

**IN THE HIGH COURT OF SOUTH AFRICA  
(KWAZULU-NATAL DIVISION, PIETERMARITZBURG)**

Case number: 10614 / 2021P

In the matter between:

**DEMOCRATIC ALLIANCE**

and

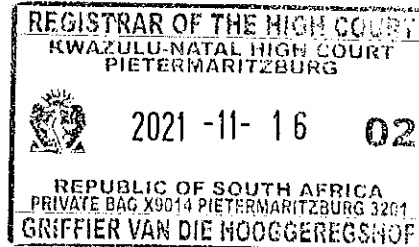
**THE ACTING MUNICIPAL MANAGER**

**UMNGENI LOCAL MUNICIPALITY**

**MEC FOR CO-OPERATIVE GOVERNANCE AND**

**TRADITIONAL AFFAIRS, PIETERMARITZBURG**

**THEMBEKA CHIBANE**



Applicant

First Respondent

Second Respondent

Third Respondent


Fourth Respondent

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**CERTIFICATE OF URGENCY**

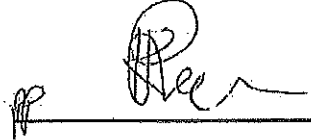
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We, the undersigned **WARREN NEIL SHAPIRO SC** and **TONI RUTH PALMER**, advocates of the above Honourable Court, practising from the 17<sup>th</sup> Floor, Durban Club Chambers, Durban, certify that we have read the founding affidavit in the above matter. Based on the allegations therein, we are respectfully of the opinion that there exist circumstances to justify the matter being heard as one of urgency in terms of rule 6(12) and being set down for hearing on the date set forth in the notice of motion or so soon thereafter as may be convenient for the Court.



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W N SHAPIRO SC



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T R PALMER

IN THE HIGH COURT OF SOUTH AFRICA

(KWAZULU-NATAL DIVISION, PIETERMARITZBURG)

In the matter between:

**DEMOCRATIC ALLIANCE**

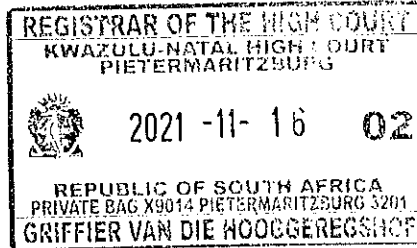
and

**THE ACTING MUNICIPAL MANAGER**

**uMNGENI LOCAL MUNICIPALITY**

**MEC FOR CO-OPERATIVE GOVERNANCE AND  
TRADITIONAL AFFAIRS, PIETERMARITZBURG**

**THEMBEKA CHIBANE**



Case number:

Applicant

First Respondent

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NOTICE OF MOTION

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**KINDLY TAKE NOTICE THAT** the abovenamed applicant will make application to the above Honourable Court at **09h30 on THURSDAY 18 of NOVEMBER 2021**, or so soon thereafter as Counsel may be heard for an Order in the following terms:

1. The matter be enrolled and heard as a matter of urgency in terms of the provisions of rule 6(12).
2. The First Respondent is ordered to do all things and to take all steps necessary in order that a Council Meeting as contemplated in section 29(2) of the Local Government Municipal Structures Act 117 of 1998 (*"Municipal Structures Act"*) is convened by Monday 22 November 2021 (including by the giving of notice of such Meeting by no later than 12h00 on Friday 19 November 2021)

3. The First Respondent is directed to place on the agenda of the Council Meeting only motions relating to the election of the Mayor, Deputy Mayor and Speaker of the Council as contemplated in sections 36, 45 and 48 of the Municipal Structures Act.
4. The Fourth Respondent is interdicted and restrained from attending, and from in any way interfering with the proceedings of, the Council Meeting contemplated in paragraph 2 above;
5. The First Respondent is to pay the costs of the application on the attorney and client scale, including the costs of two counsel where employed, together with any other opposing respondent, jointly and severally, the one paying the others to be absolved.
6. Further and / or alternative relief.

**FURTHER TAKE NOTICE THAT** the accompanying affidavit of **CHRISTOPHER PAPPAS** together with certain annexures will be used in support of the application.

**TAKE NOTICE FURTHER THAT** the applicant has appointed the address of its attorneys of record set out below at which it will accept notice and service of all process in these proceedings. Due to the urgency of the application, the applicant requires service to be effected electronically at the following email addresses: [elzanne@mindes.co.za](mailto:elzanne@mindes.co.za) and [karin@mindes.co.za](mailto:karin@mindes.co.za).

**TAKE NOTICE FURTHER THAT** if you intend opposing this application you are required to —

- (a) notify the applicant's attorney in writing on or before 15h00 on Wednesday 17 November 2021 and to appoint in such notification an address referred to in rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings; and
- (b) file your answering affidavits, if any, on or before 15h00 on Wednesday 17 November 2021.

**KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING  
ACCORDINGLY.**

**DATED AT** *PIETERMARITZBURG* **THIS** *16<sup>th</sup>* **DAY OF NOVEMBER 2021.**

  
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**MINDE SCHAPIRO AND SMITH INC**

Elzanne Jonker

Applicant's attorneys

c/o **PGPS ATTORNEYS**

Victoria Country Club, Office Park, Ground Floor 12

Montrose Park boulevard, 170 Peter Brown Drive

Montrose

**PIETERMARITZBURG**

**TO THE REGISTRAR OF THE ABOVE HONOURABLE COURT**  
**KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

**AND TO THE ACTING MUNICIPAL MANAGER**  
**uMNGENI LOCAL MUNICIPALITY**  
First Respondent  
Cnr Dicks & Somme Streets  
**HOWICK**  
**Per email: sandile.buthelezi@umngeni.gov.za**  
Care of: Siva Chetty & Company  
Per email: shalina@sivachetty.co.za

**AND TO: uMNGENI MUNICIPALITY**  
Cnr Dicks & Somme Streets  
**HOWICK**  
**Per email: sandile.buthelezi@umngeni.gov.za;**  
**thando.mgaga@umngeni.gov.za; manager@umngeni.gov.za**

**AND TO: MEC FOR CO-OPERATIVE GOVERNANCE AND**  
**TRADITIONAL AFFAIRS, PIETERMARITZBURG**  
116 Jabu Ndlovu Street,  
PIETERMARITZBURG  
Per email: senzelwe.mzila@kzncogta.gov.za  
Care of: State Attorney  
PIETERMARITZBURG

**AND TO: THEMBEKA CIBANE**  
Fourth Respondent  
**thembeke.cibane@umngeni.gov.za;**  
**khethiwe.mkhize@umngeni.gov.za;**  
**hlelators@umngeni.gov.za**

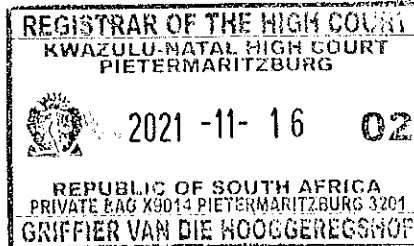
IN THE HIGH COURT OF SOUTH AFRICA

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Applicant

And

THE ACTING MUNICIPAL MANAGER

First Respondent

uMNGENI LOCAL MUNICIPALITY

Second Respondent

MEC FOR CO-OPERATIVE GOVERNANCE AND  
TRADITIONAL AFFAIRS, PIETERMARITZBURG

Third Respondent

THEMBEKA CHIBANE

Fourth Respondent

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FOUNDING AFFIDAVIT  
IN URGENT APPLICATION

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I, the undersigned

**CHRISTOPHER PAPPAS**

do hereby make oath and say:

1. I am an adult male. I am a member of the Democratic Alliance (“DA”), DA councillor elected to the uMngeni Municipality, and mayor-elect of the uMngeni Local Municipality, the second respondent. I am duly authorised to depose to this affidavit on behalf of the DA, and annex hereto marked “A” a letter by the Chairperson of the

Federal Council of the DA, as provided for the DA Constitution, authorising me to depose to this affidavit.

2. The facts contained herein are, to the best of my knowledge, true and correct and are, unless otherwise stated or indicated by the context, within my personal knowledge.

**Synopsis of the application**

3. This is an urgent application to compel the Acting Municipal Manager of the uMngeni Local Municipality (“uMngeni”) to comply with his obligation under section 29(2) of the Local Government Municipal Structures Act 117 of 1998 (“*Municipal Structures Act*”) and to call a First Council Meeting of the uMngeni Local Municipal Council, to give notice of the First Council meeting on or before Friday 19 November and to do whatever is necessary for such meeting to be convened on or before Monday 22 November 2021.
4. Section 29(2) of the Municipal Structures Act provides:

*“(2) The municipal manager of a municipality or, in the absence of the municipal manager, a person designated by the MEC for local government in the province, must call the first meeting of the council of that municipality within 14 days after the council has been declared elected or, if it is a district council, after all the members to be appointed by local councils, have been appointed.”*





5. As I set out further below, pursuant to the recent local government election, the Acting Municipal Manager is required by section 29(2) of the Municipal Structures Act to convene a First Council meeting.
6. The Acting Municipal Manager has refused or failed to call such a meeting since Friday 12 November, when the meeting convened for that purpose collapsed as a result of the suspended Municipal Manager (the fourth respondent) unlawfully attempting to chair the meeting and exercising powers as the Municipal Manager.
7. This matter is extremely urgent. As I set out below, and as a result of a recent local government election the African National Congress (“ANC”) has lost its status as the majority party in uMngeni and the majority is now held by the DA.
8. For each day that goes by that the Acting Municipal Manager refuses to call the Council Meeting, uMngeni is governed contrary to the expressed democratic will of the people of uMngeni and contrary to the Constitution. I am advised that electoral matters of this nature are inherently urgent.
9. The DA intends for Council to elect a Speaker to the Council, and thereafter for the Mayor and Deputy Mayor to be elected. The appointment of these officer bearers will provide uMngeni with leadership and direction and most importantly to improve local government and service delivery to the people of uMngeni. The voting, and that political process, will play out within the Municipal Council meeting to be convened. The Court is not asked to enter into that political matter, and will not be making a decision of a political nature in granting the DA the relief in seeks in this application.



## **PARTIES**

10. The Applicant is the **DEMOCRATIC ALLIANCE**, a party with its principal place of business in this jurisdiction at 35 Intersite Avenue, Umgeni Business Park, Durban. The DA is a political party registered in terms of section 15 of the Electoral Commission Act 51 of 1996 with its head office at Thebe Hosken House, Cnr Breda and Mills Street, Cape Town.

11. The DA brings this application in its own interest, in the interests of the council members, and in the public interest. The DA seeks in this application to give effect to the democratic will of the people and to hold the Municipal Manager to his constitutional obligations, in the public interest. The application implicates the following constitutional provisions:

11.1. section 152(1) of the constitution, in terms of which the object of local government is "*to provide democratic and accountable government for local communities*"; and

11.2. section 195(1) of the Constitution, in terms of which the municipal administration is required to adhere to the values of responsiveness, accountability, transparency and representivity.

