IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

Case no: UM192/22

In the matter between:

SAKELIGA NPC **First applicant**

CENTRE FOR GOOD GOVERNANCE
AND SOCIAL JUSTICE NPC **Second applicant**

BAREND LOURENS SNYMAN **Third applicant**

and

DITSOBOTLA LOCAL MUNICIPALITY **First respondent**

THE MUNICIPAL MANAGER / ACTING MUNICIPAL MANAGER
OF THE DITSOBOTLA LOCAL MUNICIPALITY **Second respondent**

PREMIER OF THE NORTH WEST PROVINCE **Third respondent**

AND ELEVEN OTHER RESPONDENTS

(AS PER NOTICE OF MOTION) **Fourth – Fourteenth respondents**

FILING NOTICE

DOCUMENT TO BE FILED:

- **APPLICANTS' REPLYING AFFIDAVIT: TO THE THIRD – EIGHTH RESPONDENTS' ANSWERING AFFIDAVIT TO PART B OF THE APPLICATION**

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IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

Case no: UM192/22

In the matter between:

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

and

DITSOBOTLA LOCAL MUNICIPALITY	**First respondent**
THE MUNICIPAL MANAGER / ACTING MUNICIPAL MANAGER OF THE DITSOBOTLA LOCAL MUNICIPALITY	**Second respondent**
PREMIER OF THE NORTH WEST PROVINCE	**Third respondent**
PROVINCIAL EXECUTIVE OF THE NORTH WEST PROVINCE	**Fourth respondent**
MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: COOPERATIVE GOVERNANCE, HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS	**Fifth respondent**
MEMBER OF THE EXECUTIVE COUNCIL: NORTH WEST PROVINCE: FINANCE	**Sixth respondent**

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Seventh respondent
MINISTER: NATIONAL DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Eighth respondent
MINISTER: NATIONAL DEPARTMENT OF FINANCE	Ninth respondent
MINISTER: WATER AND SANITATION	Tenth respondent
NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY	Eleventh respondent
ESKOM SOC LTD	Twelfth respondent
MAGALIES WATER BOARD	Thirteenth respondent
THE ADMINISTRATOR: DITSOBOTLA LOCAL MUNICIPALITY	Fourteenth respondent

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APPLICANTS' REPLYING AFFIDAVIT:

TO THE THIRD, FOURTH, FIFTH, SIXTH, SEVENTH AND EIGHTH RESPONDENTS' ANSWERING AFFIDAVIT TO PART B OF THE APPLICATION

I, the undersigned,

CHRISTO BESTER

hereby state under oath as follows:

1 I am an adult male non-practising attorney with further particulars as set out in the founding affidavit in this application. I am the deponent to the founding affidavit.

2 The facts set out herein are true and correct, and such facts fall within my personal knowledge unless the contrary is indicated by the context.

3 During the afternoon of Wednesday, 9 November 2022, the third to the eighth respondents (the "**opposing respondents**") served their answering affidavit in answer to Part B of the application (the "**answering affidavit**").

4 The opposing respondents are comprised of both the Provincial executive and the National executive - the third respondent is the Premier, the fourth respondent is the "Provincial Executive", the fifth respondent is the COGTA MEC, the sixth respondent is the Finance MEC, the seventh respondent is the President, and the eighth respondent is the COGTA Minister.

5 The filing of the answering affidavit at the eleventh hour, out of time, and without a request for condonation is an abuse and was a clear attempt to delay and derail the hearing of Part B of the application. I say so for the following reasons *inter alia*:

5.1 The matter is urgent. It was served on or about 6 October 2022 or shortly thereafter. The respondents were afforded a substantial period of time until Monday, 31 October 2022, to file answering affidavits to Part B. (See notice of motion, page 14) Despite affording the respondents ample time within which to answer, they failed to do so timeously. The answering affidavit of the opposing respondents is late and out of time.

5.2 The answering affidavit was commissioned on 8 November 2022. (See page 895) Yet, the opposing respondents elected to hold the answering affidavit back and only to serve it on the afternoon of 9 November 2022. There is no explanation for such conduct, and the only possible reason for serving the answering affidavit on the eve of the application was to derail the hearing of Part B of the application.

5.3 The opposing respondents have deliberately bulked up the answering affidavit in order to serve a 300 page document. For example, and without being exhaustive, '**Annexure 5**' to the answering affidavit is of no conceivable relevance and has been attached for one purpose, and one purpose only, namely to bulk up the papers. '**Annexure 5**' is approximately 150 pages in extent. This is an abuse.

6 On a perusal of the answering affidavit of the opposing respondents, read together with the founding affidavit, I respectfully state that on the facts that are either common cause or that cannot and have not been denied the applicants are entitled to the relief that they seek. Further argument shall be advanced at the hearing of the application with reference to the established facts in the application. I respectfully state that the applicants have made out a case for the relief sought in Part B of the notice of motion.

7 I turn now to reply to the allegations contained in the answering affidavit of the opposing respondents. The answering affidavit contains substantial portions that amount to allegations about the law and legislation. I do not intend responding to these allegations regarding the law and I am advised that argument shall be advanced at the hearing in respect of such legal contentions.

I deny that the legal contentions relied on by the opposing respondents are correct. I further do not intend replying to each and every allegation made by the opposing respondents in the answering affidavit, and I request the court to read any allegation in the answering affidavit that does not specifically accord with the facts set out in the founding affidavit as denied and in the context of the facts set out in the affidavits filed on behalf of the applicants.

