheet.

(j) Your attention is further drawn to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995), as well as the Code of Conduct contained in Schedule 2 to the Local Government: Municipal Systems Act, 2000 (Act No. 3 of 2000) which provisions will, where applicable, apply to the hearing.

(k) Kindly note that the municipality reserves the right to amend the charges or add new charges, at any stage before you plead to the charges.

(l) Should you require any additional information, you are welcome to contact the person leading evidence at the following contact details:
.....

Thus done and signed at ..... on this ..... day of ..... (month) ..... (year)

_____
Person Leading Evidence

1093

I confirm notification of the abovementioned disciplinary hearing and further confirm that I will attend the disciplinary hearing:

_____ _____

Senior Manager Date

I hereby confirm that the abovenamed senior manager received this notification but refused to acknowledge receipt of or confirm that he or she will attend the disciplinary hearing:

_____ _____

Witness (if applicable) Date

M.L
GNA

1094

ANNEXURE G

FINDING AND SANCTION OF DISCIPLINARY HEARING

(Copy to be handed to the senior manager and failure or refusal by the senior manager to sign this document will not affect its validity)

Date of Disciplinary Hearing

.....

Name of Presiding Officer:

.....

Name of Senior Manager:

.....

Name of Representative (where applicable):

.....

Charges:

.....
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.....
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Finding:

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.....
.....
.....
.....

Sanction:

.....
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.....
.....

Presiding Officer _____ Date _____

M.L

GNA

1095

Receipt of the abovementioned charge sheet acknowledged.

Senior Manager _____ Date _____

Witness (if applicable) _____ Date _____

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Kaapstad-tak: Tel: (021) 465-7531

DITSOBOTLA LOCAL MUNICIPALITY

Office of the Acting Municipal Manager

Notice is herewith given of the 3rd /2021 Special Meeting of the

EXECUTIVE COMMITTEE

* * *

of the Local Municipality of Ditsobotla
in Council Chambers
FRIDAY 29TH OF JANUARY 2021 at 09:00

MR. T. SHEMA
ACTING MUNICIPAL MANAGER

HON. M.P. MOREO
MAYOR

****

AGENDA

1. OPENING AND WELCOME
2. APPLICATION FOR LEAVE OF ABSENCE
3. OFFICIAL NOTICES
4. DECLARATION OF INTEREST WITH REGARD TO AGENDA ITEMS BY COUNCILLORS AND OFFICIALS
5. APPROVAL OF PREVIOUS MINUTES

   2ND /2021 Special Executive Committee Meeting held on 19 January 2021.
6. REPORT OF THE ACTING MUNICIPAL MANAGER

   Item 1 – 5
7. CONFIRMATION OF MINUTES OF THE DAY
8. CLOSURE

2021/01/27

LML/lml

ITEM 1097

4) REPORT ON THE MISCONDUCT OF SENIOR MANAGERS

REPORT OF THE ACTING MUNICIPAL MANAGER

1. **PURPOSE**

This report will be submitted during the meeting due to the confidentiality of the matter.

Submitted for consideration

M.L

GM

DITSOBOTLA LOCAL MUNICIPALITY

AGENDA



29 JANUARY 2021

3rd /2021 SPECIAL VIRTUAL COUNCIL MEETING

DITSOBOTLA LOCAL MUNICIPALITY

Office of the Acting Municipal Manager

Notice is herewith given of the 3rd /2021 Special Virtual meeting of the

COUNCIL

Of Ditsobotla via Microsoft Teams Meeting
FRIDAY, the 29TH of JANUARY 2021 at 10:00

.....
MR. T. SHEMA
ACTING MUNICIPAL MANAGER

.....
CLLR. M.E. MMOTA
SPEAKER

AGENDA

1. **OPENING AND WELCOME**

2. **APPLICATION FOR LEAVE OF ABSENCE**

3. **OFFICIAL NOTICES**

4. **DECLARATION OF INTEREST**

5. **REPORT OF THE EXECUTIVE COMMITTEE**

   2ND / 2021 Special Executive Committee Meeting held on the 19th of January 2021

   3RD /2021 Special Executive Committee Meeting held on the 29th of January 2021

6. **REPORT OF THE SPEAKER**

6.1 **Nomination of two (2) Councillors from the DA Party to serve on the Executive Committee**

6.2 **Deployment of Councillors to serve on the Portfolio Committees**

6.3 Replacement of Cllr. Moreo who was seconded to serve at Ngaka Modiri Molema District Muncipality

6. CONFIRMATION OF MINUTES

7. CLOSURE

DIVISION "B"

2nd /2021 Special Executive Committee Meeting held on 19 January 2021

Item B1 and B2 were discussed in committee and will be handed out during the meeting and will be filed under security in the strong room.

