IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NO. UM192/22

In the matter between:-

SAKELIGA NPC	**First Applicant**
CENTER FOR GOOD GOVRNANCE 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**
THE PREMIER OF NORTH WEST PROVINCE	**Third Respondent**
PROVINCIAL EXECUTICE OF THE NORTH WEST PROVINCE	**Fourth Respondent**

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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 SANISTATION	**Tenth Respondent**
NGAKA ODIRI MOLEMA DISTRICT MUNICIPALITY	**Eleventh Respondent**
ESKOM SOC LTD	**Twelfth Respondent**
MAGALIES WATER BOARD	**Thirteenth Respondent**

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THE ADMINISTRATOR: DITSOBOTLA LOCAL MUNICIPALITY Fourteenth Respondent

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FILING NOTICE

DOCUMENT PRESENTED FOR FILING:

ELEVENTH RESPONDENT'S REPLY TO THE APPLICANT'S RESPONSE TO ITS PROGRESS REPORT.

SIGNED AND DATED AT MAFIKENG ON THIS THE 04TH DAY OF APRIL 2023

Thapelo Molefe

MOLEFE ATTORNEYS

Attorneys for the Eleventh Respondent

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REF: Mr Molefe/NMMDM2/UM/2022

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

MAHIKENG

AND TO: **LABUSCHAGNE ATTORNEYs**

APPLICANTS' ATTORNEYS

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Ref: Mr Labuschagne/GW1763
Instructed by

KRIEK WASSENAAR & VENTER INC: ATTORNEYS

Service by e-mail

AND TO: **M.E TLOU ATTORNEYS & ASSOCIATES**

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AND TO: **THE STATE ATTORNEY- MMABATHO**

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AND TO: THE ADMINISTRATOR: DITSOBOTLA LOCAL MUNICIPALITY

14th RESPONDENT

Ditsobotla Local Municipality

Cnr Nelson Mandela and Transvaal

Road Lichtenburg

E-Mail: info@ditsobotla.gov.za

mosamet@ditsobotla.gov.z

a moserwkw@gmail.com

Service by e-mail

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CENTER FOR GOOD GOVERNANCE AND SOCIAL JUSTICE NPC	Second Applicant
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And

DITSOBOTLA LOCAL MUNICIPALITY	First Respondent
THE MUNICIPAL MANAGER /ACTING MUNICIPAL MANAGER OF THE DITSOBOTLA LOCAL MUNICIPALITY	Second Respondent
THE PREMIER OF NORTHWEST PROVINCE	Third Respondent
PROVINCIAL EXECUTIVE OF THE NORTHWEST PROVINCE	Fourth Respondent
MEMBER OF THE EXECUTIVE COUNCIL: NORTHWEST 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
MODIRI MOLEMA DISTRICT MUNICIPALITY Eleventh Respondent

ESKOM SOC LTD Twelfth Respondent

MAGALIES WATER BOARD Thirteenth Respondent

THE ADMINISTRATOR:
DITSOBOTLA LOCAL MUNICIPALITY Fourteenth Respondent

ELEVENTH RESPONDENT'S REPLY TO THE APPLICANT'S RESPONSE TO ITS PROGRESS REPORT

I, the undersigned:

OLEHILE ALLAN LOSABA

declare under oath and say that:

A. INTRODUCTION

1. I am:

1.1. A Major of full legal capacity;

1.2. employed by Ngaka Modiri Molema District Municipality in the capacity of a Municipal Manager, and therefore, the administrative head and accounting officer;

1.3. executing my duties at Corner of Carrington street and 1st Avenue, Industrial site, Mahikeng.

1.4. By virtue of my capacity as such and the relevant delegations of authority, I am duly authorized to depose to this affidavit on behalf of Ngaka Modiri Molema District Municipality.

1.5. The facts set out in this affidavit are, unless otherwise stated or the converse appears from the context, within my personal knowledge, and are both true and correct.

1.6. Where I make legal submissions in this affidavit, I do so based on the advice of Ngaka Modiri Molema District Municipality's legal representatives.

1.7. I am the head of administration of Ngaka Modiri Molema District Municipality and in my capacity as such, I am responsible and accountable for:-

1.7.1 The formation and development of an economical, effective, efficient, and accountable administration.

1.7.2 The management of the Municipality's administration in accordance with the systems' Act and other legislation applicable to the Municipality;

1.7.3 The implementation of the Municipality's integrated development plan, and the monitoring of progress with implementation of the plan;

1.7.4 The management of the provision of services to the local community in a sustainable and equitable manner;

1.7.5 Facilitating participation by the local community in the affairs of the Municipality;

1.7.6 Developing and maintaining a system whereby community satisfaction with municipal services is assessed;

1.7.7 all income and expenditure of the Municipality;

1.7.8 all assets and discharge of all liabilities of the Municipality; and

1.7.8 proper and diligent compliance with the Municipal Finance Management Act, amongst others.