8 Before turning to rely to the allegations in the answering affidavit, I point out that the third to the sixth respondents filed an answering affidavit to Part A of the application (at page 617 – 648 of the record). Much of the content of that answering affidavit is repeated in the present answering affidavit and I request the court to read any allegations in the initial answering affidavit (at page 617 – 648) as denied insofar as such allegations do not accord with the facts set out in the affidavits filed on behalf of the applicants.

9 I shall employ the same terms that I employed in the founding affidavit herein.

AD PARAGRAPH 1 AND 2 THEREOF:

10 I admit the content hereof.

AD PARAGRAPH 3 THEREOF:

11 I deny that the allegations in the answering affidavit are all true and correct. I deny that all such allegations fall within the personal knowledge of the deponent.

AD PARAGRAPH 5 THEREOF:

12 I deny that the opposing respondents have provided oversight in respect of the activities of Ditsobotla. The ongoing crisis in Ditsobotla caused by a crisis in the financial affairs of Ditsobotla, and the resultant collapse of service delivery and the provision of basic municipal services, demonstrate a complete failure of oversight.

AD PARAGRAPH 7 - 13 THEREOF:

13 The bare and unsupported allegation on the part of the opposing respondents that "*... the matter is not urgent ...*" does not bear scrutiny, is false and is incorrect on the version of the opposing respondents themselves. The allegation is quite clearly wrong and is denied.

14 I respectfully state that such allegation is further revealing in respect of the approach of the opposing respondents to fundamental breaches of the rights of the applicants, their members and the community of the municipality, as well as Constitutional obligations. I deny that the urgency of the present application is "*due to the tardiness of the applicants.*"

15 Her Ladyship Acting Justice Mahlangu ("**Mahlangu J**"), despite the protestations of the respondents denying urgency, has already found that the application is urgent. The current situation in Ditsobotla is much the same as it was when Mahlangu J granted her order on 13 October 2022. The matter remains urgent.

16 It is further relevant that the order of Mahlangu J has been breached and I respectfully state that it is urgently necessary to adjudicate the present application.

17 On the undisputed facts in this matter, the present application is urgent. Further argument shall be advanced in this regard.

18 The version of the opposing respondents in respect of urgency is belied by their own statements. In this regard, I refer the court to the version of the respondents which includes the following *inter alia*:

18.1 In August 2022 "*violence broke out*" in the Ditsobotla municipal building which included "*gunfire and assaults with pangas*". (Page 851 – 852, paragraph 26.2)

18.2 In September 2022, the mayor, speaker and municipal councillors were taken hostage. "*There was serious anarchy and vagary in Ditsobotla …*". "*Basic service delivery was severely affected …*". The workers of Ditsobotla "*… stopped working at the water treatment plant and shut it down …*". (Page 853– 854, paragraph 27.4 – 27.7)

18.3 The opposing respondents admit that the "*… running of raw sewer (sic) on the streets of Lichtenburg and other townships fallen (sic) within the Ditsobotla Local Municipality affects the health of the residents …*" (Page 858, paragraph 39)

18.4 The opposing respondents referred to the statement by the Finance Minister of and concerning *inter alia* Ditsobotla that it is "*… in a financial and service delivery crisis …*" and that it requires "*... urgent intervention*

in terms of S139 of the Constitution ...". The Finance Minister is aware of "*... the urgency of the situation ...*" (Page 867) The opposing respondents are also aware of the urgency of the situation and their protestations to the contrary ring hollow.

19 The current version of the opposing respondents that the matter is not urgent is in conflict with the version of the Finance Minister, but also in conflict with their own version. Further argument shall be advanced with reference to the facts of the matter.

20 I deny that the second and third applicants are represented by Sakeliga in this application or in any other litigation. The second applicant, the Centre for Good Governance and Social Justice NPC, is an independent non-profit company. The further particulars of CGGSJ are contained in paragraph 9 to 13 of the founding affidavit. The third applicant, Snyman, is a person who lives with his family in Lichtenburg and conducts business there. The further particulars of Snyman are contained in paragraph 14 to 16 of the founding affidavit.

21 I do not dispute that there have been failures on the part of Ditsobotla to provide basic municipal services, and that there has been a crisis in its financial affairs resulting in serious and persistent material breach of its obligations to provide basic services and to meet its financial commitments for years. However, the urgency that triggered the present application is based *inter alia* on the complete collapse of the municipality, and the financial and Constitutional crisis that arose very shortly prior to the launch of the present application, as is more fully set out the founding affidavit. The complete collapse of the municipality and the complete failure to provide any basic municipal services endangers

public health, safety, and the environment. The complete collapse has led to lawlessness, to vigilante gangs exploiting the collapse, and to the breakdown of law and order. As the respondents have admitted, "*gangsterism*" now reigns in Ditsobotla. It is this total collapse that renders the matter urgent.