REPORT ON THE MISCONDUCT OF SENIOR MANAGERS

REPORT ON THE RECRUITMENT PROCESSES

2021/01/27 **ITEM**

ITEM TO COUNCIL

3. Replacement of Cllr Moreo who was seconded to serve at Ngaka Modiri Molema District Municipality (NMMDM)

PURPOSE

The purpose of the item is for Council to nominate 1 candidate from the ANC Party who will replace Cllr. Moreo to be seconded to Ngaka Modiri Molema District Municipality.

BACKGROUND

Cllr Moreo ceases to be a member seconded to the District by virtue of being elected as the Chairperson of EXCO /Mayor of Ditsobotla Local Municipality

RECOMMENDATION

That Council nominate 1 member from ANC Party to replace Cllr. Moreo and be seconded to Ngaka Modiri Molema District Municipality

2021/01/27

ITEM

ITEM TO COUNCIL

2. Deployment of Councillors to serve on the Portfolio Committees

PURPOSE

The purpose of the Item is for the Speaker to deploy Councillors into Portfolio Committees

BACKGROUND

The Council of 15/01/2021 passed a motion of no confidence on the Entire Executive Committee and as a result the entire EXCO members Ceased to be Chairperson of Portfolio Committee

RECOMMENDATION

Council to adopt the deployment of Councillors to their new Portfolios

(See attached deployment list)

1104

DITSOBOTLA LOCAL MUNICIPALITY

OFFICE OF THE SPEAKER

Item to Council: Deployment of Councillors to Sub-Committees

Honourable Mayor: Chairperson of Executive Committee
Cllr. T. Moreo

Executive Committees and their Portfolios

Cllr. L. Mongale: Finance
Cllr. T. Molawa: Infrastructure
Cllr. P. Matshogo : Community Services & LED
Cllr. T. Sonakile : Planning and Development
Cllr. L.J. Mtlhambe: Corporate Services
Cllr. B. Matlholwa: Member without Portfolio
Cllr.S.E. Moeketsane: Member without Portfolio

2021/01/27

ITEM

ITEM TO COUNCIL

3. Replacement of Cllr Moreo who was seconded to serve at Ngaka Modiri Molema District Municipality (NMMDM)

PURPOSE

The purpose of the item is for Council to nominate 1 candidate from the ANC Party who will replace Cllr. Moreo to be seconded to Ngaka Modiri Molema District Municipality.

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Cllr Moreo ceases to be a member seconded to the District by virtue of being elected as the Chairperson of EXCO /Mayor of Ditsobotla Local Municipality

RECOMMENDATION

That Council nominate 1 member from ANC Party to replace Cllr. Moreo and be seconded to Ngaka Modiri Molema District Municipality

M.L GNA

1106

FINANCE	INFRUSTRUCTURE	COMMUNITY SERVICES	PLANNING AND DEVELOPMENT	CORPORATE SERVICES
Chairperson: Cllr L. Mongale 082 088 1283	**Chairperson: Cllr T. Molawa 063 680 9926**	**Chairperson: Cllr P. Matshogo 072 493 6110**	**Chairperson: Cllr T. Sonakile 082 525 2219**	**Chairperson: Cllr L.J Mthambe 082 599 3002**
1.Cllr. Morutse	Cllr. Setlhare	Cllr. Mokoneng	Cllr.Matshane	Cllr. Gulube
3. Cllr. Thebeyagae	Cllr. English	Cllr.Seribe	Cllr. Tali	Cllr. Mofokeng
3.Cllr. Pretorious	Cllr. Bamphithile	Cllr. Schennepels	Cllr. Moloko	Cllr. Melamu
4.Cllr.Mokhuane	Cllr. Motlhako	Cllr.Mokoso	Cllr. Rajane	Cllr. Engelbrecht
5. Cllr. Daemane				

ANNEXURE MC 21

1107

Ditsobotla

Plaaslike Munisipaliteit
Local Municipality

☎018-633 3800 – 633 3999
Faks/Fax: 018-632 5247

✉7
Burgersentrum/Civic Center
Dr Nelson Mandela Rylaan/Drive
Lichtenburg 2740

ENTRUST AND CONQUER

BY EMAIL

MR LETLHOGONOLO MOKOENA
THE CHIEF FINANCIAL OFFICER
DITSOBOTLA LOCAL MUNICIPALITY

Dear Sir

RE: SUBJECT MATTER: NOTICE OF SUSPENSION OF THE CHIEF FINANCIAL OFFICER OF DITSOBOTLA LOCAL MUNICIPALITY – MR LETLHOGONOLO MOKOENA

1. The above subject matter bears reference.

2. Pursuant to the letter of intention to suspend dated 17th December 2020 and the Municipal Council resolution of today the 29th January 2021, the Municipal Council have taken into consideration the representations you have made in response to the letter of intention to suspend.

3. The Municipal Council has resolved that you be as you are hereby placed on a precautionary suspension with immediate effect and with

full pay, pending the appointment of the investigator, and the investigation and possible disciplinary hearing depending on the outcome of the investigations.