12. The First Respondent is Sandile Buthelezi, the **ACTING MUNICIPAL MANAGER OF THE UMGENI LOCAL MUNICIPALITY**, in his official capacity, with his principal place of business at Cnr Dicks & Somme Streets, Howick, KwaZulu-Natal

A handwritten signature in black ink, appearing to be 'R. G.', located in the bottom right corner of the page.

13. The Second Respondent is the **UMNGENI LOCAL MUNICIPALITY**, a local municipality established in terms of the Municipal Structures Act, with its principal place of business at Cnr Dicks & Somme Streets, Howick, KwaZulu-Natal.
14. The Third Respondent is the **MEC FOR CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, PIETERMARITZBURG**, with his principal place of business at 116 Jabu Ndlovu Street, Pietermaritzburg.
15. No relief is sought against the Second and Third Respondents, who are cited on account of the interest that they may have in this application.
16. The Fourth Respondent is Ms. Thembeke Cibane, the suspended Municipal Manager of uMngeni, whose physical address is unknown to me but is represented by attorneys in her Disciplinary Hearing namely Hlela Attorneys Incorporated, 241, Problem Mkhize Road Essenwood Durban with email address [hlelaattorneys@gmail.com](mailto:hlelaattorneys@gmail.com) and her personal email address [Chibanethembeka@gmail.com](mailto:Chibanethembeka@gmail.com).
17. Cibane has been suspended as the Municipal Manager of uMngeni in terms of the Local Government: Disciplinary Regulations for Senior Managers, 2010 (*"Disciplinary Regulations"*) and remains suspended.
18. She is cited in these proceedings because on Friday 12 November 2021, and despite her suspension, she attended the uMngeni Municipal Council meeting and purported to act as Municipal Manager despite the presence of the lawfully appointed Acting Municipal Manager, causing council members to leave the meeting and for the meeting to collapse.



19. Interdictory relief is sought against the suspended Municipal Manager in order to prevent her from attending the next Special Council Meeting.

### **BACKGROUND AND EVENTS GIVING RISE TO THIS APPLICATION**

20. There are 25 seats in the Municipal Council of the Second Respondent. Following the local government elections in 2016, the majority of seats were held by ANC Councillors (13 seats to the ANC; 10 to the DA).

21. With the local government elections of 2021, held on 1 November 2021, and in accordance with section 24(1) of the Structures Act, the term of office of that Council expired. In terms of section 24(1) of the Structures Act, *“The term of municipal councils is five years, calculated from the day following the date set for the previous election of all municipal councils in terms of subsection (2).”*

22. On 8 November 2021, the Independent Electoral Commission (“IEC”) announced the local government election results. The result were:

- 22.1. DA – 13 seats;
- 22.2. ANC – 10 seats;
- 22.3. EFF – 2 seats.

23. These numbers represent councillors elected to proportionally represent the parties (“PR representatives”) and to directly represent the wards (“ward councillors”) in accordance with section 22(1) of the Structures Act.

24. The DA is accordingly the majority party in uMngeni. I annex a copy of the IEC printout of the results of the by-election marked "B". The new Council was declared to be elected on 8 November 2021 by way of publication in the Government Gazette and all councillors have been appointed.
25. The election at uMngeni was a watershed moment for uMngeni which has faced years of poor administration and service deliver under the erstwhile administration. Not only is this the first municipality won be the DA in the KwaZulu-Natal province, but it is an area particularly hard hit by the recent July riots and civil unrest, where enormous damage was caused to business and lives. When the election results were announced, there was great excitement and fanfare, and it was widely reported in the media.
26. I announced, when the election results were published by the IEC, that I had already planned the first 100 days of my term. My intention, and the intention of the new DA government, is to deliver on promises and provide service delivery to residents of the area who are angry and desperate.
27. Pursuant to these election results, and Council being established, the Structures Act requires:
- 27.1. in section 36(2), that the Municipal Council, at its first sitting after its election, elect its speaker from amongst its councillors. In this regard, Section 36(3) provides that the "*municipal manager of the municipality or, if the municipal manager is not available, a person designated by the MEC*



*for local government in the province, presides over the election of a speaker”.*

27.2. in terms of section 48(1), that the *“municipal council must elect a member of its executive committee as the mayor and, if the MEC for local government in the province so approves, another member of the executive committee as the deputy mayor, of the municipality”*

28. The procedure for such elections is set out in schedule 3 of the Structures Act. Such elections must take place at a council meeting.

29. In terms of section 29(2) of the Municipal Structures Act:

29.1. the municipal manager of a municipality must call the first meeting of the council of that municipality within 14 days after the council has been declared to be elected.

29.2. in the absence of the municipal manager, a person designated by the MEC for local government in the province may do so.

30. In short, the election of a new government cannot commence until a municipal council meeting is called. This lies in the hands of the municipal manger.

***uMngeni’s erstwhile municipal manager’s suspension and the appointment of an acting Municipal manager.***

31. In 26 or 27 August 2021, uMngeni’s Municipal Manager, Thembeke Cibane (*“Cibane”*) (the fourth respondent) was placed on precautionary suspension, by way of a letter dated 26 August 2021 which was delivered to Cibane’s place of residence.



32. The decision to place Cibane on precautionary suspension was taken some weeks earlier, on 28 July 2021, but only effected when the notice placing her on suspension was delivered on this date, which letter of suspension I annex as “C”.
33. I annex hereto the Minutes of the Special Council meeting where the resolution was taken, as “D1” and “D2”.
34. The date of Cibane’s precautionary suspension is therefore 26 August 2021.
35. I understand that earlier efforts to deliver the notice of suspension had been thwarted because Cibane could not be reached on earlier attempts.
36. Her suspension was effected in terms of Regulations 5 and 6 of the Disciplinary Regulations (annexed in relevant part as “E”), and pursuant to an investigation conducted by the Special Investigating Unit (“SIU”) in alleged irregular COVID-19 spending. I do not provide further details of this, as the matter is presently before a disciplinary committee.
37. In terms of Regulation 6(6)(a), a disciplinary hearing must commence within three months after the date of suspension, failing which the suspension will automatically lapse.
38. Ms. Cibane’s disciplinary hearing has commenced on 2 November 2021 but was not concluded as Cibane took ill at the last day of the hearing (where she was in attendance).
39. Therefore, the suspension remains extant and in any event has not been challenged. Cibane has, since 26 August 2021, abided by her suspension, has not come to the



municipal offices, has not acted as Municipal Manager and has not come to work. She was however cited at the Municipality on Thursday, 11 November 2021 but I do not know for what reason she was there.

40. Since Ms. Cibane's precautionary suspension, there have been two acting Municipal Managers – the first was Mr Hloba, who was appointed on 21 August 2021, and resigned the following month (in September 2021).

41. I annex hereto marked "F" a copy of the Minutes of the in-Committee Council Meeting of 21 August 2021, where it was resolved:

*"1. That Council note the report that the Municipal Manager is on precautionary suspension.*

*2. That Council appoint, Mr. Mzi Hloba as the Acting Municipal Manager for the period of Municipal Manager's absence and / or in accordance with Section 54(A) of the Local Government Municipal Systems Amendment Act 7 of 2011.*

*3. That the Acting Municipal Manager, Mr. Mzi Hloba be duly authorized to endorse all documentation relating to legal matters, housing matters, project linked subsidy agreement and the likes."*

42. Thereafter a new Acting Municipal Manager was appointed on 29 September 2021.

(This is the first respondent). I annex hereto marked "G" a copy of the Report to the uMngeni Municipal Council recommending the first respondent's appointment and marked "H" a copy of the resolution for his appointment.

43. These documents are not signed, but I confirm that the DA's Speaker elect, Janis Emmeline Holmes (whose confirmatory affidavit will be deposited to evenly herewith)





was in attendance at the meeting of 29 September 2021 and that the resolutions were passed.

44. The Acting Municipal Manager is required to perform the role and functions of the Municipal Manager, including calling the first council meeting.
45. As required and after the announcement of the recent local government election results, the first respondent duly called the first council meeting, which was convened on 12 November 2021. I attended that meeting.
46. At that Council meeting, as had been widely reported in the press, Cibane attended the meeting – unlawfully and in breach of her precautionary suspension.
47. The meeting was opened by the first respondent, but the fourth respondent “took over” the meeting, contending that she was entitled to as her precautionary suspension had lapsed. I annex hereto a meeting report, with a photograph of Cibane at the table next to the first respondent, as “I”.
48. Her contentions were clearly wrong, and her attendance at the meeting was unlawful. I refer to what I have said above but also point out that the three-month period contemplated in the Regulations terminates on 25 November 2021.
49. I have since laid a criminal charge of trespassing against Cibane.
50. Cibane’s presence and attempted chairing of the meeting rendered it unlawful and irregular. When she refused to leave the meeting, the DA and EFF council members had no option but to leave the meeting. The meeting became inquorate and collapsed.



51. As a result, no election of the Speaker could take place and the work of the council could not begin. The DA's attorney immediately addressed a letter to the Acting Municipal Manager, which I set out in relevant part in full, because of the importance of its content.