22 Insofar as the opposing respondents imply that the appointment of the administrator has lessened the urgency of the situation, I deny that this is correct. I refer to and incorporate herein the applicants' affidavit in response to the administrator's explanatory affidavit (at page 771 to 826 of the record) (the "**applicants' responding affidavit to the administrator's explanatory**"). The administrator himself confirmed that on 11 October 2022 he was prevented from accessing the municipality's premises "*by bouncers employed by the company that is rendering security services to the municipality...*". After the hearing of Part A of the application, the administrator was not only prevented from accessing the municipal offices, but was physically assaulted together with his bodyguard who was stabbed in his head, and the office of the administrator was destroyed in violence. The opposing respondents' suggestion that the administrator is a solution to the crisis is factually incorrect. The appointment of an administrator further does not excuse the respondents from complying with their Constitutional duties and obligations.

23 The very first time that the applicants were informed that Ditsobotla was under mandatory intervention in terms of section 139(5) of the Constitution was on 30 September 2022 (being the date of the virtual meeting). The applicants launched the present application four court days later. Any allegation that the

applicants were 'tardy' is wrong. The applicants brought this application as expeditiously as possible.

24 The majority of this paragraph constitutes legal submissions. These shall be dealt with in argument.

25 I deny each and every allegation herein that does not expressly accord with the facts set out in the founding affidavit. The application is urgent and remains urgent and I persist with the facts set out in the founding affidavit.

AD PARAGRAPH 14 THEREOF:

26 I deny that the applicants are abusing the court process. The relief sought under case number M311/2021 is not the same as the relief sought in the present application. The applicants are entitled to seek the urgent remedy that they do in the present urgent application. I deny that the issues that are raised under Part B of the urgent application are the same issues raised under case number M311/2021. In the present urgent application, the applicants seek an order *inter alia* directing the national executive to intervene in terms of section 139 (7) of the Constitution on an urgent basis. In circumstances where the common cause facts demonstrate incontrovertibly that the applicants are entitled to the relief sought and the Constitution compels the relief sought, the opposing respondents cannot contend that the application is an abuse.

27 The application seeks to uphold the Constitution, to protect the rights of the applicants, their members and the community of the municipality, and to resolve a financial and Constitutional crisis.

28 The present application is not an abuse.

29 On the other hand, the technical opposition raised by the opposing respondents is most certainly an abuse of process and of power.

30 I deny that the urgent matter of the provision of water has been disposed of. I refer to and incorporate herein the applicants' responding affidavit to the administrator's explanatory.

31 I deny the remainder of the content hereof.

AD PARAGRAPH 15 THEREOF:

32 I admit that there are systemic failures in Ditsobotla. I admit that Ditsobotla has persistently failed to carry out and has acted in breach of *inter alia* sections 152 and 153 of the Constitution. Further breaches are set out in the founding affidavit.

33 I do not bear personal knowledge of when, if and how the PEC resolved to dissolve the Ditsobotla municipal council. The opposing respondents are put to the proof thereof. The opposing respondents have failed to attach any such resolution.

34 I deny that voluntary intervention in terms of section 139 (1) of the Constitution is appropriate. Factually, it is clear that the repeated past voluntary interventions in terms of section 139 (1) of the Constitution have failed in respect of Ditsobotla. Worse still, such voluntary or discretionary interventions have historically worsened the situation. Where there is a financial crisis in the municipality, the Constitution compels recourse in terms of section 139 (5) of the Constitution. The opposing respondents know this (see *inter alia*: pages 866 and 954).

AD PARAGRAPH 16 THEREOF:

35 I note that the provincial executive has failed in its mandatory intervention in terms of section 139 (5) of the Constitution. According to the opposing respondents, the aforesaid mandatory intervention on the part of the provincial executive started in November 2021. As at that time, and thereafter, the opposing respondents were quite clearly of the view that there was a crisis in the financial affairs of Ditsobotla as a result of which Ditsobotla was in serious and persistent material breach of its obligations to provide basic services and to meet its financial commitments. The uncontested facts quite clearly show that such views are factually justified.

36 The first time that the applicants were informed of the mandatory intervention on the part of the provincial executive in Ditsobotla in terms of section 139 (5) was on 30 September 2022. It is common cause that the aforesaid mandatory intervention is a complete and utter failure. The uncontested facts show further that the provincial executive cannot, has not and does not exercise the powers and perform the functions referred to in section 139 (5) of the Constitution. The intervention of the national executive is mandatory, and such mandatory national executive intervention is urgently necessary.

37 I deny that another (futile) voluntary intervention is either appropriate or lawful.

AD PARAGRAPH 17 – 18 THEREOF:

38 There was a mandatory intervention in respect of Ditsobotla in terms of section 139 (5) of the Constitution in November 2021 already. The provincial executive

failed to exercise its powers and to perform its functions in terms of the aforesaid section of the Constitution.

39 The opposing respondents have failed to attach the alleged 'directive' referred to paragraph 17 and the alleged 'written notice of dissolution' referred to in paragraph 18, and it is accordingly not possible to reply issuably thereto.

40 I admit that there was infighting and governance paralysis.

41 I do not bear personal knowledge of the remainder of the content hereof and I accordingly put the opposing respondents to the proof thereof.

AD PARAGRAPH 19 THEREOF:

42 The community does not simply seek stability but also, and more importantly, the provision of basic municipal services, and that the Constitution be upheld in order to ensure that the most basic needs of the community are met. Neither has happened.

AD PARAGRAPH 20 - 22 THEREOF:

43 I note the content hereof. The provincial executive has done nothing to rectify the problems that are referred to herein from November 2021 to date hereof. The provincial executive has failed entirely to exercise the powers and perform the functions referred to in section 139 (5) of the Constitution.