4. The decision to place you on a precautionary suspension with immediate effect is based on the following reasons:-

4.1 Your presence at the workplace may jeopardize the investigations;

4.2 Your presence may be detrimental to the stability in the Municipality;

4.3 There is a likelihood that you may interfere with potential witnesses.

5. The following conditions will also apply during the period of your suspension:-

5.1 You are required to be available either on your mobile phone and/or at your home should I or any other authorised representative need clarity concerning any of the issues relating to this matter or should any information relating to your work from you.

M.L TJ

AM

GNA

5.2 You are not allowed to remove anything from your office or the offices or premises of the Municipality, other than your own personal belongings, should you so wish.

5.3 You are not allowed to enter the premises of the Municipality or your office during the period of the suspension without obtaining authorisation from the Acting Municipal Manager unless you are notified to attend any proceedings in terms of the *Local Government: Disciplinary Regulations for Senior Managers, 2010 and/or Local Government Municipal Finance Management Act, 2003: Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings.*

5.4 Should you seek any information or documentation, whether hard copy or electronic format you may contact the Acting Municipal Manager at 076 230 3980 or shematsietsi@yahoo.combetween 07: 30am and 16:00pm.

5.5 You are instructed to immediately hand over any municipal property that you may have in your possession.

6. You are requested to adhere to these conditions since any breach thereof could constitute misconduct.

M.L TL

GM

Your cooperation in this regard will be highly appreciated.

Yours faithfully

MR TSIETSI SHEMA
ACTING MUNICIPAL MANAGER
DITSOBOTLA LOCAL MUNICIPALITY
Date: 29/01/2021

I, _____, hereby acknowledge receipt of this letter at _____ on this _____ day of JANUARY 2021.

SIGNATURE: _____

DITSOBOTLA LOCAL MUNICIPALITY

INTERNAL MEMORANDUM

TO : **MR. T I SHEMA**
ACTING MUNICIPAL MANAGER

FROM : **MR. L.S. MOKOENA**
CHIEF FINANCIAL OFFICER

DATE : **10 DECEMBER 2020**

REPORT ON HOW TO RESOLVE UNLAWFULLY COMMITTING SUPPLIERS TO PROCURE GOODS AND SERVICES BY EMPLOYEES.

1. PURPOSE

To report to the Accounting Officer on how to resolve unlawfully committing suppliers to procure goods and services by employees.

2. LEGISLATIVE BACKGROUND

Section 32 of the MFMA and Circular 68 defines unauthorized, irregular fruitless and wasteful as:

2.1. Unauthorized expenditure is defined in section 1 of the MFMA as follows:

"unauthorized expenditure", in relation to a municipality, means any expenditure incurred by a municipality otherwise than in accordance with section 15 or 11(3), and includes—
(a) overspending of the total amount appropriated in the municipality's approved budget;
(b) overspending of the total amount appropriated for a vote in the approved budget;
(c) expenditure from a vote unrelated to the department or functional area covered by the vote;
(d) expenditure of money appropriated for a specific purpose, otherwise than for that specific purpose;
(e) spending of an allocation referred to in paragraph (b), (c) or (d) of the definition of "allocation" otherwise than in accordance with any conditions of the allocation; or
(f) a grant by the municipality otherwise than in accordance with this Act.

2.2. Irregular expenditure is defined in section 1 of the MFMA as follows:

"irregular expenditure", in relation to a municipality or municipal entity, means—

(a) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of this Act, and which has not been condoned in terms of section 170;

(b) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a

MFMA Circular No 68

Unauthorized, Irregular, Fruitless and Wasteful Expenditure

June 2019

Page 6 of 17

requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act;

(c) expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Public Office-Bearers Act, 1998 (Act No. 20 of 1998); or

(d) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality's by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law,

but excludes expenditure by a municipality which falls within the definition of "unauthorised expenditure".

this context 'expenditure' refers to any use of municipal funds that is in contravention of the following legislation:

- Municipal Finance Management Act, Act 56 of 2003, and its regulations;
- Municipal Systems Act, Act 32 of 2000, and its regulations;
- Public Office-Bearers Act, Act 20 of 1998, and its regulations; and
- The municipality's supply chain management policy, and any by-laws giving effect to that policy

2.3. Fruitless and wasteful expenditure is defined in section 1 of the MFMA as follows:

"fruitless and wasteful expenditure" means expenditure that was made in vain and would have been avoided had reasonable care been exercised.

The concept of fruitless and wasteful expenditure is founded on public administration and accountability principles, to promote "efficient, economic and effective use of resources and the attainment of value for money". The idea is also founded on the fact that the Coun0cil, the Mayor and the Accounting Officer have a fiduciary responsibility to ensure that municipal resources are used in the best interests of the municipality and the local community.