1.8 I am also responsible for the effective, efficient, economical and transparent use of the resources of Ngaka Modiri Molema District Municipality and to take effective and appropriate steps to

prevent unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct and to manage available working capital efficiently and economically.

1.9 In addition, I am responsible for ensuring that the expenditure of Ngaka Modiri Molema District Municipality is in accordance with its vote and that effective and appropriate steps are taken to prevent any unauthorized expenditure.

2 I have previously deposed to an affidavit in compliance with the Order of her Ladyship Justice Djadje DJP, dated 02 March 2023. In the said affidavit which in essence is Ngaka's progress report in so far as the provision of potable water to the community of Ditsobotla is concerned, I have dealt with the following:

2.1 detailed plans of all steps necessary to restore the sustainable provision of potable water to the community of Ditsobotla;

2.2 steps that Ngaka has been taken to restore the sustainable provision of potable water to the community of Ditsobotla;

2.3 whether the sustainable provision of potable water to the community of Ditsobotla has been achieved or not; and

2.4 further steps that still need to be taken to restore the sustainable provision of potable water to the community of Ditsobotla.

3 Following the above, Sakeliga then filed a response to the aforesaid progress report, which resulted in this reply from Ngaka. The reply is by agreement between the parties and as per the DJP's directives on the 20 March 2022.

4 Sakeliga makes the following case, considering its response to Ngaka's progress report:

4.1 the water crisis experienced by the community of Ditsobotla has not been resolved and the fundamental rights of the members of the community of Ditsobotla continue to be breached.

4.2 The intervention measures proposed by Ngaka are vague.

4.3 Ngaka has not taken a single effective measure to address water crisis.

4.4 On the 17 March 2023, Sakeliga's deponent, Mr Chris Breedt inspected the main reservoir at Waterworks in Lichtenburg and his findings were that the reservoir was almost empty. Again, on the 27 March 2023, he conducted a further inspection at Waterworks reservoir and at reservoir 3. He further discovered that the main reservoir was at 25% capacity and reservoir 3 was at 5% capacity.

5 Ngaka's reply to Sakeliga's response is that:

5.1 Ngaka's concedes that Waterworks reservoir was empty on the 17 March 2023. The near empty reservoir was known to Ngaka since it is did not purposely fill up the Waterworks reservoir to allow it to perform the emergency repairs to reservoir.

5.2 The repairs related to the damaged air valve. As a result, to carry out these repairs, it was necessary not to fill up the Waterworks reservoir. The only fault on the part of Ngaka was its failure not to communicate the emergency repairs with the community, something it will endeavor to do in the future whenever there is an emergency or any planned maintenance works.

5.3 The aforesaid repairs were completed on the same day (17 March 2023) and by the 20 March 2023, there was water at Waterworks reservoir since it took 3 days to fill it up. I therefore submit that this was not a planned maintenance but an emergency breakdown that had to be attended to immediately.

5.4 Regarding the water level on the 27 March 2023 at Waterworks reservoir and Klipveld reservoir 3, I submit that it was because of a planned maintenance work wherein Ngaka was upgrading the pumps size by installing the 18kw, 22kw and 37-Kw submissible pumps at Klipveld boreholes, replacing the 7.5kw submissible pumps previously installed by a contractor and at the instance of the Department of Water and Sanitation.

5.5 Again, there was failure to communicate with the community, something that Ngaka has taken into consideration and is addressing at the moment.

5.6 The basis for installing the bigger submissible pumps is that previously the boreholes at Klipveld used to operate on 7.5 kilowatts submissible pumps which took 7 hours to fill a reservoir. The small submissible pumps also meant that the reservoirs could only be filled once a day. Ngaka has since upgraded the capacity of the submissible pumps by installing the

37kw, 22kw and 18kw pumps, which is a great improvement in that it now takes 5 hours to fill a reservoir. The bigger pumps mean that we are able to fill the reservoirs twice a day, whereas in the past, we could only fill the reservoirs once a day.

5.7 Another aspect that Ngaka has considered and is addressing is the transmission of water from the 3 Klipveld reservoirs to Waterworks reservoir. Currently the water gravitates to the Waterworks reservoir, which is a slow process. Ngaka has resolved to install High lift pumps (booster pumps). A contractor has been appointed and has already placed an order for the High lift pumps. The estimated completion date of the installation is the second week of May 2023.