AD PARAGRAPH 23 THEREOF:

44 The heading of this paragraph, namely "3 February **2022**" (my emphasis) appears to be entirely incorrect. The court order attached to the answering

affidavit marked "**Annexure 4**", (which I note), is dated 19 February **2021**. The version of the opposing respondents appears entirely incorrect.

45 The founding affidavit with attachments thereto which is attached to the answering affidavit and marked "**Annexure 5**" (page 973 – 1127) is entirely irrelevant to the proceedings before this court except for the fact that it demonstrates that the provincial executive was fully aware of the crisis in the financial affairs of Ditsobotla in February 2021 already, and provincial government had instituted urgent application proceedings citing Ditsobotla, the "*purportedly elected*" Mayor of Ditsobotla, the speaker of the municipal Council of Ditsobotla, and the "*purportedly elected*" municipal manager of Ditsobotla in February 2021 already.

46 Much of the remainder of the content hereof is nonsensical.

47 I deny the allegations herein insofar as I do not expressly accord with the facts set out in the founding affidavit.

AD PARAGRAPH 24 THEREOF:

48 I note that there was a "*downwards spiral of regression and collapse of governance and administration*" within Ditsobotla. I do not bear personal knowledge of the remainder of the content hereof.

AD PARAGRAPH 25.1 – 25.4 THEREOF:

49 I do not bear personal knowledge of the content hereof and I can accordingly neither admit or deny the allegations herein.

AD PARAGRAPH 25.5 THEREOF:

50 "**Annexure 6**" is not attached to the answering affidavit, and I am accordingly unable to comment on the alleged conditions set by National Treasury. The absence of the documents and information referred to herein demonstrates that the provincial executive cannot and has not exercised the powers and performed the functions referred to in section 139 (5) of the Constitution, read together with relevant legislation.

AD PARAGRAPH 26 THEREOF:

51 I do not bear personal knowledge of the content hereof and can accordingly neither admit nor deny the content hereof. The opposing respondents failed to provide any particularity in respect of the alleged "engagements" between the COGSTA MEC and Ditsobotla. I put the opposing respondents to the proof thereof.

AD PARAGRAPH 27.1 – 27.2 THEREOF:

52 I do not bear personal knowledge of the content hereof and can accordingly neither admit nor deny the content hereof. The alleged correspondence referred to herein is not attached to the answering affidavit. It is accordingly not possible to deal with these allegations meaningfully.

53 I note that there appears not to have been a municipal manager for Ditsobotla.

AD PARAGRAPH 27.3 – 27.7 THEREOF:

54 I admit that the salaries of municipal employees were not paid. The financial crisis persists. As a result, basic municipal services are not rendered in breach

of the Constitution and relevant legislation. As explained in the founding affidavit, as a result of this financial crisis municipal employees were unpaid and extorting money from the community of the municipality in exchange for (*inter alia*) reconnecting electricity.

55 I admit that there was serious anarchy in Ditsobotla. The extent of this is further demonstrated by the hostage-taking incident referred to. The opposing respondents have referred to this as a state of 'gangsterism' in Ditsobotla. The opposing respondents cannot honestly contend that this application is not urgent.

56 The administrator himself has been subject to this ongoing violence which persists to date. I refer to the applicants' responding affidavit to the administrator's explanatory.

57 I admit that basic service delivery has been severely affected. A water crisis prevails in Ditsobotla.

58 There is a collapse of governance in Ditsobotla. Gangsterism prevails. This is a case of state failure which calls for an urgent remedy.

AD PARAGRAPH 28 – 30 THEREOF:

59 The appropriate Constitutionally mandated recourse is in terms of section 139 (7) of the Constitution. This is mandatory. On the version of the opposing respondents, the section 139 (5) provincial executive mandatory intervention has failed. On the common cause facts, the applicants are entitled to the relief that they seek.

60 The administrator has not resolved the crisis in Ditsobotla. I refer to what I have stated above in this regard already.

AD PARAGRAPH 31 THEREOF:

61 I deny the content hereof.

62 The contrived version of the respondents is exposed by the fact that the third to the sixth respondents denied that Part A of the application was urgent. Despite such denial, this court has found that it was urgent. The respondents have now changed their stance and appear to admit the water crisis in Ditsobotla is urgent. The explanatory affidavit of the administrator demonstrates incontrovertibly that the crisis in Ditsobotla calls for urgent intervention. The matter is urgent and the applicants shall not obtain substantial recourse at a hearing in due course.

63 I refer to incorporate herein the facts set out under the heading "AD PARAGRAPH 7 - 13 THEREOF" above.

AD PARAGRAPH 32 THEREOF:

64 The bare denial herein conflicts with the common cause facts in this matter and further with the opposing respondents' own version stated both under oath and in the attachments to the answering affidavit.

65 The denial herein demonstrates a complete lack of *bona fides*. The opposing respondents' version is that Ditsobotla was placed under mandatory intervention in terms of section 139 (5) of the Constitution in November 2021. The documents attached to the answering affidavit confirm the aforesaid factual

position. In order for the aforesaid to have been done, the opposing respondents had to have been of the view that the trigger requirements contained in section 139 (5) of the Constitution had been met. Yet, the opposing respondents deny that the applicants are entitled to the declaratory relief sought in prayer 2 of Part B of the notice of motion. Such denial is vexatious and dishonest.