In this context 'expenditure' refers broadly to processes that must be followed, transactions with service providers or suppliers and the use of other resources belonging to the municipality. The phrase 'made in vain' indicates that the Municipality derived no value for money from the expenditure or the use of other resources. Fruitless and wasteful expenditure must fulfill both the conditions in the definition, namely, that it was made in vain and it would have been avoided had reasonable care been exercised. The treatment of such expenditure is dealt with later in this Circular.

3. DISCUSSION

3.1 The above laws empower the Accounting Officer to do the following when such expenditure is incurred:

3.1.1 Disciplinary and criminal charges for unauthorized, irregular, fruitless and wasteful expenditure If, after having followed a proper investigation, the council concludes that the political office-bearer or official responsible for making, permitting or authorizing unauthorized, irregular, fruitless and wasteful expenditure did not act in good faith or committed an act of financial misconduct, then the Municipality must consider instituting disciplinary action and criminal charges against the liable person/s in terms of chapter 15 of the MFMA read with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings.

3.1.2 If the action of the person(s) liable falls within the ambit of the above description, then the Council, Mayor or Accounting Officer (as may be relevant) must institute disciplinary charges as follows:

(i) Financial misconduct in terms of section 171 of the MFMA read with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings: in the case of an official that deliberately or negligently:

- contravened a provision of the MFMA which resulted in unauthorized, irregular, fruitless and wasteful expenditure; or
- made, permitted or authorized an irregular expenditure (due to noncompliance with any of legislation mentioned in the definition of irregular expenditure);

(ii) Breach of the Code of Conduct for Municipal Staff Members: in the case of an official whose actions in making, permitting or authorizing unauthorized, irregular, fruitless and wasteful expenditure constitute a breach of the Code; and

M.L 6A9

(iii) Breach of the Code of Conduct for Councilors: in the case of a political office-bearer, whose actions in making, permitting or authorizing unauthorized, irregular, fruitless and wasteful expenditure constitute a breach of the Code. This would also include instances where a Councilor knowingly voted in favour or agreed with a resolution before Council that contravened legislation resulting in unauthorized, irregular, fruitless and wasteful expenditure when implemented, or where the political office-bearer improperly interfered in the Management or administration of the Municipality.

3.2 Given the above laws and process, it is my advice that payments should not be made to the service providers that were committed unlawfully by the officials of the municipality, without municipal commitment in a form of an order or letter by the Accounting Officer or delegated official.

3.3 The Accounting Officer may consider disciplinary process of the responsible officials, and institute an investigation.

3.4 In the event that the amount is extremely unjustifiable, then the process of recoverability must ensue.

3.5 It must also be reported that same process of irregularity has not stopped from the technical department as they are not adhering to procurement plans and continue to make all the submission on an emergency basis. In particular, Mr Malesa, Mr Chiwarawara and mechanical workshop.

3.6 The three departments are not using the panel for electricity maintenance and supply and delivery of materials. A panel of service providers for mechanical workshop must also be advertised and appointed to avoid irregularity at the workshop.

3.7 This increases the Municipalities' irregular expenditure and collapse of the system of internal controls.

3.8 Appointment of the Bid – adjudication committee members resulting from the newly appointed Directors on the 1st October 2020, and the period lapse of the Acting Directors on the 31st October 2020.

3.9 Given the number of Senior Managers, the Municipality will not be complying with section 29 of the MFMA regulation, that clearly states that Bid Adjudication Committee must have a minimum of four senior managers.

3.10 Council needs to appoint Acting Senior Managers to ensure functionality of the bid adjudication committee, most importantly to avoid irregular expenditure and put corrective measures in place.

3.11 This will lead to adjudication committee not sitting and delaying SCM process.

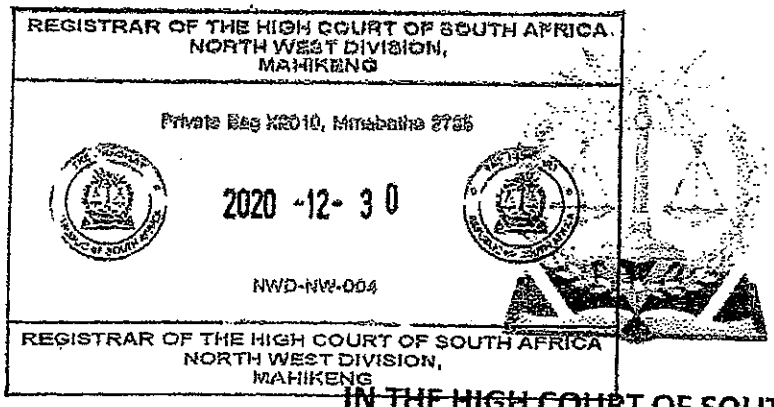
3.12 Importantly, improvements in the above controls will also avoid irregular expenditure and put corrective measures in place.