*"2.5 You duly proceeded to lawfully convene the first inaugural meeting for 12 November 2021. The newly elected Councillors were all in attendance, together with the administrative personnel, as required by the Rules of Order.*

*2.6 Prior to the commencement of the convened meeting on 12 November 2021 it was noticed that the suspended Municipal Manager, Cibane had arrived in the Howick West Community Hall, in contravention of her suspension conditions.*

*2.7 Ms Cibane unlawfully occupied the front table where the presiding officer ordinarily sits. In blatant contravention of her suspension conditions and prepared herself to preside over the meeting in contravention of her suspension conditions. Ms Cibane had a number of council documents that had been prepared for her for the meeting. This appeared to be an agenda and councillor details.*

*2.8 Our client's councillor, Mr Christopher Pappas advised Ms Cibane that her attendance in the Council Chamber was unlawful as her suspension conditions imposed by the Council prevented her from being present.*

*2.9 At this point Ms Cibane contended that she is no longer under suspension and proceeded to chair the meeting as the Municipal manager.*

*2.10 Ms Cibane's claim that her suspension had lapsed is misplaced and incorrect. Ms Cibane was advised of her suspension in accordance with the Local Government: Disciplinary Proceedings of Senior Managers (2010) by way of notification on 26 August 2021. The legal representatives of the Municipality advised Cllr Pappas, in your presence, that Ms Cibane remained under suspension and was not entitled to be present at the meeting, let alone to preside.*

*2.11 You were aware that Ms Cibane was not allowed to be present in the hall, and was not permitted to preside over the meeting. You were aware that it was your obligation to preside over the meeting until a speaker had been elected.*

*2.12 Despite all of the above, you failed to take the Chair and proceed with the business of the day. As a result, our client, together with the Councillor of the EFF, could not remain in attendance as any decision to be taken whilst Ms Cibane purported to chair the meeting would have been unlawful. The DA and EFF councillors left the chamber. As the meeting no longer had a quorum and the meeting disbanded.*



*As AMM you were legally obliged by section 29(2) of the Structures Act to call the first meeting of the Council within 14 days after the Council has been declared elected in order to allow a government to be formed and certain political office bearers to be elected. You – as the lawful AMM – were obliged by s 36(3) of the Structures Act to preside over that meeting to ensure the election of a speaker.*

*Despite your obligations you failed to take any steps to preside over the meeting and facilitate the election of the political office bearers. You also failed to act to prevent Ms Cibane's unlawful attendance in the Council Chamber or ensure she was removed after she made her appearance.*

*This was a serious failure of your statutory obligations. It violated the constitutional rights of the citizens of uMngeni, and the rights of our clients.*

*Due to the legislative requirement that the first Council meeting is to be convened within 14 days after the result of the Local Government Elections have been announced, you are required to urgently re-convene the Council meeting that you called for Friday 12 November 2021.*

*Our clients demand that you reconvene the Council meeting of yesterday be at 10:00 AM on Monday, 15 November 2021, in order for the relevant political office bearers to be elected and attend to the business of the newly elected Municipal Council..”*

52. I annex hereto the letter as “J”.

53. The Acting Municipal Manager failed to convene the requested meeting. His response is quite extraordinary. In a letter of 14 November 2021, he stated:

*“Please be advised that I had already written to the MEC for Cooperative Governance and Traditional Affairs in KwaZulu Natal Mr. SE Hlomuka, MPL (see attached) advising him that I am unavailable to carry out the task of convening and presiding over the first council meeting/inaugural meeting. My reasons are self-explanatory and contained in the letter referred to above.*

*In terms of Section 29 and 36 of the Local Government Structures Act, Act 117 of 1998 as amended, in circumstance such as this, the MEC must designate a person who will convene and preside over the meeting. I am not privy to the intentions of the MEC, however, adequate notice for the meeting should be given in line with the requirements of the Rules and Orders of the municipality. Furthermore, the Chief Electoral Officer will have to be notified of the meeting, for him/her to attend to the election provided for in Section 23 and Schedule 2 of the act supra.*



*Even if I had not referred the matter to the MEC, which I have, it would be improbable for me to convene the meeting for Monday, 15 November 2021, given the logistics and associated arrangements.”*

54. I annex hereto the letter as “K”.

55. The response is all the more extraordinary because the Acting Municipal Manager has – since the local elections – *already* sought to convene such a meeting (on Friday 12 November, as I have explained above). His change of stance, and professed inability to call a meeting, is perplexing.

56. Annexed to the Acting Municipal Manager’s letter is his letter which he addressed to the MEC for COGTA on 12 November 2021. This is annexed as “L” and says:

*“I hereby in my capacity as Acting Municipal Manager of uMngeni Local Municipality request the Honourable MEC for COGTA to designate a person to call for the first Council Meeting of uMngeni Local Municipality.*

*I have been appointed by Former Council to act as Municipal Manager a month ago following suspension of the Resident Municipal Manager. I am thus not able to proceed with the processes of holding the first Council Meeting as envisage by Local Government Municipality Structures 117 of 1998.”*

57. The first respondent’s concerns is difficult to discern from the cryptic letter. His professed inability to hold the meeting appears to arise from the fact that his appointment as the Acting Municipal Manager took place one month ago, under the erstwhile Council. Nothing about this fact affects his present appointment, and the resolutions of the erstwhile Council remains in effect and his appointment remains extant. The first respondent is the Acting Municipal Manager and can discharge his duties as much. There is no lawful basis on which to request the MEC for COGTA to simply step in to perform his duties when he is available to do so.



58. The DA's attorney took issue with the Acting Municipal Manager's refusal to convene a further meeting and addressed a letter to him the following day, on Monday 15 November 2021, in which that the following was pointed out:

*"2.1 You were appointed as Acting Municipal Manager in accordance with Section 82 of the Municipal Structures Act 117 of 1998 (the Act) on 29 September 2021 and your appointment remains valid and operative and the resolution for your appointment does not terminate or lapse because there has been an intervening election / new council;*

*2.2 As you are the Acting Municipal Manager, there is no " the absence of the municipal manager" as envisaged in section 29(2) of the Structures Act and the request to the MEC for COGTA for a designation is unnecessary and any designation by the MEC of COGTA would be unlawful. It will moreover cause delay and the council meeting must urgently be called because section 29 of the Structures Act requires the meeting to be called within 14 days which days will expire on 22 November 2021;*

*2.3 You are called on to give notice of a meeting to be held on or before Monday 22 November 2021 by no later than 11am tomorrow, 16 November 2021 (Tuesday) failing which an application will be launched urgently to seek relief compelling you to do so. Such matter will be in court on Thursday 17 November and this letter serves as notice on that urgent hearing, date and relief that will be sought.*

*2.4 This letter will be put up in correspondence accompanying the urgent application and punitive costs sought. "*

59. A copy of the letter is annexed as "M".

60. The first respondent failed to respond to the request for an urgent meeting to be convened, and failed to respond to the letter at all.

61. I am given to understand, through a verbal indication from uMngeni Municipality's attorneys, that the MEC for COGTA has indicated that he will appoint a "designate" today (being Tuesday 16 November 2021). I cannot verify the truth of this assertion as it comes to me second-hand but for the reasons which have already been explained, this cannot be done as the Acting Municipal Manager is available and in office, and therefore the jurisdictional threshold in section 29(2) of the Structures Act has not



been met for the MEC to designate a stand-in. The DA's attorneys had pointed this out in the letter of 15 November 2021, to which no response was received.

62. It is not clear whether the MEC will honour this undertaking before the day's end, but this application - given its urgency and profound importance - cannot await the outcome of any such decision (particularly given that the Acting Municipal Manager in fact is available). I undertake to keep the court apprised of developments as and when they arise in this regard.

63. In the premises, the DA has no option but to approach this Court for urgent relief to ensure that the democratic process is not undermined by the first and fourth respondents' unlawful conduct.

#### **URGENCY AND HARM**

64. Should section 29(2) of the Structures Act not be complied with, the hard-fought battle for the DA, and the people of uMngeni, is at risk of provincial intervention and of failing to comply with the Structures Act. The calling of the first council meeting is time sensitive and has serious ramifications.

65. There are four bases for the urgency of this application:

65.1. Firstly, I am advised that electoral matters are inherently urgent and failure to resolve this matter results in intolerable and unacceptable uncertainty in the municipality;



- 65.2. Secondly, there is ongoing democratic harm for as long as the DA cannot begin the business of local government in uMngeni because no Mayor, Deputy Mayor can be appointed;
- 65.3. Thirdly, there is harm caused to Council and councillors, which cannot function properly without a Speaker and perform the democratic work of Council and councillors;
- 65.4. Finally, and perhaps most importantly, the uMngeni area was extremely hard-hit during the recent July riots and both lives and businesses were devastated. I am most concerned that given the volatile political climate, any delays in the election of the Council's office bearers and the commencement of a program of service delivery will undermine the steps that have been taken since July to bring calm to the area and to restore a modicum of trust in local government.
66. Government must be responsive and those who are elected to represent the people in uMngeni must be given an opportunity at a Council Meeting to elect their office bearers. This is not a time for either the first or fourth respondents to play political games.
67. Given that the erstwhile council's term has expired, the sole order of business at the Council Meeting to be convened, is to consider the election of new office-bearers. I highlight that the outcome of that vote is not yet known. However, for every day that goes by that no vote can be taken on *inter alia* the Mayor and Deputy Mayor and Speaker, the democratic order is violated.
68. Finally, I highlight that the DA has approached the Court so as soon as possible. This application is instituted after one business day, and has been instituted after affording

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the Acting Municipal Manager and the MEC for COGTA notice of the proceedings (by way of the letter dated Monday 15 November 2021).

69. The matter will be set down for Thursday 18 November 2021. This will allow sufficient time for the Acting Municipal Manager to give notice of the Council meeting to-be-held (on Monday 22 November 2021) on or before Friday 19 November 2021. This will allow two calendar days' notice of the meeting. These timeframes are in accordance with the uMngeni Standing Rules and Orders to the extent that they are relevant, and which are annexed hereto as "N".

70. This application will be issued and served by email on all parties before close of business on Tuesday 16 November 2021. They will be served at the following addresses:

70.1. First respondent: sandile.buthelezi@umngeni.gov.za;  
manager@umngeni.gov.za

70.2. Second respondent: thando.mgaga@umngeni.gov.za;  
manager@umngeni.gov.za

70.3. Third respondent: care of email senzelwe.mzila@kzncogta.gov.za;  
scelo.duma@kzncogta.gov.za and HODPA@kzncogta.gov.za.

70.4. Fourth respondent: thembeke.cibane@umngeni.gov.za; and her personal assistant: khethiwe.mkhize@umngeni.gov.za; and her attorneys, Hlela Attorneys (at hlelatorneys@gmail.com).

71. Physical service will also be effected during the course of Wednesday 17 November 2021, as a matter of precaution.

Two handwritten signatures in black ink, one appearing to be a stylized 'S' and the other a more fluid signature.



72. There is no basis for any of the respondents to oppose the relief sought in this application and submit that the constitutionally responsible thing to do would be for the Acting Municipal Manager to call the Council Meeting. However, to the extent that it is opposed, any respondent wishing to oppose the application will be called upon to deliver a notice of intention to oppose and/or answering affidavit on or before 15h00 on Wednesday 17 November 2021 so the matter can be heard on Thursday 18 November 2021.

### **RELIEF SOUGHT**

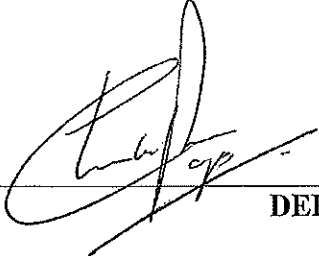
73. The relief which is sought in this application is what is lawfully required in the Structures Act, namely that the Acting Municipal Manager convene a Council Meeting in terms of section 29(2). I am advised that the Municipal Manager had *no discretion* but to convene the meeting given the peremptory provisions of section 29(2) of the Municipal Structures Act

74. Given her past unlawful conduct, and the real threat that she will continue to insist that her precautionary suspension had lapsed, an interdict to restrain the suspended municipal manger (fourth respondent) from again attending (and therefore collapsing) the meeting is also sought. I submit that it is warranted in the circumstances, as there is a reasonable apprehension of her doing so, and because this is patently unlawful.