66 Further argument shall be advanced with reference to the provisions of section 139 (5) of the Constitution, read together with the common cause facts in this application and the documentation which the opposing respondents themselves have attached the answering affidavit.

67 I deny the content hereof.

AD PARAGRAPH 33 – 35 THEREOF:

68 I note the opposing respondents' version that there have been "*numerous [mandatory] interventions*" in terms of section 139 (5) of the Constitution. The only such mandatory intervention that I am aware of is the mandatory intervention of the provincial executive in terms of section 139 (5) of the Constitution in November 2021.

69 The opposing respondents very own 'Progress report' (attached to the answering affidavit as "**Annexure 3**") demonstrates incontrovertibly that the provincial executive has dismally failed to and cannot exercise the powers and perform the functions referred to in section 139 (5) of the Constitution. Further argument shall be advanced with reference to the so-called 'Progress report' which demonstrates the dismal failure of the provincial executive to perform

such functions and exercise such powers as are mandatory in terms of the Constitution read together with relevant legislation.

70 I deny the remainder of the content hereof.

AD PARAGRAPH 36 THEREOF:

71 I admit that they are "exceptional circumstances" in this matter. The exceptional circumstances have been addressed in the founding affidavit, including the crises in the financial affairs of Ditsobotla. As a result of the aforesaid crises there are serious and persistent material breaches of the obligations of Ditsobotla to provide basic services to the community of the municipality and to meet its financial commitments. The opposing respondents themselves concede such "inability to provide basic services", and I admit that this is so.

72 Mandatory intervention in terms of section 139 (7) of the Constitution is peremptory. The refusal of the national executive to comply with the Constitution and the mandatory and peremptory duty clearly set out in the Constitution requires the urgent intervention of the court.

73 I deny the remainder of the content hereof.

AD PARAGRAPH 37 THEREOF:

74 Intervention in terms of section 139 (7) of the Constitution is not simply Constitutionally mandated but in fact peremptory in terms of the Constitution

itself. Insofar as the argument herein seeks to imply that the national executive is excused from complying with this Constitutional duty, I respectfully state that such argument is fatally flawed.

75 I deny the remainder of the factual allegations contained herein. I am advised that the legal argument herein is incorrect and wrong. The duties of the provincial executive and the national executive are peremptory in terms of the Constitution.

AD PARAGRAPH 38 - 39 THEREOF:

76 I admit that there is an economic and financial crisis in the affairs of Ditsobotla. I admit that, as a result of such financial and economic crisis, Ditsobotla is and has been in serious and persistent material breach of its obligations to provide basic services. On the opposing respondents' own version this is the case - the opposing respondents themselves referring to the "*running of raw [sewage] on the streets of Lichtenburg and other townships ... within the Ditsobotla Local Municipality [which] affects the health of the residents...*".

77 I admit that the closure of large corporations (but also smaller businesses) creates a further economic and financial crisis.

78 This vicious circle can be stemmed only when the respondents comply with their Constitutional duties. They have failed and refused to do so, and they persist with their refusal in these papers. I respectfully state that the court must intervene to compel compliance with the Constitution.

79 The various 'challenges' within Ditsobotla have been described in the founding affidavit. I persist with such facts.

80 I deny the remainder of the content hereof.

AD PARAGRAPH 40 - 43 THEREOF:

81 The provincial executive has quite clearly failed to exercise the powers and perform the functions set out in section 139 (5) of the Constitution, read together with relevant legislation in relation thereto. I admit that the intervention of the provincial executive from November 2021 to date has been a complete and utter failure. The provincial executive has acted in breach of its Constitutional duties.

82 I deny the remainder of the content hereof. I persist with the facts set out in the founding affidavit.

AD PARAGRAPH 44 THEREOF:

83 I deny that it "*would be premature for the national executive to intervene in [terms] of section 139 (7) of the Constitution.*" The provincial executive, on its own version, has had a year to exercise the powers and perform the functions required by section 139 (5) of the Constitution, and has acted in total breach thereof.

84 The Constitution compels a mandatory intervention in terms of section 139 (7) of the Constitution. The failure and refusal to comply with the mandatory provisions of the Constitution requires the court to intervene and compel compliance.

85 I deny the remainder of the content hereof.

AD PARAGRAPH 45 - 48 THEREOF:

86 The technical and legal argument contained herein shall be addressed in argument at the hearing of the matter. The applicants persist with the facts set out in the founding affidavit.

AD PARAGRAPH 49 - 50 THEREOF:

87 I deny that the provision of basic services, including water, has been resolved as alleged or at all. This allegation on the part of the opposing respondents reveals the fact that it is essential for the court to oversee the restoration of basic municipal services to the community of Ditsobotla. I refer to and incorporate herein the applicants' responding affidavit to the administrator's explanatory.