Kind regards,

MR. L.S. MOKOENA
CHIEF FINANCIAL OFFICER

M.L

MC 23



IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

CASE NO: UM285/2020

Held at MMABATHO on this the **30th day** of **DECEMBER 2020**
BEFORE the Honourable Mr Justice **GURA**

In the matter between:

TEBOGO DANIEL BUTHELEZI	Applicant
and	
DITSOBOTLA LOCAL MUNICIPALITY	1st Respondent
MOSIDI ESTER MMOTA N.O	2nd Respondent
MEMBER OF THE EXECUTIVE COUNCIL OF THE NORTH WEST PROVINCE FOR THE DEPARTMENT OF CO-OPERATIVE GOVERNANCE	3RD Respondent
MOTLHANKA PATRICK MOREO N.O	4th Respondent

HAVING HEARD **MR M. WESSELS** on behalf of the Applicant and **ADVOCATE T. MASIKE** on behalf of the 1st, 2nd and 4th Respondents and having read the Notice of Motion and

M.L

other documents filed of record;

IT IS ORDERED

1. **THAT:** This application be heard as one of urgency and that the non-compliance with the time frames laid down by the Uniform Rules of Court be condoned in terms of the provisions of Uniform Rules 6(12);

REGISTRAR OF HIGH COURT
NORTH WEST HIGH COURT
MAFIKENG

2. **THAT:** Suspending the effect of the following actions taken by the Municipal Council ("the Council") in a special council meeting on 10 December 2020 pending the final determination of review proceedings to set such actions aside;

2.1 The adoption of a notice of motion of no confidence in the Applicant as Mayor of the First Respondent;

2.2 The Council resolution taken in a special Council meeting on 10 December 2020 removing the Applicant from the office as Mayor of the First Respondent;

2.3 The Council Resolution appointing the Fourth Respondent (Motlhanka Patrick Moreo) as the mayor of the First Respondent.

3. **THAT:** The Applicant is re-instated as Mayor of the Municipality with

M.L KH

GAG

immediate effect;

4. **THAT:** The Applicant's review application to be instituted within thirty (30) days from date hereof; and

5. **THAT:** The first Respondent to pay costs.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG