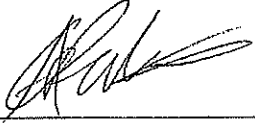
75. Due to the unlawful conduct of the First Respondent, and the clear violation of the constitutional rights of the DA, the councillors, the electorate of uMngeni, and the subversion of the democratic process, costs are sought on an attorney client scale from the First Respondent.



76. No relief is sought against the further respondents, unless they choose to oppose the relief sought, in which case costs will be sought against those respondents, jointly and severally with the First Respondent.

  
DEPONENT

Thus signed and sworn to at Umhlanga Rocks on 16 November, 2021 the deponent having declared that he knows and understands the contents of this affidavit, that he has no objection to taking the oath and that he regards the oath as binding on his conscience.

  
COMMISSIONER OF OATHS

**COMMISSIONER OF OATHS  
ADRIAN GEORGE PARKER  
LEGAL PRACTITIONER (ATTORNEY)  
OF THE HIGH COURT OF SOUTH AFRICA  
FUTCHER & POPPESQOU ATTORNEYS  
UNIT 8, LEVEL 2, THE CENTENARY BUILDING  
QUADRANT 1, 30 MERIDIAN DRIVE  
UMHLANGA NEW TOWN CENTRE**

FULL NAME:  
DESIGNATION:  
ADDRESS:



"A"



**HELEN ZILLE**  
Chairperson of the Federal Council  
Tel: +27 21 465 1431  
Email: [fedexchair@da.org.za](mailto:fedexchair@da.org.za)  
[www.da.org.za](http://www.da.org.za)  
P.O. Box 1475, Cape Town, 8000

16 Nov 2021

**MINDE SCHAPIRO & SMITH INC**  
TYGER VALLEY OFFICE PARK  
BUILDING NO. 2  
CNR WILLIE VAN SCHOOR & OLD OAK ROADS  
BELLVILLE

Attention: Ms Elzanne Jonker

Dear Ms Jonker

**DEMOCRATIC ALLIANCE / MUNICIPAL MANAGER : UMNGENI**

As the Chairperson of the Democratic Alliance Federal Council, I am duly authorised to act on behalf of and legally bind the Party. I hereby authorise **CHRISTOPHER JOHN PAPPAS** to sign all affidavits in the above proceedings.

Yours faithfully,

**HELEN ZILLE**  
**CHAIRPERSON : FEDERAL COUNCIL**

**FREEDOM. FAIRNESS. OPPORTUNITY. DIVERSITY.**



SOUTH AFRICA

## Seat Calculation Detail

Printed on: 2021/11/08 15:50:34

**"B"**

Electoral Event: LOCAL GOVERNMENT ELECTION 2021  
 Province: KwaZulu-Natal  
 Municipality: KZN222 - uMngeni

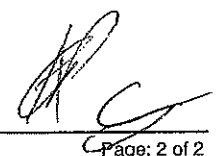
Quota (Q)	2,302
Total Valid Votes Cast for All Parties (A)	57,527
Total Seats Available in Municipality (B)	25
Independent Ward Councillors Elected (C)	0
Ward Councillors Seats from Parties with no PR List (D)	0

Formula :  $Q = (A / (B - C - D)) + 1$ ; disregarding fractions. TVV: Total Valid Votes

Party Name	Total Valid Votes	Total Valid Votes / Quota	Round 1 Allocation	Remainder	Ranking of Remainder	Round 2 Allocation	Total Party Seats
ABANTU BATHO CONGRESS	103	0.0447	0	0.0447	7	0	0
AFRICAN CHRISTIAN DEMOCRATIC PARTY	565	0.2454	0	0.2454	4	0	0
AFRICAN NATIONAL CONGRESS	23,419	10.1733	10	0.1733	5	0	10
AFRICAN TRANSFORMATION MOVEMENT	67	0.0291	0	0.0291	9	0	0
DEMOCRATIC ALLIANCE	28,345	12.3132	12	0.3132	2	1	13
ECONOMIC FREEDOM FIGHTERS	4,141	1.7989	1	0.7989	1	1	2
INKATHA FREEDOM PARTY	678	0.2945	0	0.2945	3	0	0
NATIONAL FREEDOM PARTY	117	0.0508	0	0.0508	6	0	0
THE ORGANIC HUMANITY MOVEMENT	92	0.0400	0	0.0400	8	0	0
<b>Total</b>	<b>57,527</b>		<b>23</b>			<b>2</b>	<b>25</b>

Party Name	Total Party Seats (x)	Ward Seats (y)	PR List Seats (x-y)	
ABANTU BATHO CONGRESS	0	0	0	
AFRICAN CHRISTIAN DEMOCRATIC PARTY	0	0	0	
AFRICAN NATIONAL CONGRESS	10	8	2	
AFRICAN TRANSFORMATION MOVEMENT	0	0	0	
DEMOCRATIC ALLIANCE	13	5	8	
ECONOMIC FREEDOM FIGHTERS	2	0	2	
INKATHA FREEDOM PARTY	0	0	0	
NATIONAL FREEDOM PARTY	0	0	0	
THE ORGANIC HUMANITY MOVEMENT	0	0	0	
<b>Total Party Seats</b>	<b>25</b>	<b>13</b>	<b>12</b>	
Independents		0		
<b>Total Seats</b>		<b>13</b>	<b>12</b>	<b>25</b>

Note: This report refers to the Local Government Municipal Structures Act 117 of 1998



"C"

**Nomfundo Dlamini**

---

**From:** Nomfundo Dlamini  
**Sent:** Thursday, August 26, 2021 4:46 PM  
**To:** Thembeka Cibane  
**Cc:** Mayor Cllr RS Sokhela  
**Subject:** Attention :Ms T Cibane  
**Attachments:** DOC-20210826-WA0013.pdf

Good Afternoon MM  
Please find the attached for your attention.

A hard copy of the same has been sent to you and will be hand delivered to you.

Kindly acknowledge the receipt of both.

Kind regards  
Office of the Mayor

Get [Outlook for Android](#)

Two handwritten signatures in black ink, one on the left and one on the right, located at the bottom right of the page.



**uMngeni Municipality**

P.O. Box 5  
Howick, 3290  
South Africa  
Tel: +27 (33) 239 9266  
Fax: +27 (33) 330 3006  
Email: [mayorpa@umngeni.gov.za](mailto:mayorpa@umngeni.gov.za)  
Website: [www.umngeni.gov.za](http://www.umngeni.gov.za)

## **MEMORANDUM**

TO: Ms Thembeke Cibane

EMPLOYEE NO: L-015085

Designation: Municipal Manager

DATE: 26 August 2021

### **RE: NOTICE OF PRECAUTIONARY SUSPENSION FROM WORK**

Dear Miss Cibane,

1. My letter to you, dated 29 June 2021, in which you were advised or notified of the Council's intention to place you on a precautionary suspension due to various allegations of serious misconduct against you, based on the Special Investigating Unit (SIU)'s Report, to which, even to date, you have not responded, refers.
2. Kindly be advised that, in line with the Local Government: Disciplinary Regulations for Senior Managers (2010), the Local Government: Municipal Financial Misconduct Regulations (2012), Schedule 2 of the Local Government: Municipal Systems Act (Act No. 32 of 2000), as amended, titled "Code of Conduct for Municipal Staff Members" and Schedule 8 of the Labour Relations Act (Act No. 66 of 1995), as amended, titled "Code of Good Practice", Council, after having considered the serious allegations of misconduct against you and your failure to make a representation to me on why you should not be suspended, has taken a decision to place you on suspension with full pay, pending the finalization of the investigation

and the conclusion of any disciplinary action arising therefrom.


3. The Council's decision has been informed by the following reasons, amongst others:
- (i) The allegations against you are of a serious nature as they relate to maladministration, fraud and corruption in the procurement of goods and services relating, inter alia, to the acquisition of COVID-19 Personal Protective Equipment (PPE) on the procurement for COVID-19 PPE for Umngeni Local Municipality.
  - (ii) The Report submitted and presented by the Special Investigating Unit (SIU) to Council is damning, as it suggests that you have committed an offence and a serious financial misconduct in terms of Section 173(1) of the Municipal Finance Management Act (Act No. 56 of 2003) ("MFMA"), as amended, as you are alleged to have irregularly processed the reprioritization of the Municipal Infrastructure Grant ("MIG") Funds, amounting to R19 950 000, 00, to the National Disaster Fund in response to the Covid-19 Pandemic without following the necessary due process including obtaining Council's approval on the proposed reprioritization process.
  - (iii) As a result of your action as the Accounting Officer, you have caused an unnecessary financial prejudice and reputational damage to the Municipality, which are contrary to your fiduciary duties and responsibilities, as contained in Section 61 of the MFMA and through that process, you, similarly, prevented the Mayor from exercising his obligations in terms of Section 29 of the MFMA.
  - (iv) The allegations against you are very serious and work-related. Therefore, your continued presence at work is likely to jeopardize the investigation into these allegations, particularly as some potential Witnesses may, in terms of line function, be Employees of the Municipality who are accountable or who report to you directly. Some of the information required for investigation may also be obtainable from your Office as the Accounting Officer.





- (v) The Municipality has a reasonable cause to believe that you may jeopardize the investigation into the serious allegations of misconduct against you including interference with potential Witnesses, commission of further acts of misconduct, posing of a danger to the well-being of any person or municipal property or be detrimental to the stability in the Municipality or potentially damage or tamper with the evidence.
4. Kindly hand over all the tools of trade that are assigned to you for executing your responsibilities including the Laptop and Office Keys. All these tools of trade will be returned to you after you have been cleared of allegations and charges that may be preferred against you.
  5. Further be warned that these allegations against you are not necessarily exhaustive, as the investigation may discover or establish other acts of misconduct against you.
  6. Whilst on suspension, you are advised and requested to be available to the Municipality as your Employer at all times as and when necessary, for any justifiable reason/s. However, you are directed not to enter the premises of the Municipality nor communicate or give instruction to any Member of Staff of the Municipality, unless directed or instructed by my Office.
  7. Your suspension takes place immediately. Kindly therefore ensure that you vacate your Office and the premises of the Municipality as soon as you are served with this notice. Failure to do so may lead to you being escorted out of the Municipality by the security personnel.
  8. I thank you in advance for your co-operation and understanding and look forward to this matter being resolved speedily.

Yours in service delivery.

  
MAYOR  
Cllr R. S Sokhela

**ACKNOWLEDGEMENT OF RECEIPT OF NOTICE OF PRECAUTIONARY SUSPENSION**



1) Signatory: Miss Thembeke Cibane (Municipal Manager)

Signature \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

A handwritten signature in black ink, appearing to be 'T. Cibane', located at the bottom right of the page.