88 The breaches on the part of the respondents have a systemic impact on the rights of thousands of people who comprise the community of the municipality, particularly the vulnerable and disadvantaged. The repeated breaches and non-compliance with the Constitution, and in failing to respect and protect the rights of the community of the municipality, calls for a remedy that is effective and that enhances accountability. The remedy sought is to address the Constitutional and financial crisis in Ditsobotla. The remedy sought herein seeks to rectify the breach of the state's positive Constitutional duties which requires the implementation of systemic relief. In order to give practical and tangible effect to the rights of the applicants, their members and the community of the municipality, the retention of supervisory jurisdiction is necessary in this matter. This court ought to supervise compliance with the orders granted by this court to ensure compliance with Constitutional obligations. The relief sought is called for: the Constitutional and financial crisis calls for a prolonged and

resource intensive administration of systemic relief; implementation of the remedy needs to be subject to monitoring so that progress can be assessed and the remedy that the court affords can be adjusted if needs be; reporting requirements will enhance transparency and accountability. There is a need for robust supervision over deadlines for implementing systemic relief. The need for disciplined accountability justifies the imposition of a structural remedy requiring the respondents to report back to the court. On the basis of regular reports, the court will be in a position to evaluate the respondents' compliance with the Constitution and the process of restoring the rights to basic municipal services of the community.

89 Neither the applicants nor their members have been engaged by any of the respondents on the progress regarding the provision and restoration of basic services. The respondents are in breach of their obligation in this regard. I refer to and incorporate herein the applicants' responding affidavit to the administrator's explanatory.

90 I note the euphemistic use of the word 'challenges' in the financial affairs of Ditsobotla. They are not merely challenges, but a crisis. I note the concession on the part of the opposing respondents regarding the financial affairs of Ditsobotla.

91 I deny that the applicants are fixated on the crisis in the financial affairs. The opposing respondents themselves have concluded that there is a crisis in the financial affairs of Ditsobotla, which resulted in the serious and persistent material breach of the obligations of Ditsobotla to provide basic services and to meet its financial commitments.

92 I deny the remainder the content hereof and further argument shall be advanced with reference the relevant facts in this matter.

AD PARAGRAPH 51 THEREOF:

93 The opposing respondents concede that there is a problem in respect of basic municipal services in Ditsobotla. I admit the concession. I deny that such problems are being attended to. I have dealt with this already and I refer the court to the facts set out in the founding affidavit read together with this affidavit.

AD PARAGRAPH 52 THEREOF:

94 The allegation that there has been "*constant communication with the applicants in relation to the provision of basic services in Ditsobotla*" is entirely false, to the knowledge of the opposing respondents. The opposing respondents seek to mislead the court in this regard.

95 Apart from the meeting on 30 September 2022, as described in the founding affidavit, there has been no engagement whatsoever. In aggravation, despite the court order of Mahlangu J, the respondents have acted in breach thereof and have failed to allow the applicants to observe the restoration of the water supply in Ditsobotla. The opposing respondents are challenged to point out a single instance of meaningful engagement. The allegation is false to the knowledge of the opposing respondents. Further argument shall be advanced with reference to the facts of the matter.

96 I refer to and incorporate herein the applicants' responding affidavit to the administrator's explanatory.

AD PARAGRAPH 53 THEREOF:

97 I have no personal knowledge of the allegation herein that "*... in April 2021 the national government was ordered to intervene in the affairs of Ditsobotla ...*". The opposing respondents are quite clearly aware of the fact that the national executive has a Constitutional obligation of mandatory intervention in terms of section 139 (7) of the Constitution. This is evident from the letter of the Finance Minister which the opposing respondents quote herein.

98 The applicants were not aware of the letter from the Finance Minister, a copy of which is attached the founding affidavit marked "**CC34**". As is evident from paragraph 122 of the founding affidavit, the first time that the applicants became aware of this letter was on 29 September 2022.

99 Be the aforesaid as it may, it is quite clear and evident from the letter from the Finance Minister that the Finance Minister and the opposing respondents are well aware of the following facts *inter alia*:

99.1 That Ditsobotla was at that time already (in October 2021) "*in a financial and service delivery crisis*";

99.2 That Ditsobotla required "*urgent intervention in terms of S 139 of the Constitution*";

99.3 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 [MFMA]";
(my emphasis)

99.4 That a financial recovery plan had to be concluded within 90 days;

99.5 That "*given the urgency of the situation, an interim recovery plan will be drafted for implementation within the first month of the intervention being invoked …*";

99.6 That the section 139 "*process is* ***not synonymous with the Municipal Support and Intervention Plan*** *(MSIP) process … [and that these] processes are complimentary…*"; (my emphasis)

99.7 That the 'landmark decision' by the High Court sets a precedent that where the community in the municipality are suffering 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 section 139 (5) intervention, that the national executive ought to be directed to intervene in the financial and service delivery affairs of the municipality as provided for in section 139 (7) of the Constitution. (This is precisely the case in the present matter)

100 I respectfully state that on the common cause facts in this matter:

100.1 The conditions for a provincial intervention in Ditsobotla in terms of section 139 (5) of the Constitution were met no later than October 2021 already (but in fact on the facts of this matter for years prior thereto).

100.2 Despite being instructed to do so, the provincial executive cannot, and has not either adequately or at all, exercised the powers and performed the functions referred to in section 139 (5) of the Constitution.

100.3 Both the Constitution and relevant legislation require the national executive to intervene in terms of section 139 (7) in the stead of the provincial executive.

101 I deny the remainder of the content of this paragraph insofar as it does not specifically accord with the facts set out in the founding affidavit.

AD PARAGRAPH 54 THEREOF:

102 The letter attached to the founding affidavit marked "**CC34**" is a letter from the Finance Minister.

103 Ditsobotla was identified as being in crisis requiring intervention in terms of section 139 (5) of the Constitution read together with section 139 of the MFMA.