Private Bag X2010, Mmabatho 2735

2020 -12- 30

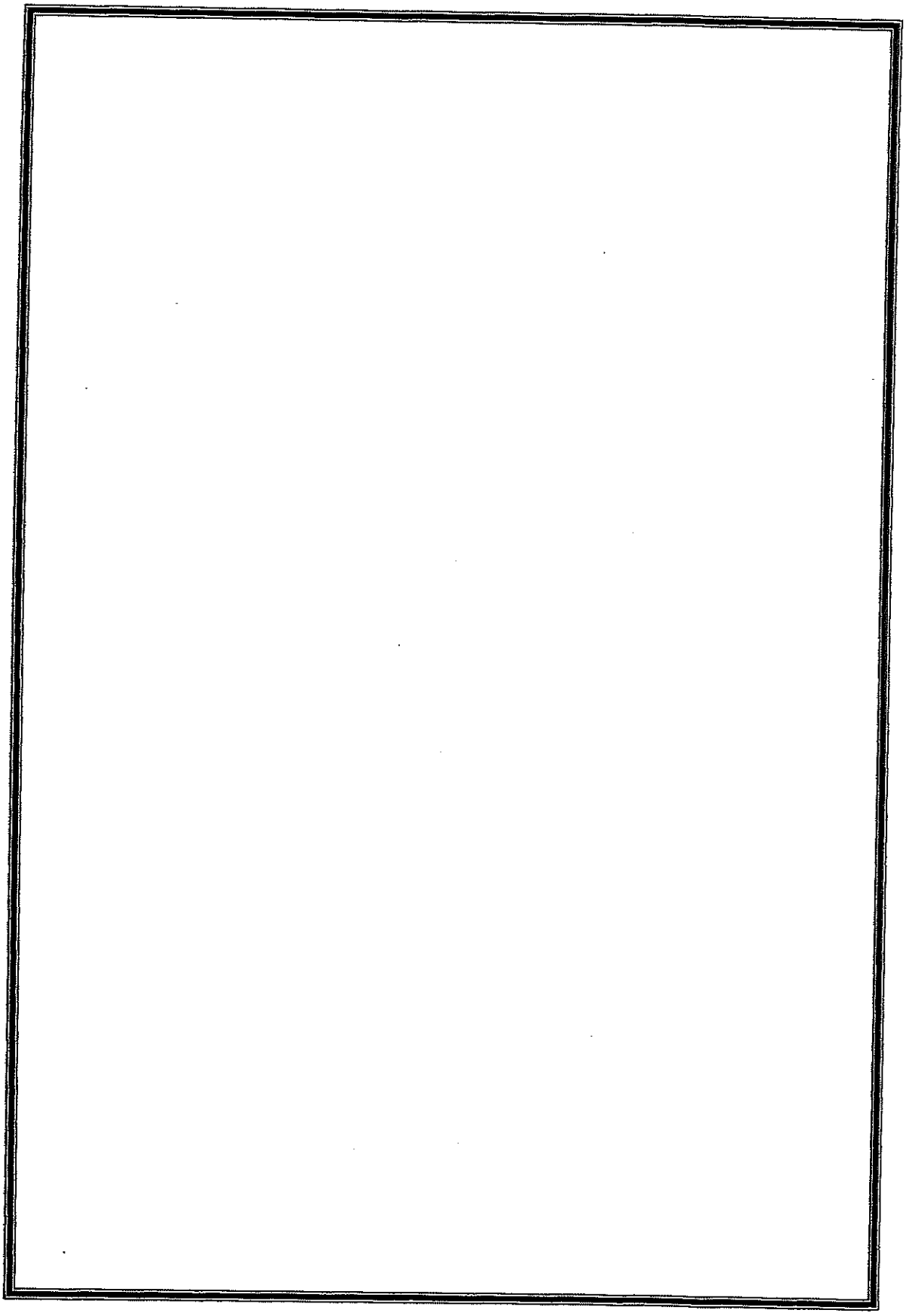
NWD-NW-004

BY THE COURT

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG

REGISTRAR

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M.L

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M.L GM

LOCAL AUTHORITY NOTICE NO. _____

DITSOBOTLA LOCAL MUNICIPALITY

STANDARD STANDING ORDERS BY LAWS

The Ditsobotla Local Municipality, in terms of Section 13(9) of the Local Government: Municipal Systems Act, (2000 Act No. 32 of 2000) as amended, publishes the Standard Standing Orders By-Laws set forth hereinafter, which have been adopted by the Council, on a meeting held on 28 July 2004, in terms of the said Act.

Definitions

1. Unless the context otherwise indicates, words or expressions shall have the meaning assigned as follows:
"Council" means a local government body established in terms of the Municipal Structures Act, 1998;
"days" shall mean working days;
"Executive Committee" means a committee established in terms of Section 43 of the Local Government Municipal Structures Act, 1998;
"meeting" means a meeting of council;
"member" means a member of the council;
"motion" means a motion introduced in writing in terms of section 14;
"proposal" means any proposal with the exception of a motion, moved and seconded during a meeting;
"the report of the Executive Committee" means a report of the executive committee to the council as contemplated in Section 44 (4) of the Local Government Structures Act, 1998;
"Municipal Manager" means municipal manager appointed in terms of Section 82 (a) or 82 (b) of the Local Government Municipal Structures Act, 1998;
"Party" a political party registered in terms of the Electoral Commission Act, 1996;
"Speaker" means the Speaker of the Council elected in terms of Section 36 of the Local Government Municipal Structures Act, 1998, and also means the acting Speaker elected in terms of section 48 of these Standing Orders.
"a point of order" means pointing out any deviation from anything contrary to these by-laws or any law.
"a personal explanation" means an explanation of some material part of a member's former speech which may have been misunderstood;
In this document, unless the context otherwise indicates, words and expressions denoting the singular shall include the plural and vice versa, and the male sex shall include the female sex, and vice versa.

ATTENDANCE REGISTER FOR THE COUNCIL MEETINGS

2.1 A Councillor must attend each meeting of the Municipal Council and of a committee of which the Councillor is a member, except when –

(a) leave of absence is granted in terms of an applicable law or as determined by the rules and orders of the Council; or

(b) that Councillor is required in terms of these rules or the Code of Conduct to withdraw from the meeting;

2.2 Every member attending a meeting shall sign his/her name before the closing of the meeting in the attendance register kept for this purpose and shall remain in attendance until closure of the meeting save with permission of the Speaker.

2.3 A Councillor failing to attend a meeting without leave of absence **being granted** shall be liable to a fine as determined by Council.

2.4 A Councillor who is absent from three or more consecutive meetings of the Municipal Council and/or from three or more consecutive meetings of the committee, which the Councillor is required to attend, must be removed from office as a Councillor with immediate effect.

2.5 Proceedings for the imposition of a fine or the removal of Council must be in accordance with the procedure prescribed in Section 14 of the Code of Conduct for Councillors (Schedule 1) to the Local Government: Municipal Systems Act 32 of 2000.

ADJOURNMENT IN THE EVENT OF NO QUORUM

3.1 The presence of at least fifty percent plus one member, excluding the Speaker, shall be necessary to constitute a meeting of the Council.

3.2 If at the expiry of 15 minutes after the hour at which a meeting is appointed to be held a quorum has not assembled, no meeting shall take place unless it is decided with the consent of the **majority** of the members present to allow further time not exceeding 15 minutes in order to enable a quorum to assemble.

3.3 If no quorum is obtained after expiry time of any of the periods mentioned above, the Municipal Manage

must convene a meeting for a time in consultation with the Speaker, of which notice shall be deemed to be an adjourned meeting for the purposes of section 5.