"D1"

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uMngeni Municipality

**CONTINUATION OF THE IN-COMMITTEE MINUTES OF THE COUNCIL HELD ON  
WEDNESDAY 28 JULY 2021**

**COUNCILLORS:** CT Mthalane (Speaker), RS Sokhela (Mayor), NF Buthelezi (Deputy Mayor), SK Pillay, NE Ngcongco, SS Khumalo, SS Sibiya, QSB Buthelezi, BA Zuma, NJ Lewis, SD Nkuna, GT Dlamini, S Mnikathi, SM Ndlovu, JE Holmes, NN Mlotshwa, FT Cele, HM Lake, S Zondi, TS. Sikhakhane, JA Mkhasibe, PA Passmoor and CRW Millar.

**A VIRTUAL SPECIAL COUNCIL MEETING HELD ON TUESDAY 03 AUGUST 2021 AT 09:00**

**C.08.21.67 MAYOR'S PROGRESS REPOR ON SIU REPORT**

Councillor S. Zondi stated that the meeting is unprecedented, recommend that they are concern that the Council is making decisions not utilizing legal advice and also concerned about the powers. The DA are supporting the resolution of precautionary suspension by the SIU.

Councillor SD Nkuna affirmed the resolutions that Council to continue with the process as stipulated in Section 57 of the Senior Manager and adopt the report by the Mayor with its recommendations and resolution to place the Municipal Manager on precaution suspension from today, 03 August 2021. A council authorized the Mayor to appoint the legal advisor as the current lawyer who was used in the Court. The Disciplinary measure must be instituted.

Councillor JE Holmes said there is no division on the suspension of the Municipal Manager only concerned about the legal advisor in the meeting. She support the SIU Report and the disciplinary measures must be followed with legal advice.

The Speaker reported that COGTA responded to supporting the Municipality and the MEC has received the documents in order to engage and issue advices and with regards to legal support, He further stated that Council should make a recommendations on the legal support.

Councillor SM Ndlovu supported by Councillor NE Ngcongco moved and supported the Mayors recommendations. Councillor SD Nkuna opposed the legal advice by the Speaker.

Councillor JE Holmes accepted the SIU Report and supported its recommendations of disciplinary.

The Mayor requested to table the SALGA report regarding the legal advice but the Speaker responded that the document will have a shift because it is inputting into the item. The

Hon. Mayor responded that the information received will assist the meeting because in the previous meeting the Speaker practiced the same and he is following the same precedent.

The Speaker requested Councillors to comment on the matter:

Councillor GT Dlamini stated that the Mayor should have contacted the Speaker before the meeting start to table the advice. Councillor QSB Buthelezi reaffirm that a legal advice is needed.

The Deputy Mayor seconded the Mayor and they are acting on the best interest of the Council and if the information brought by the Mayor is user-friendly Council must accept it. Council should not play delaying tactics because Council authorized the Mayor to represent the Municipality. The SALGA information came at a right time when there was this meeting, Councillors should allow the Mayor to table the information and not to request another special meeting.

Councillor SD Nkuna stated that this meeting is taking the shape of the previous meeting and reaffirm that the ANC still stands by their resolutions. The SIU as the legal entity has given the directive based on the proclamation by the President to be implemented by Council.

Councillor NE Ngongo stated that if the letter will assist the Council as it was requested from SALGA, the Mayor should be allowed to beam the letter and thereafter engage on the information written on the letter.

Councillor SK Pillay concur with the Deputy Mayor by stating the Mayor should be allowed to read the matter maybe it will assist Council to make an informed decision.

Councillor SM Ndlovu concurred with the Speaker that the nature of the meeting does not allow the additional matter for discussion because this is the continuation meeting. Another special meeting can be called to discuss the letter. Councillor SM Ndlovu proposed the withdrawal of the letter. Councillor SM Ndlovu proposed that Council should vote per recommendation because there are different views.

The Speaker allowed Councillors to engage because some have different views:

Councillor BA Zuma said the Mayor should have been given the opportunity to present the letter from SALGA and stated that this meeting is rounding in circles.

Councillor Sibiya supported the recommendation to suspend the Municipal Manager as stated by Councillor SD Nkuna seconded by Councillor SM Ndlovu, Deputy Mayor and NE Ngongo.

Councillor QSB Buthelezi stated that this matter is new to Councillors and they should source for the legal advice.

Councillor JE Holmes said she would like to see the letter from SALGA and requested the Mayor to email it to Councillors.

The Mayor stated that he have no problem with withdrawing the presentation of the letter but the Council should be clear as to who present the matters that affect the Municipal Manager. He is confused who is representing Council in this matter and he withdraws the letter and will request a special council to discuss the letter.

With regard to the recommendations, the Speaker recalled that the Whips had confirmed their positions but got side tracked a little bit. He stated that when following the discussion he discovered that most Councillors do not know and not too sure what to do. The speaker stated that Councillor should consider 2 issues to discuss this matter live and observe social distance. The virtual is not conducive for this kind of meeting and the beaming of reports is not working for Councillors because of the leaking of information. He further stated that the Whips has agreed to vote on two (2) recommendations.

Councillor SM Ndlovu recalled that the DA proposed to defer the matter until the Council get a legal advice but today Councillor Zondi present another view. Councillor JE Holmes added that the DA do not have a problem with the disciplinary matter of the Municipal Manager. Councillor SM Ndlovu wanted the DA to be clear about their position in relation to the suspension. Councillor SM Ndlovu proposed that voting should be done per recommendation.

Councillor GT Dlamini insisted that the legal advice is needed and recommended that the Speaker should write a letter to the SIU request all the documents to be submitted to Council. She cited that the Speaker mentioned that COGTA has all the documents and Council should receive the same. She proposed that the Speaker should get a legal advice and the Municipality have a panel of Lawyers, the Municipal Manager and the General Manager: Corporate Services can deal with the matter on behalf of the Council.

Councillor S Zondi request a ten (10) minutes caucus. The Speaker granted five (5) minutes caucus. The meeting reconvene and the presentations from the Whips were as follows:

Councillor S Zondi said this meeting is unprecedented since becoming a Councillor and stated that on behalf of the DA caucus to retract their resolution. He also like to note that Council is making decisions not utilizing legal advice and that they are concerned regarding the Mayors powers because the Council is the highest decision making body. The DA is supporting the resolution of precautionary suspension with pay as per recommendation from the SIU Report, after all they have been through the Parliamentary Master as well as the Presidential Master. The DA retract the previous recommendation to defer the matter. The DA emphasize that they support the recommendation of the SIU report as well as the precautionary suspension.

Councillor SM Ndlovu stills stands with the Disciplinary actions as stipulated in the Section 57 Managers guidelines, the recommendations from the Mayors Report and emphasizes of the resolutions by Councillor SD Nkuna.

The Speaker took the matter to the vote but Council S Zondi asked why they are voting because there is no division. The Speaker responded that there is a division.

The Mayor requested the Speaker to clarify the division because what was said by Councillor SM Ndlovu and Councillor SD Nkuna was detailed but now the guidelines/regulations are mentioned. He also stated that the DA Whip supported part of the recommendations. The Mayor requested that the ANC Whip be given a chance to clarify what he meant by Section 57 Managers guidelines/regulations because Councillors will end up voting for something they do not understand. The Mayor suggested that Council should vote on each and every resolution he brought to Council.

The Speaker requested the ANC Whip to detail his recommendation. Councillor SM Ndlovu requested Council SD Nkuna to outline the recommendations on his behalf:

Councillor SD Nkuna stated that as ANC they reaffirm their resolutions, that Council resolve to continue with the process as stipulate in Section 5 and 6 of the Code of Conduct for the Senior Managers and that Council further adopt the report presented by the Hon. Mayor, Councillor RS Sokhela with its recommendations. Council therefore resolve to place the Municipal Manager, Ms Thembeke Cibane on precautionary suspension as of today, 03 August 2021. Council authorize the Hon. Mayor, Councillor RS Sokhela to immediately appoint the independent Investigating Officer within the next seven (7) days and that Council recommend that it be the current Lawyer who was used in the Labour Court matter. That the Disciplinary Process be finalized within the next ninety (90) days as the stipulation of the resolutions. That after the Mayor has received the report he must consult with the Speaker to arrange a special meeting for consideration of the recommendations of the Investigating Officer.

Councillor JE Holmes also raised a concern as to why they are voting when there is no division. She seconded the comments made by the DA Whip, Councillor S Zondi that they support the precautionary suspension but not the powers of the Mayor during this whole process.

The Speaker caution Councillors not to come back when the Whips have spoken. The Speaker emphasize that the matters needs to be voted upon. The DA and ANC parties agreed that there is no division and there is no need to vote.

The Speaker asked whether the powers of the Mayor should be taken into tasks. The ANC Whip responded that it supposed to be the Party Whips who declare the division not the Speaker.

The Speaker allowed Councillors to comment on the powers of the Mayor and the presentations were as follows:

- Councillor S Zondi stated that when he came back from their caucus he made it clear that the DA retract from the proposed recommendation from the previous meeting and further state that as a matter of record, they request for certain comments to be recorded e.g. the DA is fully in support of a precautionary suspension of the Municipal Manager and also concerned about the powers

delegated to the Mayor so that when this matter comes back it is reflected on comments. He also stated that every member of the Council is free to speak and sees nothing wrong when his caucus members support each other's statement. He further requested the Speaker to clarify the division because both Parties are in support of the recommendations.

- Councillor QSB Buthelezi emphasize that Council need a Legal Advisor before any decision is taken and enquired whether Councillors are deviating they no longer need a legal advice.
- Mayor, Councillor RS Sokhela also concur that there is no division but also proposed that Council should vote on each and every decision to make the Speaker's work easier. The majority voters will be implemented.
- Councillor GT Dlamini stated that she is happy the that the Hon. Mayor is in agreement with what was said before in relation to legal advice. That ever since these meetings started the issue of legal advice was raised. She also supported Councillor Buthelezi's comments.
- Councillor NE Ngcongco concur that there is no division between the Parties.
- Deputy Mayor, Councillor NF Buthelezi mentioned that Councillors are starting to confuse themselves because they are seeking division where there is none. She recalled the Speaker's comments regarding the matters raised by Councillors. She emphasize that there is no need for a vote. She further stated that the concerns of the Council should be prioritized and not play delaying techniques. She also recalled the recommendations from the SIU of putting the Municipal Manager on precautionary suspension and requested Council not to delay because the Mayor need to generate a report to be submitted to the SIU and His Excellency the President.
- Councillor SS Khumalo stated opposition will always remain which is a division. He said as the ANC Councillor he needs an expert on legal matters to advice whether he can vote with the DA party. The Deputy Mayor placed an order to this comments and request all to be addressed as Council.
- Councillor JA Mkhlasibe supported the voting process because it is clear that most Councillors are confused including him. He stated that voting will clear all the confusion and supported Councillor GT Dlamini that Council needs assistance as well as waiting a report from COGTA.
- Councillor SS Sibiyi still remain with the recommendations cited by Councillor SD Nkuna on behalf of the ANC Whip only different is the proposal by the DA concerned about the powers of the Mayor. The DA requested that the concerns must be recorded like they always do.
- Councillor SK Pilaly concurred with Councillor Sibiyi and Council should be mindful of the SIU Report.
- Councillor QSB Buthelezi in his capacity reaffirm that Council need a legal advice and cannot take something he does not understand because this process is new to them. He stated that getting a legal advice will equip them so that an informed decision can be taken. Council SM Ndlovu responded that he said the kind of the meeting is new to him but not the processes that need to followed.
- Councillor Zondi stated that with regard to the matter under discussion they do not have a recommendation but the ANC should sort out their divisions because they



have two positions. He further suggested that the ANC should go and have their caucus so that they come back with one proposal.