5.8 Ngaka has also requested Eskom to increase the Klipveld power supply from the current one to the 3MVA one, which Ngaka is responsible for to accommodate the High Lift pumps. Currently the capacity of electricity at Lichtenburg town is too low to manage the capacity of motors that are going to be installed. I refer to annexure **"A."**

5.9 There has also been significant progress on the repairs of the 11km pipe in Boikhutso and Blydeveld. The anticipated completion date is month end of May.

5.10 Further, on the 1 April 2023 the supply of water was interrupted as a result of cable theft at Waterworks reservoir and a case was reported at Lichtenburg Police Station with case no 9/4/2023.

6 I now wish to address the individual allegations set out in the response. I deny those allegations not addressed expressly and where such allegations are at odds with my averments in the progress report.

B. AD SAKELIGA'S RESPONSE

Ad paragraph 8

7 I deny the allegations. The installation of the 18kw, 22kw and 37kw submissible pumps has greatly improved the water supply in Ditsobotla. These installations mean that underground water is pumped at a high rate. By the time we are done installing the High lift pumps, the situation will be far much better as the Waterworks reservoir will be always full.

Ad paragraphs 16 - 19

8 I have already set out the intervention measures that Ngaka has carried out and what it will continue to do to alleviate the water situation in Ditsobotla.

Ad paragraphs 20, 21 and 23

9 I repeat the contents of paragraphs 5.1 and 5.6 above, to be read as if specifically incorporated herein.

Ad paragraph 22

10 I have already dealt with these allegations in paragraphs 5.1– 5.9 above.

Ad paragraph 47

11 I deny the allegations.

12 I submit that there is sufficient water to the Ditsobotla.

13 I also need to point out that most houses in Lichtenburg town have water storage tanks *(Jojo tanks)* and as a result, they have connected booster pumps on municipal pipes

14 By installing the boosters pumps, they are now interfering with water supply and as a result, the high lying arears of Ditsobotla are greatly affected in that in order for the high arear to receive water, the water storage tanks in the low lying arears must first be filled up.

15 In the report previously filed, I did indicate that 4 additional boreholes in ward 3 were being drilled. It is imperative to point out that the contractor did manage to drill those 4 boreholes, however same are having low yield (0,9 L/S, 0,6 L/S, 1 L/S and 0,5 L/S), whereas the water demand is 28 litres per second.

16 In the circumstances, the contractor is busy surveying 4 new boreholes based on the aforesaid, since the already drilled ones will fail to meet the demand.

Ad paragraph 48

17 I submit that this was a general service delivery protest and not a water strike. In the circumstances, I therefore deny the allegations.

Ad paragraphs 49 - 57

18 I deny the allegations.

Ad paragraph 58

19 I deny the allegations. As already stated, steps have been taken and will continue to be taken to ensure that the community is provided with water. In the result, this means that the action plan is effective.

Ad paragraph 59

20 In fact, currently 15 boreholes are operational and 2 are being repaired. The completion date is this Friday, 07 April 2023.

Ad paragraphs 61 – 62

21 I have already with these allegations.

Ad paragraphs 86 and 89

22 Vandalism and theft of the infrastructure is a serious concern.

23 On 1 April 2023, a cable was stolen from Waterworks reservoir which affected the supply of potable water to Lichtenburg.

24 In the circumstances, same had to be replaced at a costs of R136 875.00

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OLEHILE ALLAN LOSABA

I CERTIFY that this affidavit was signed before and sworn to before me at MAHIKENG on this the 04th day of April 2023, by the deponent who acknowledge that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and who uttered the following words: "I swear that the contents of this affidavit are true, so help me God".

COMMISSIONER OF OATHS

MPENDULO MICHAEL MADUBELA
Practising Attorney
Commissioner of Oaths
12 Ha[illegible] Street, New
[illegible]
Tel: [illegible] 8309

ANNEXURE A

1971

NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY

Cnr Corridor & Strand 1st Avenue, Thabamoopo, Mahikeng, 2745 | Tel: (018) 381 0400 | Fax: (018) 381 4300
Private Bag X2107, Mahikeng, 2745 | www.nmmdm.gov.za

OFFICE OF THE MUNICIPAL MANAGER

Enq: Mr M.A Senwedi & Mrs Mokgalagadi

Tel :083 377 6543 /0835124769 /0183819400

TO: Energy centre building

Mmabatho Eskom

Cnr Dr James Moroka & Sekame Street

Mmabatho

2745

ATTENTION: Sam Mosila

This letter serves as a request to upgrade Lichtenburg main line power supply to 3MVA because we want to construct x3 water pump station in Lichtenburg game reserve.

Your co-operation will be highly appreciated.

Regards

Mr O.A Losaba

Municipal Manager