3.4 The names of the members present at the adjourned inquorate meeting (not constituting a quorum) shall be recorded in the minutes and attendance register.

ADJOURNMENT IN THE EVENT OF NO QUORUM

4.1 If, during any meeting, the attention of the Speaker is drawn to the number of members present, such members shall be counted and if it found that there is no quorum, the Speaker shall cause the call-bell to ring for at least one minute, and if after an interval of five minutes there is still no quorum, the Speaker shall forthwith adjourn the meeting.

4.2 Business not disposed of at a meeting adjourned in terms of subsection (1) shall be dealt with at an adjourned meeting convened by the Municipal Manager for this purpose, provided that such business not dealt with and which originated from a special meeting convened at the request of members in terms of Section 29(1) of the Local Government municipal Structures Act, 1998, may be held over until the next ordinary meeting.

ADJOURNED MEETING

5.1 When a meeting is adjourned, notice of the adjourned meeting shall be served at least forty-eight hours prior to such meeting.

5.2 Subject to the provisions of section 6, no business shall be transacted at an adjourned meeting except such as specified in the notice of the meeting, which is adjourned.

BUSINESS LIMITED BY NOTICE OF MEETING

6.1 Subject to the provisions of subsection (2) and with the exception of an urgent report of the Executive Committee, no business not specified in the notice of the meeting shall be transacted at that meeting.

6.2 A member may during a meeting propose that the provisions of subsection (1) be suspended to enable him/her to make a proposal reduced by him/her in writing and read out.

6.3 The proposal in subsection (2) shall be seconded by a member and shall be dealt with in terms of the provisions of these by-laws.

6.4 The proposer contemplated in subsection (2) shall have that right to reply.

ORDER OF BUSINESS OF ORDINARY MEETING

7.1 The order of business of an ordinary meeting convened in terms of section 29 of the Municipal Structures Act, 1998, shall be as follows:

a. Opening
b. Applications for leave of absence
c. Official notices
d. Proposals of condolence
e. Proposals of congratulations
f. Approval of minutes of the previous meeting
g. Report of the Speaker
h. Interviews with deputations or persons summoned to attend the meeting
i. Questions of which notice has been given
j. Motions/proposals deferred from previous meetings
k. Report of the Executive Committee
l. New motions

7.2 After the matters referred to in paragraphs (a) to (j) have been considered, the Council may at its discretion bring forward any business which is on the agenda.

7.3 If a proposal in terms of subsection 1(d) or (e) is opposed, such proposal shall lapse without further discussion.

MINUTES OF MEETING

8.1 Minutes of the proceedings of every meeting of the Council shall be drawn up and printed or type-written and shall be submitted for confirmation at the next ordinary meeting by the Speaker.

8.2 The minutes shall be taken as read for the purpose of confirmation, if a copy thereof was sent to each

member of the Council at least forty-eight hours previously.

8.3 Except as to accuracy, no motion or discussion shall be allowed on the minutes.

8.4 A motion of course to correct the minutes shall be permissible and if carried, the minutes shall forthwith be corrected accordingly and signed.

8.5 The minutes in relation to any item considered by the Council in committee as contemplated in section 37, shall be kept separately from other minutes of the Council, unless consideration of that item was finalised in open Council and such minutes shall be approved by the Council in committee not later than 60 days from the date of which the meeting in question took place.

QUESTIONS

9.1 A member may at a meeting put a question –

a. on a matter arising out of or connected with any item of the report of the Executive Committee when such item has been called or during discussion thereof;

b. concerning the general work of the Council not arising out of or connected with any item of the report of the Executive Committee, provided that such question shall only be asked if at least five days' notice in writing has first been lodged with the secretary of the council, who shall forthwith furnish a copy thereof to the Speaker, Mayor, Chairman of the Executive Committee and the leaders of the parties in the Council.

9.2 A question on a matter which in the reasonable opinion of the Speaker is of urgent importance, may be put at a meeting after notice thereof in triplicate shall have been lodged in writing with the council secretary at least ten minutes before a question is put and the council secretary shall forthwith furnish a copy thereof to the Speaker and the Chairman of the Executive Committee.

9.3 A member who has put a question in terms of subsection (1)(b) shall, on request, be entitled to be furnished with a written reply within 14 days.

9.4 The Chairman of the Executive Committee shall at the Council meeting to be held within one (1) month reply to questions in terms of subsections (1)(b) and (2), unless the Council is satisfied that an extended period is required.

9.5 Subject to the provisions of subsection (4), any questions put in terms of the section, shall be answered by or on behalf of the Chairman of the Executive Committee during reply.

9.6 If, after his question has been replied to, a member is of the opinion that the reply to his question is not cleared adequately, he may with the consent of the Speaker request elucidation and/or amplification thereof and no additional questions shall be put.