104 The provincial executive has failed to comply with any of the instructions contained in the letter from the Finance Minister ("**CC34**").

105 The national executive is compelled to intervene in terms of section 139 (7) of the Constitution read together with the MFMA and relevant legislation.

106 I deny the remainder of the content hereof.

AD PARAGRAPH 55 THEREOF:

107 The applicants note the provisions of rule 6 (5) (e) of the uniform rules of court.

108 The applicants have requested the court for authorisation to file supplementary affidavits should further breaches and/alternatively continued breaches of the Constitutional rights of the community of Ditsobotla in relation to the provision of basic municipal services occur after the granting of the order, or in the event that the respondents fail to comply with the order of this court.

109 The respondents have already failed to comply with the Part A order. Based on the history of this matter there is every reason to believe that there will be further serious breaches of the Constitutional rights of the applicants, their members, and the community of the municipality.

110 I respectfully state that the applicants have made out a proper case for the order sought.

111 I deny the remainder of the content hereof.

AD PARAGRAPH 56 THEREOF:

112 I have dealt with the content hereof already. I respectfully state that the applicants are entitled to the costs order sought.

113 In this regard further, the relief sought in Part A of the application was urgently necessary. When the state respondents returned to court on 10 November 2022, the state respondents requested an opportunity to stand down in order to attempt to propose solutions to the water crisis in Ditsobotla, which at that stage had not yet been addressed. In this regard further, I refer to and incorporate herein the applicants' responding affidavit to the administrator's explanatory.



114 The opposing respondents filed the answering affidavit at the eleventh hour in order to derail the hearing of Part B on 10 November 2022. I have addressed this at the beginning of this affidavit and I refer the court to the facts set out there regarding the conduct of the opposing respondents. The only reason that the matter could not proceed at 10h00 on 10 November 2022 was by virtue of the late filing of the answering affidavit. The opposing respondents ought to be directed to pay the reserved costs of 10 November 2022 on an attorney and client scale.

115 Part B of the notice of motion is urgent and has been brought to protect the Constitutional rights of the applicants, their members and the community of the municipality. The opposition to Part B of the notice of motion is vexatious. The applicants ought not to be out of pocket in respect of their legal costs and the costs order sought in respect of Part B of the application ought to be granted as prayed for in the notice of motion.

116 I deny the remainder of the content hereof.

AD PARAGRAPH 57 - 62 THEREOF:

117 I deny that the engagement of a special master and/or Sakeliga would be in violation of the Systems Act.

118 The remainder of the content hereof amounts to legal argument, and the quoting and referencing of legislation. This shall be dealt with in argument at the hearing of the matter.

AD PARAGRAPH 63 – 65.10 THEREOF:

119 I deny that what the applicants require from the court regarding the takeover of water supply requires payment for an indefinite period. The applicants seek an urgent and effective remedy to the crisis that prevails.

120 The remainder of the content hereof amounts to legal argument, and the quoting and referencing of legislation. This shall be dealt with in argument at the hearing of the matter.

AD PARAGRAPH 85 THEREOF:

121 I deny that the so-called 'point *in limine*' has any merit. I persist with the facts set out in paragraph 20 of the founding affidavit.

AD PARAGRAPH 99 THEREOF:

122 I deny that the crisis in respect of water has been resolved. I refer to and incorporate herein the applicants' responding affidavit to the administrator's explanatory.

123 I further refer to and incorporate herein the facts set out under the heading "AD PARAGRAPH 7 - 13 THEREOF" above.

124 I persist with the facts set out in the founding affidavit read together with this affidavit.

AD PARAGRAPH 107 THEREOF:

125 The second sentence hereof constitutes argument about the law and legislation. This shall be dealt with in argument at the hearing of the matter.

AD PARAGRAPH 108 THEREOF:

126 I deny that the COGTA MEC has always supported an endeavour to ensure that Ditsobotla is strengthened in order to manage its own affairs. No evidence is presented in support of this allegation. The facts quite clearly demonstrate the contrary.

AD PARAGRAPH 109 THEREOF:

127 I note the allegation that the municipal Council of Ditsobotla "*was misappropriating funds*". There has quite clearly been an ongoing and serious crisis in the financial affairs of Ditsobotla.

128 I admit that the equitable share was not paid. I have no personally knowledge of whether the equitable share or a part thereto has subsequently been paid.

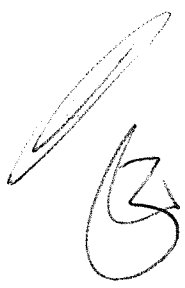
AD PARAGRAPH 110 - 111 THEREOF:

129 I have already dealt with the fact of the intervention of the provincial executive in terms of section 139 (5) of the Constitution. Such intervention has failed entirely. The national executive must intervene in terms of section 139 (7) of the Constitution.

AD PARAGRAPH 112 THEREOF:

130 I deny the second sentence hereof. The facts of this matter demonstrate that this allegation is startlingly untrue, to the knowledge of the opposing respondents. The serious crisis in various forms in the financial affairs of Ditsobotla bear testament to the fact that the provincial executive failed to exercise its powers and functions in any proper respect at all.