- Councillor Mnikathi concurred with Councillor Zondi by stating that as the DA they made it very clear that there is no division between the Political parties. But it seems as if the division is among the ANC Councillors.
- Councillor BA Zuma stated that the powers of Council are invested to the Speaker but by allowing more hand to raise their concerns it shifting the meeting focus but the Mayor corrected the statement by stating that Councillors deserve to voice their concerns.

The matter was taken to vote and the results was as followed:

8 ANC Councillors disagree with the appointment of the legal advisor and agreed that the current Lawyer who was used in the Labour Court matter should be appointed.

5 ANC Councillors agree on getting a legal advisor

DA - the Speaker said the DA abstained

After all the above concerns the Speaker read the Standing Rules and Order, Chapter 8, Section 29.3 which says "all matters before the Council must be decided by the majority of the Councillors present in the meeting." He stated that the challenge he is having is the majority of the Councillors will be seen by the division of the Councillors. That eight (8) Councillors voted for the motion is far less. He consulted the Rules and order because he needed to make a declaration regarding the outcome of the vote. He said his consultation is not concluded but the meeting is adjourned for further consultation regarding the voted Councillors.

The meeting resume and the Speaker, Councilor CT Mthlane mentioned that he has made his second consultation from SALGA and COGTA both commented on the Standing Rules and Order, Chapter 8, Section 29.3 which says "*all questions before the Council must be decided by the majority of the vote cast by the Councillors present.*" SALGA (Mr. Sabelo Gwala) and COGTA (Mr Duma) are in agreement that the interpretation of the Rules are that if Councillors present the majority of those will be 12, 15 plus 1. The majority of votes to sustain decision will be the majority of votes and all 23 Councillors were present. He stated that the recommendation or report presented is unable to make a decision because of the numbers of votes which does not have the majority of the Councillors present. He further stated that his office and that of the Mayor will discuss when the next meeting will convene. After the above summary the Speaker left the meeting.

On a proposal moved by, Councillor SD Nkuna and seconded by the Deputy Mayor, Councillor NF Buthelezi, it was

#### RESOLVED

1. That Council resolve to continue with the process as stipulate in Section 5 and 6 of the Code of Conduct for the Senior Managers.
2. That Council further adopt the report presented by the Hon. Mayor, Councillor RS Sokhela with its recommendations.

3. That Council therefore resolve to place the Municipal Manager, Ms Thembeke Cibane on precautionary suspension as of today, 03 August 2021.
4. That Council authorize the Hon. Mayor, Councillor RS Sokhela to immediately appoint the independent Investigating Officer within the next seven (7) days.
5. That the Disciplinary Process be finalized within the next ninety (90) days as the stipulation of the resolutions.
6. That after the Mayor has received the report he must consult with the Speaker to arrange a special meeting for consideration of the recommendations of the Investigating Officer.

There being no further business for discussion, the meeting was closed at 13h30.

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Confirmation Signature

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DATE





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uMngeni Municipality

**IN-COMMITTEE MINUTES OF THE SPECIAL COUNCIL**

COUNCILLORS: CT Mthlane (Speaker), RS Sokhela (Mayor), NF Buthelezi (Deputy Mayor), SK Pillay, NE Ngcongco, SS Khumalo, SS Sibiya, QSB Buthelezi, BA Zuma, NJ Lewis, SD Nkuna, GT Dlamini, S Mnikathi, SM Ndlovu, JE Holmes, NN Mlotshwa, FT Cele, HM Lake, S Zondi, TS. Sikhakhane, JA Mkhlasibe, PA Passmoor and CRW Millar.

IN ATTENDANCE:

A VIRTUAL SPECIAL MEETING HELD ON WEDNESDAY 28 JULY 2021 AT 11:00

**C.07.21.65 CONFIRMATION OF MINUTES: Special Council meeting held on the 09 July 2021**

The DA Councillors need legal advice and requested that the minutes must be deferred because they could not read them properly and they should be resubmitted after the Mayor's report on the SIU. Councillor SM Ndlovu moved for the adoption of the beamed Minutes.

After the Caucus the Whips presented as follows:

Councillor JE Holmes stated that DA position has not changed that they want the Minutes to be deferred because they could not read them properly. She further stated that given the seriousness of the matter, Council should look at a different way of holding confidential meetings. Since the country is in Level 3 the meeting could be held in a Hall so that hard copies can be given to Councillors. She is not happy deliberating on important items seeing them rushed on the screens.

Councillor SM Ndlovu moved for the adoption of the minutes and seconded by Councillor SD Nkuna.

Councillor GT Dlamini abstain her vote

Due to different views, the matter was voted upon and resulted to the following

- 10 DA Councillors deferred because did not receive ample time to read the minutes
- 11 ANC Councillors approved the minutes

On a proposal moved by, Councilor BA Zuma and seconded by the Deputy Mayor, Councilor NF Buthelezi, it was

**RESOLVED**

That the Minutes of the Special Council Meeting, held on 09 July 2021, be confirmed

**MATTERS ARISING**

The following comments were raised

- On the minutes the Mayor assured that all the information asked for will be circulated to Councillors but it was not done.
- It was stated that Councillors are liable to get a report and it should be received before the meeting continues.

The Mayor responded that what has been beamed gave Council an access to the information requested.

With regards to the copy of the letter sent by the Municipal Manager from her Attorney stating that she has not receive the documents requested. Councillor SD Nkuna responded that Council had a Court Order that was supposed to be honored by a special Council meeting on the 19 July 2021 because of technical glitches it could not materialize. On top of that it is incorrect for the Municipal Manager to forward a letter to Council because her Attorneys should have communicated the letter with the Council Attorneys. The issue of the requested evidence files and affidavits, the municipality is not in a position to deal with the case because the matter still needs to go to other processes.

**C.07.21.66 MAYOR'S REPORT ON THE SPECIAL INVESTIGATION UNIT (SIU)**

The Hon. Mayor requested to present his comprehensive report because some of the questions are part of his report.

Councillor GT Dlamini stated that the Mayor is speaking on behalf of the Council but he was not mandated and there is no Council Resolution. She requested that a letter sent to Council by the Municipal Manager must be responded to because it is addressed to Council. The Mayor responded that the letter in question is addressed to the Mayor and the Speaker then the Mayor responded to the letter. The Mayor further stated that he is willing to give feedback to Council on what transpired but it seems Councillor GT Dlamini is trying by all means to block the process. Councillor GT Dlamini responded that she did not say that the matter must not proceed and has no intention. She said that Council has to be principled when dealing with the matter and this is happening because there is no Legal advisor in this meeting.

Councillor SK Pillay supported by Councillor SM Ndlovu requested Councillors to allow the Mayor to present because when this matter was presented in the first special Council meeting the Mayor, Councillor RS Sokhela was appointed to lead the process as per the Legislation guidance. The Council delegated the Hon. Mayor, Councillor RS Sokhela to deal with the entire SIU processes and never limited him.

Councillor SS Khumalo stated that Legal Advisor should have been part of these proceedings because this matter is sensitive. He stated that his participating in the voting process it's because of his Political Party but not his choice. Hence, he requested to listen



to the recording but it was not supported because of the disagreements Council is not working collectively.

Councillor SD Nkuna responded that it is concerning that Councillors are repeating one and the same thing and is the Council really having conscientious to play oversight in such a way that some Councillors can go to any extent in trying to block the process to move forward. Subsequent to that the SIU is a state organ and it implemented the investigation on the pieces of the proclamation of the President; further to that in the meeting that Councillor SM Ndlovu have cited the Mayor was mandated to deal with this matter. He even quoted himself stating that if the Mayor did not do anything Council would have blamed him. The Municipal Manager is the one who went to Court and the Council did not seek Court assistance but Councillors could fold their arms and stop defending the Municipality. The Mayor, Councillor RS Sokhela by virtue of being a Political Head he had a responsibility to do that; hence the Council have been served with a Court Order further asked whether Council must be driven into contempt of Court by not implementing the Court Order. The meeting must proceed and the Mayor be allowed to present the report, Councillor NE Ngcongco supported.

Councillor GT Dlamini disagree with the resolution to appoint the Mayor to act on behalf of the Council but quoted them as follows:

1. That Council note the report presented by the Special Investigation Unit (SIU) as well as the complementary report of the Hon. Mayor, Councillor RS Sokhela.
2. That Council authorizes the Mayor, Councillor RS Sokhela to write a letter for the attention of the Municipal Manager, Ms. Thembeke Cibane inform her about the allegations and indication the intention for the suspension and she must respond within seven (7) days in writing.
3. That the Speaker, Councillor CT Mthlane be mandated to call a Special Council meeting within seven (7) working days

The Deputy Mayor emphasized that Council supported the Mayor to act on behalf of the Municipality. She further recalled that the Mayors report beamed to Council also included the recommendation that the Mayor must represent the Council. She further urged Councillors to allow the Hon Mayor to present his report and most of the questions raised will be covered in the report.

Councillor BA Zuma shared the same sentiment with the Mayor and requested the meeting to continue because most concerns will be responded to.

Councillor JA Mkhasibe seconded the statement made by Councillor GT Dlamini that they did not give mandate to Hon Mayor to continue with the representation but only to write a letter to the Municipal Manager notifying her of the Council intention to suspend.

Councillor GT Dlamini responded to the Hon Mayor's comment that the meeting is repeating the same thing, she stated that they are exercising their rights and Councillors were promised that COGTA or SALGA will advise Council neither legal person to guide

Council. She asked the Speaker if he agrees that the Mayor should represent Council without proper nomination and further stated that Council is legalizing what the Mayor is doing on behalf of the Council. With regarding to Mayor taking care of irregularities, Councillor Dlamini stated that things should be corrected before any irregularities comes into the picture and the legal fees will be a burden to Council.

Councillor SM Ndlovu cited that there are special meetings that were supposed to be called but they did not take place. When the Municipality appoints the Municipal Manager who did the Municipal Manager signed the Employment Contract with, it was the Mayor and all other duties has to via the office of the Mayor. For argument sake why the Municipal Manager did not sign her contract with the Speaker because the Legislation gives the Mayor authority same as the SIU report. Council does not have power to remove the Mayor, the legislation is clear in terms of his responsibility. Councillors should consult if they do not understanding the legislation.