9.7 The Speaker may disallow a question if he is of the opinion that it is out or order or not put clearly.

REPORTS OF THE EXECUTIVE COMMITTEE

10.1 A report submitted by the Executive Committee in terms of section 44(4) of the Local governmen Municipal Structures Act, 1998, shall first contain the matters in respect of which recommendations are made and where no powers have been delegated to the Executive Committee and thereafter the matters which have been delegated to the Executive Committee.

10.2 1Unless an item is submitted to the Council for information only, every item relating to matters in respec of which the Executive Committee has no delegated powers, shall contain a recommendation which may b accepted by the Council.

DELIVERY OF REPORTS OF THE EXECUTIVE COMMITTEE

11 A report of the Executive Committee, with the exception of a report accepted by the Speaker as a matter o urgency, shall for the purpose of a meeting be served at least forty-eight hours prior to such meeting takin place.

MOVING OF REPORT OF THE EXECUTIVE COMMITTEE

12.1 The Chairman of the Executive Committee or a member called upon by the Speaker to do so, shall submit report of the Executive Committee to a meeting by requesting that the report be considered and such reques shall not be discussed.

12.2 When the report of the Executive Committee is being considered, the Speaker shall put th recommendations in that part of the report in respect of which the Executive Committee has no delegate powers seriatim (one after another), unless for a good cause he/she sees fit to vary their order.

12.3 The recommendations in the report of the Executive Committee as mentioned in subsection (2) shall b deemed to have been proposed and seconded.

12.4 When a recommendation contemplated in subsection (2) has been adopted, such recommendation become a resolution of the Council.

12.5 After the matters in respect of which the Executive Committee has no delegated powers have been c with, the Speaker shall permit debate of the matters delegated to the Executive Committee, provided that

a. such debate shall be limited to a period not exceeding one hour or such extended period as t Council may determine;

b. a member, excepting the Chairman of the Executive Committee, shall not speak on such matters fo longer than ten minutes;

c. other proposals shall be submitted during such debate, except a proposal that the Executive Committee be requested to reconsider his resolution;

d. during such debate a member may request that his/her opposition to a resolution in respect of the Executive Committee has delegated powers, and his/her reasons therefore, be minuted after which the council secretary shall minute or cause to be minuted such opposition and reason.

12.6 The Chairman of the Executive Committee or a member as contemplated in subsection (1) may –

a. with the consent of the majority of the members of Executive Committee, which shall be granted or disallowed without debate, withdraw any item;

b. subject to the provisions of section 17, amend any item with the consent of the Executive Committee, which shall be granted or disallowed without debate, provided that this item is within the Executive Committee's delegated powers.

12.7 If the Chairman of the Executive Committee or a member contemplated in subsection (1) takes part in the debate concerning any item in the report, he shall close the debate on such item, provided that the Chairman of the Executive Committee or member concerned may nominate another member who is more conversant with the item which is being debated, to close the debate on his behalf, irrespective of whether such member had previously taken part in the debate on that item, in which case the provisions of section 28(2) pertaining to the Chairman of the Executive Committee, shall also apply to such member.

DEPUTATIONS

13.1 Any deputation desiring an interview with the Council shall submit a memorandum to the Municipal Manager in which are set out the representations it wishes to make.

13.2 The Municipal Manager shall submit the memorandum contemplated in subsection (1) to the Executive Committee who may receive the deputation and deal with the matter raised in the memorandum if the necessary power has been delegated to him/her or the Executive Committee.

13.3 If the Chairman of the Executive Committee / the Executive Committee has not been thus empowered, or i the Chairman of the Executive Committee / the Executive Committee is of the opinion that the matter raisec in the memorandum is one which should be placed before the Council, it shall so report to the Council and if the Council so orders, an interview shall be granted to the deputation.

13.4 The matter shall not be further considered until the deputation has withdrawn.

13.5 The Speaker may allow any deputation to address the Council without written notice having been given, i the Speaker is of opinion that the matter to be presented is of an urgent nature.

MOTIONS

14.1 Subject to the provisions of any other law –

a. every notice of motion shall be in writing and such notice shall be signed by the member submitting it;

b. motion shall be given to the Council Secretary who shall enter it in a book kept for that purpos which shall be open to inspection by any member;

c. notice of motion shall not be specified in the summons for a meeting unless it is received at leas five days prior to such a meeting unless leave from the Speaker is sought to submit same in a shorte period.

d. In the event of the absence of a mover as envisaged in (a) above from the relevant Council meetin when called upon by the Speaker to move a motion standing in his/her name on the agenda, an other Councillor of his/her party may move such motion in his/her name, unless the original move has notified the Municipal Manager in writing of a substitute to move the motion.

14.2 At the request of a member who gave notice of a motion, the Council Secretary shall acknowledge receip thereof in writing;

14.3 Every motion shall be relevant to the administration of/or condition in the Municipality or shall deal with matter in respect of which the Council has jurisdiction.

14.4 A motion shall only be regarded as having been submitted to the council for decision if the proposa introducing that motion was duly seconded.

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