AD PARAGRAPH 114 – 116 THEREOF:



131 I have already dealt with the fact of the intervention of the provincial executive in terms of section 139 (5) of the Constitution. Such intervention has failed entirely. The national executive must intervene in terms of section 139 (7) of the Constitution.

132 The opposing respondents are well aware of their obligations and the narrative that they now seek to present is false. I refer in this regard *inter alia* to the letter and the instructions therein of the Finance Minister attached to the founding affidavit and marked "**CC34**". Further argument with reference to the facts of the matter shall be advanced the hearing of the application.

133 The argument about the Constitution, the law and legislation shall be dealt with in argument at the hearing of the matter.

AD PARAGRAPH 117 THEREOF:

134 I deny that the intervention in terms of section 139 (7) of the Constitution "*is premature*". The opposing respondents are well aware the fact that this allegation is patently false.

135 On the version of the opposing respondents, the provincial executive intervened in terms of section 139 (5) of the Constitution a year ago.

136 For over a year, the provincial executive has demonstrated that it cannot, has not and does not exercise the powers and perform the functions referred to in section 139 (5) of the Constitution.

137 The intervention of the national executive is mandatory, and such mandatory national executive intervention is urgently necessary.



138 I deny that the voluntary intervention is either appropriate or lawful.

AD PARAGRAPH 120 THEREOF:

139 The content hereof constitutes argument about the law and legislation. This shall be dealt with in argument at the hearing of the matter.

AD PARAGRAPH 122 THEREOF:

140 The parties to case number M311/2021 are evident from the notice of motion in those proceedings, a copy of which is attached the founding affidavit and marked "**CC13**". I deny the remainder of the content hereof.

AD PARAGRAPH 124 THEREOF:

141 I deny that all the disputes that exist between the applicants and the respondents date back to May 2021. I deny the remainder of the content hereof. I persist with the facts in respect of the urgency of Part B of the urgent application as set out in the founding affidavit read together with this replying affidavit.

AD PARAGRAPH 125 THEREOF:

142 I deny that the present application is an abuse. I deny that the applicants are trying to dispose of case M311/2021 through the back door. There is no forum shopping.

143 I deny the remainder of the content hereof insofar as it does not specifically accord with the facts set out in the founding affidavit.

AD PARAGRAPH 126 THEREOF:



144 I admit that the first applicant was aware of the background facts in the first application in 2021. The facts that render the present application urgent occurred during September 2022, as described in the founding affidavit, and the applicants moved as expeditiously as possible to bring the present urgent application.

AD PARAGRAPH 127 THEREOF:

145 As is apparent from paragraphs 102 and 103 of the founding affidavit, Sakeliga heard on 21 September 2022 from *inter alia* its supporters that the provincial executive had invoked section 139 (1) (c) of the Constitution. I deny that this fact renders the present application "*not urgent*". I deny that the applicants were aware of a resolution to dissolve the municipal council on 14 September 2022. I persist with the facts set out in the founding affidavit read together with this replying affidavit in support of the urgency of the matter.

AD PARAGRAPH 128 – 131 THEREOF:

146 Apart from the first sentence in paragraphs 128, 129 and 130 of the answering affidavit, the remainder of the content hereof is denied insofar as it does not specifically accord with the facts set out in the founding affidavit.

147 There has been no meaningful engagement whatsoever. In fact, apart from the engagement that took place on 30 September 2022, there has been no engagement whatsoever. I further refer to and incorporate herein the applicants' responding affidavit to the administrator's explanatory.

AD PARAGRAPH 133 THEREOF:

148 I deny that there "*has always been intervention at Ditsobotla by the provincial executive*". I admit that there have been prior voluntary interventions. However, all interventions, including the mandatory intervention in terms of section 139 (5) of the Constitution, invoked in November 2021 by the provincial executive, have failed dismally. I have dealt with this already and further argument shall be advanced with reference to the founding affidavit read together with this replying affidavit.

AD PARAGRAPH 135 THEREOF:

149 The applicants did all in their power to avoid the present application. Unfortunately, however, the intransigence and conduct on the part of the respondents left the applicants with no alternative but to bring the present application urgently. I deny the remainder of the content hereof insofar as it does not specifically accord with the facts set out in the founding affidavit read together with this replying affidavit.

AD PARAGRAPH 138 AND 140 THEREOF:

150 I deny that water has been restored to Ditsobotla. There is no "*confirmatory affidavit of MISA*". MISA itself has expressed extremely serious concerns about the water crisis and the health of the residents and community of Ditsobotla, as appears from the report attached to the administrator's explanatory affidavit marked "**RM3**" (at page 723 – 755). The MISA report confirms that the present matter remains extremely urgent and that the applicants are entitled to an effective remedy as sought in these proceedings. I refer further to and incorporate herein the applicants' responding affidavit to the administrator's explanatory.

WHEREFORE, the applicants persist with the relief sought in their notice of motion.

DEPONENT

I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED:

a. he knows and understands the contents of this affidavit;

b. he has no objection to taking an oath;

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

THUS signed and sworn before me, at Pretoria on this the **14TH** day of **NOVEMBER 2022**, the Regulations contained in Government Notice No. R1648 of 19 August 1977 (as amended) having been fully complied with.

COMMISSIONER OF OATHS
FULL NAMES:
BUSINESS ADDRESS:
DESIGNATION:

JOHANNES JACOBUS VAN DER MERWE
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