The Speaker wanted clarity from Councillors to ascertain whether they were satisfied with the Mayor's response but Councillor PA Passmoor responded that they were not adequately responded to because the Court Order says the Mayor must provide the Municipal Manager with the annexures mentioned in the letter therefore the Municipality is not complaint with the Court Order.

The Mayor requested the Speaker to beam the information and he presented the following communiques from both the Lawyers:

- The Letter dated 22 July 2021 requesting documents was referred to the Municipality Lawyers for an advice because the Court Order from the Municipal Managers Lawyers did not stipulate the additional information. The Municipality Lawyers responded to the Municipal Managers Lawyers to refrain from sending correspondence to Council but they should send to them.
- The Letter dated 21 July 2021 talks about the unrest that delayed the stamped Court Order

The Hon. Mayor presented his progress report on the SIU matter relating to allegations of misconduct against the Head of Administration, the Municipal Manager Ms. Thembeke Cibane and other implicated officials. His recommendations were as follows:

1. Due to period of appropriately 13 days having lapsed with no representation nor explanation on delay experienced from the Municipal Manager, Ms Thembeke Cibane, yet the allegations of misconduct against her are of a serious nature. Council to grant confirmation of her precautionary suspension immediately with full pay, pending the outcome of the investigation and the Disciplinary Proceedings.
2. In line with the Local Government Disciplinary Regulations for Senior Managers, 2010 and Local Government Municipal Financial Misconduct Regulations (2017), the disciplinary process against the Municipal Manager, Ms Thembeke Cibane be

commenced with immediately and concluded within a period of 90 days, unless it is not possible to do so.'

3. If Council believes that indeed an act of misconduct has been committed by the Municipal Manager, Ms. Thembeke Cibane and the other implicated Officials, as per the Report of the SIU, Council is requested to appoint an Independent Investigator within 7 days of the Report to investigate the alleged misconduct so as to put in motion the process for Disciplinary Proceedings, in line with the uMngeni Municipality's Disciplinary Policy and Code of Conduct, Local Government Disciplinary Regulations for Senior Managers, 2010 and Local Government Municipal Financial Misconduct Regulations (2012).
4. The request from the SIU as contained in the letter dated 07 July 2021, be noted and actioned accordingly in line with the timelines provided.
5. Council support be obtained for the SIU's finalization of the remaining aspects of investigation, which includes the investigation of SCM related issues and other matters of misconduct that have been identified.
6. In order to allow the Municipality to function whilst the investigation and the Disciplinary Proceedings are underway, the Acting Municipal Manager, should be appointed for a period not exceeding 6 months to allow for the conclusion of the investigation and Disciplinary Proceedings against Municipal Manager Ms. Thembeke Cibane and the other implicated Officials.

The Hon. Mayor stated that Councillors have been insisting that the Municipal Manager must be given annexures contained in an evidence he clarified that the said documents were not part of the Court Order. Council should remember that it was the Municipal Manager that took the Municipality into Court proceedings. The documents mentioned in the Court Order were given to them immediately after the Court proceedings were issued. With regard to the evidence files, the SIU advise the Mayor not to release the file to the Councillors because it contains the evidence. Even the Lawyers agreed that they will deal with the evidence files once the charges has been formulated and when the matter is going to disciplinary.

The Speaker stated that it is true that he was cited as a responded into Court papers and from there up until today to remain cited and a recipient of papers. He said after listening to Councillors at the previous meeting, he consulted COGTA regarding the matter. COGTA requested the Speaker to submit a letter to the MEC asking for a legal support on this matter. The request has been forwarded to COGTA and awaiting a response from the MEC's office. Subsequent to that, the Speaker wrote to the Municipal Manager requesting the Municipality to source a legal support but the office of the Municipal Manager responded that it should be a Council decision to grant the Speaker a legal support.

Councillors raised the following concerns:

- Councillor GT Dlamini recalled the letters that was read by the Mayor which he responded to, the comments mentioned in the report are coming from him and not

Council. The financial implications of irregular expenditure mentioned in the report will reappear again because the Mayor is doing the same thing. She enquired as to how can the Council act on the unfinished investigation. She further stated that they did not instruct any Lawyer on behalf of Council. Letters were not sent to Council or the Municipal Manager and yet they are expected to take a decision. She said Council need a legal advice on this matter.

- Councillor SD Nkuna emphasize that, if the Municipal Manager were listening to Council in the early days when the issue of COVID 19 started and the raised concerns, the Municipality would not find itself in this situation. He said that the Mayor, the Whip had explained and this does not need any repetition. The Mayor has delegated duties by Legislation to deal with issues affecting the Municipal Manager and it is by legislation that if the Municipal Manager do anything, she directly report to the Mayor. He further stated that the Municipal Manager and her Lawyers are playing delaying tactics because she went to Court. Hence a Court Order was issued, to say Council can't deal with the matter because it is sub judice, and yet the Municipal Manager drove the Municipality into Court and a Court took a decision. The Municipal Lawyer stated in his correspondence that the documents requested by the Municipal Manager's Lawyers has been granted. The Municipal Manager was supposed to respond on the 16 July 2021 but the letter presented today is 22 July 2021. There was no response from the Municipal Manager's Lawyers because they knew that all was asked have been given to them. He emphasized that the SIU is a legal entity acted on the proclamation of the President, Council has no right to defy the instructions. If the Speaker said he sorted an advice from COGTA but Councillor SM Ndlovu stated categorically that in the previous meetings that the issue of dealing with the Municipal Manager is the sole responsibility of the Mayor. Councillor SD Nkuna move for the approval of the Mayors report as presented with it recommendations and further stated them as follows:
  - Council resolve to continue with the Disciplinary process as stipulated in Section 4 and 5 of the Code of Conduct of the Senior Managers;
  - The Municipal Manager has already been given 7 days in the first instance and another 7 days in the second instance as per Court Order and she was supposed to respond on the 16 July 2021, therefore her none response must be considered as failure to adhere to her Court Order which she sorted;
  - Council further note or adopt the report presented today by the Hon. Mayor, Councillor RS Sokhela as it is with its recommendations;
  - Council therefore resolve to place the Municipal Manager, Ms Thembeke Cibane on a precautionary suspension from today 28 July 2021 with pay and all other benefits entitled to as per her Employment Contract;
  - Council authorize the Mayor, Councillor RS Sokhela to immediately appoint an Independent Investigator within 7 days and Council recommend that it be the current Lawyer used in the Labour Court matter since he has already well vest with the matter.
  - Council authorizes the Mayor to appoint a Presiding Officer and a Prosecutor to commence with the Disciplinary process within the next 7



days and to commence with the disciplinary process as and when the Investigating Officer has completed investigation and formulated the charges.

- That the Disciplinary process be finalized within the next 90 days and upon such finalization the Prosecutor and the Presiding Officer present a report to the Mayor and after the Mayor has received the report, he must consult with the Speaker to arrange a calling of a Special Council meeting for the Mayor to table the Report by the Prosecutor/Presiding Officer and its recommendations for consideration by Council.
- The Deputy Mayor, Councillor NF Buthelezi thank the Mayor report and that he has done his part as mandated. She seconded all the recommendations mentioned by Councillor SD Nkuna.
- Councillor JE Holmes enquired whether COGTA is obliged to give the Municipality legal advice and Council must have its own legal advice in this matter. Council has no legal advice but has a Lawyer acting on behalf of Council and briefly see letters by that Lawyer to the Municipal Manager's Lawyers. Council need legal advice in terms of whether the Affidavits should be released or not. The SIU recommended that the Municipal Manager should be put on precautionary suspension as soon as possible, so the process should be speeded up under a professional legal advice.
- Councillor SS Sibiyi welcome the presentation by the Mayor and request Council to seriously look at doing justice for the uMngeni Municipality. Seconded the recommendations by the Mayor and Councillor SD Nkuna's recommendations.
- Councillor NE Ngcongco stated that in every situation if there are allegations of some sought suspension is always considers to allow the investigation to go smoothly. By so doing it does not mean that the Municipal Manager is being suspended because she is guilty. Councillor NE Ngcongco supported the recommendations by the Mayor as well as Councillor SD Nkuna.
- Councillor SK Pillay support the recommendations by Councillor SD Nkuna as well as thanking the Mayor for his report.
- Councillor QSB Buthelezi disagree with the recommendations. He stated that he need to apply his mind because they are not expert in Legal matters and that the Municipality has a panel of Attorneys which needs to be invited in this meeting. COGTA or SALGA needs to be invited to advice Council and they are not doing justice in terms of deciding on matter on hand without reading it. Council should not be misled because later consequences will bit the Council. The Speaker is seeking legal advice from COGTA and the Mayor on the other side is doing the same.

Councillor QSB Buthelezi supported the statement by the Speaker to wait for the advice from COGTA.

- Councillor SM Ndlovu requested 10 minutes caucus. After the caucus, Councillor SM Ndlovu reported that the ANC Caucus move the recommendations of the Mayor in addition with Councillor SD Nkuna's recommendations.
- Councillor S Zondi requested the Council JE Holmes read the DA Caucus position. Councillor JE Holmes stated that the DA feels that Council has not been afforded with legal advice that it should or still not have sight of the documents they promised in the last meetings. The DA like the item to be deferred until SALGA gives a legal advice and ask to receive all the documents requested.

Councillor GT Dlamini emphases that they requested the files and a detailed report from the first special Council meeting and up to now they have not yet received it. Also requested advice from the Experts in legal matters and the Mayor took a decision not having a Council support to do whatever on behalf of Council. It is not correct and will abstain her vote. The Speaker responded that the advice from the MEC's Office has arrived that the MEC has received the files and he will look at it.

Two views on the matter was raised and the voting process was proposed

It was noted that the recording is still on but the Committee Officer has left the meeting and there is no one to count the votes.

The meeting was adjourned.

There being no further business for discussion the meeting finished at 18h00.

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Confirmation Signature

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DATE



(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.



(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;





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uMngeni Municipality

**IN-COMMITTEE MINUTES OF THE COUNCIL MEETING HELD ON TUESDAY 31 AUGUST**

**2021**

COUNCILLORS: CT Mthlane (Speaker), RS Sokhela (Mayor), NF Buthelezi (Deputy Mayor), SK Pillay, NE Ngcongo, SS Khumalo, SS Sibiya, QSB Buthelezi, BA Zuma, NJ Lewis, SD Nkuna, GT Dlamini, S Mnikathi, SM Ndlovu, JE Holmes, NN Mlotshwa, FT Cele, HM Lake, S Zondi, TS. Sikhakhane, JA Mkhasibe and PA Passmoor

A SPECIAL COUNCIL MEETING HELD IN THE COUNCIL CHAMBER ON **TUESDAY 31 AUGUST 2021**  
**AT 09:00**

**OPENING AND WELCOME**

The Speaker welcomed everyone to the meeting.

**2. NOTICE OF MEETING**

The Notice of Meeting was read by the Municipal Manager.

**3. ANNOUNCEMENTS**

None.

**4. APPLICATIONS FOR LEAVE**

Councillor CRW Millar

**5. ADOPTION OF THE AGENDA**

Councillor BA Zuma adopted the Agenda and was seconded by Councillor SK Pillay.

The Speaker, Councillor CT Mthlane reported that he did not receive the Confidential Minutes prior to the meeting. Councillors were given time to go through the tabled Confidential Minutes.

**C.08.21.68 CONFIRMATION OF CONFIDENTIAL MINUTES: Special meeting held on the 28 July 2021**

The following comments were raised:

- The Deputy Mayor, Councillor moved for the confirmation to the both sets of confidential minutes.
- Councillor GT Dlamini disagree with the confirmation of the minutes, the composition format and that they are not a true reflection of what transpired.

- Councillor SK Pillay seconded the confirmation of the confidential minutes.
- Councillor HM Lake responded that these minutes are written as a composition because there were a lengthy discussions.
- Councillor JE Holmes responded that the minutes are a true reflection and a detailed minutes is what was requested for some time but only the corrections can be done
- Councilor SM Ndlovu responded to the Speaker's comment by stating that the Confidential Minutes are tabled in the meeting.
- Councillor SS Sibiya supported the way the Minutes are wrote because of the sensitivity of this matter and that they are true reflection.
- Councillor SD Nkuna proposed that the Councillors should point out the corrections of the minutes if there serious errors and that there was a need to be specific of who said what in the minutes and Councillor NE Ngongo supported the minutes.
- The Speaker, Councillor CT Mthlane responded that he never left the meeting but concluded it with a ruling which is in the minutes. He removed himself from the proposals because he made his contribution when making a consultation.

On a proposal moved by the Deputy Mayor, Councilor NF Buthelezi and seconded by, Councilor SK Pillay, it was

**RESOLVED**

That the Minutes of the Special Council Meeting held on 28 July 2021, be confirmed

**C.08.21.69 CONFIRMATION OF CONFIDENTIAL MINUTES: Special meeting held on the 03 August 2021**

On a proposal moved by the Deputy Mayor, Councilor NF Buthelezi and seconded by, Councilor SK Pillay, it was

**RESOLVED**

That the Minutes of the Special Council Meeting held on 03 August 2021, be confirmed

**C.08.21.70 THE PROGRESS REPORT ON THE SIU REPORT**

The Hon. Mayor Councillor RS Sokhela presented the following documents to Council:

- SIU referral letter dated 08 July 2021
- SALGA and COGTA correspondence as per request of the Office of the Mayor
- Minutes and Resolutions of Special Council for 03 August 2021
- Notice of Suspension to MM dated 26 August 2021
- Mayors Report

Councillors requested a 10 minutes caucus. The meeting reconvene and the following concerns were raised:

- Councillors S Zondi stated that the Speakers communique regarding COGTA's advice contradicts with the one presented by the Mayor and requested to see a written advice sent to the Speaker, Councillor CT Mthlane by COGTA. The Speaker reported that he has not responded to the matter because the Councillors

do not know what he requested from the MEC, Hlomuka and he responded to the request made by the Speaker.

- Councillor JE Holmes proposed as per the 5<sup>th</sup> recommendation that the Chief Financial Officer, Mr Mzingisi Hloba be appointed as the Acting Municipal Manager because he was not around when this transpired and he has no conflict of interest in the matter. She requested that a report regarding the implicated Service Providers should be sent to MPAC because the Internal Audit Unit raised this matter in their report in October 2020. Councillor S Mnikathi seconded the proposed recommendation.
- Councillor SM Ndlovu proposed the Chief Financial Officer, Mr Mzi Hloba to act on the Municipal Manager's position as stipulated in Section 54 (a) of the Municipal Systems Amendment Act (No. 7 of 2011). Councillor SD Nkuna seconded Councillor SD Nkuna and suggested that an incumbent to act in the position is important. The Deputy Mayor supported the recommendation.
- Councillor GT Dlamini stated that an item appointing the Acting Municipal Manager should have been attached in the Agenda and recommended that a secondment should be requested from COGTA. The Speaker supported by stating that a detailed item with recommendation should be submitted to Council in order to make an informed decision. Councillor JA Mkhasibe seconded Councillor GT Dlamini and enquired whether it is correct to appoint an Acting whilst the Council is waiting for the Municipal Manager to sign the suspension letter, will the Court of Law allow that.

On a proposal moved by, Councillor SM Ndlovu and seconded by, Councillor SD Nkuna, it was

#### RESOLVED

1. That Council take note of and support the process that has thus far been embarked upon by the Office of the Mayor including suspension of the Municipal Manager, Ms. Thembeke Cibane, with full pay, pending the finalization of investigation and the disciplinary proceedings.
2. As a point of emphasis, in line with the Local Government: Disciplinary Regulations for Senior Managers, 2010 and Local Government: Municipal: Financial Misconduct Regulations (2012), the disciplinary process against the suspended Municipal Manager, Miss Thembeke Cibane, be commenced with immediately and concluded within a period of 90 days.
3. As per the resolutions taken on a Special Council meeting held on the 3<sup>rd</sup> of August 2021, the Mayor be authorized by Council to appoint an Independent Investigator within 7 days from today, 31 August 2021 to investigate the alleged misconduct so that, if necessary, the process for Disciplinary Proceedings is put in place immediately, in line with the uMngeni Municipality's Disciplinary Policy and Code of



Conduct, Local Government: Disciplinary Regulations for Senior Manager, 2010  
Local Government: Municipal Financial Misconduct Regulations (2012).

- 4. That the request from the SIU as contained in the letter, dated 08 July 2021, be noted and actioned accordingly, in line with the timelines and recommendations provided therein.
- 5. That Council appoint Acting Municipal Manager since the Municipal Manager has been placed on precautionary suspension.

**C.08.21.71 APPOINTMENT OF ACTING MUNICIPAL MANAGER WHILE THE MUNICIPAL MANAGER IS ON PRECAUTIONARY SUSPENSION**

On a proposal moved by, Councillor SM Ndlovu and seconded by, Councillor SD Nkuna, it was

**RESOLVED**

- 1. That Council note the report that the Municipal Manager is on precautionary suspension.
- 2. That Council appoint, Mr. Mzi Hloba as the Acting Municipal Manager for the period of Municipal Manager's absence and / or in accordance with Section 54(A) of the Local Government Municipal Systems Amendment Act 7 of 2011.
- 3. That the Acting Municipal Manager, Mr. Mzi Hloba be duly authorized to endorse all documentation relating to legal matters, housing matters, project linked subsidy agreement and the likes.

There being no further business for discussion, the meeting was closed at 12h45.

\_\_\_\_\_  
Confirmation Signature

\_\_\_\_\_  
DATE



# REPORT TO THE uMNGENI MUNICIPAL COUNCIL

# "G"



**uMngeni Municipality**

PO Box 5  
3290  
Howick, South Africa

Tel: +27 (33) 239 9285  
Fax: 033-3302965  
Email: [planning@umngeni.gov.za](mailto:planning@umngeni.gov.za)  
Website: [www.umngeni.gov.za](http://www.umngeni.gov.za)

File Reference: Acting MM  
Report Number: 1

Author: RS Sokhela  
Designation: Mayor

**CONFIDENTIAL/ NOT CONFIDENTIAL**

**FOR NOTING/ CONSIDERATION**

1<sup>st</sup> Level: MANCO/ EXMANCO: (14 March 2016)  
2<sup>nd</sup> Level: CLUSTER COMMITTEE (date)  
3<sup>rd</sup> Level: AUDIT COMMITTEE (date)  
4<sup>th</sup> Level: EXCO (date)  
5<sup>th</sup> Level: COUNCIL (29 September 2021)

**SUBJECT: APPOINTMENT OF ACTING MUNICIPAL MANAGER WHILE THE MUNICIPAL MANAGER IS ON SUSPENSION**

**DATE: 29 September 2021**

1. **PURPOSE**

To obtain the Council resolution to appoint of an Acting Municipal Manager.

2. **ANNEXURES:**

2.1 Nil

3. **LEGISLATIVE PROVISIONS**

3.1 Section 54(A) of the Local Government: Municipal Systems Amendment Act (No. 7 of 2011)  
2007 Municipal Finance Management Act Regulations on the Appointment of Senior Managers

4. **BACKGROUND**

4.1 The Municipal Manager Ms. T. Cibane is currently on suspension and a need has arisen to appoint the Manager to Acting.

4.2 The Previously appointed Acting MM Mr Mzi Hloba has tendered his resignation

5. **COMMENTS FROM THE MAYORS OFFICE**

In terms of Section 54(A) of the Local Government: Municipal Systems Amendment Act no. 7 of 2011 the Municipal Council must appoint:

(a) a Municipal Manager as head of the administration of the Municipality; or

(b) an Acting Municipal Manager under circumstances and for a period prescribed.

(2) A person appointed as Municipal Manager in terms of Subsection (1) must at least have the skills, expertise, competencies and qualification as prescribed.

(2a) A person appointed in terms of subsection (1)(b) may not appointed to act for a period that exceeds three months..."

6.. **IMPLICATIONS**

7.1 **FINANCIAL**

7.1.1 salary budget for the post of the Municipal Manager.

7.2 **LEGAL**

7.2.1 Section 54(a) of the Municipal Systems Amendment Act 7 of 2011

7.3 **COMMUNICATION**

7.3.1 Council

7.4 **COMMUNITY:**

7.4.1 N/A

7.5 **SERVICE DELIVERY IMPLICATIONS:**


7.5.1 For effective and efficient service delivery to communities

8. **RECOMMENDATION**

**IT IS RECOMMENDED THAT:**

- 8.1 That Council note the report that the Municipal Manager is on suspension
- 8.2 That Council appoint an Acting Municipal Manager for the period of Municipal Manager's absence and /secondment by COGTA / in accordance with Section 54(a) of the Local Government Municipal Systems Amendment Act 7 of 2011
- 8.3 That Acting Municipal Manager be duly authorized to endorse all documentation relating to legal matters, housing matters, project linked subsidy agreement and the likes.
- 8.4 That the Council writes to COGTA requesting the secondment of the Acting Municipal Manager.

9. **SUBMITTED BY:**



Councillor RS Sokhela  
MAYOR

Contact No. 033-2399266  
E-mail: [Mayor@umnqeni.gov.za](mailto:Mayor@umnqeni.gov.za)



"H"



**uMngeni Municipality**

PO Box 5  
3290  
Howick, South Africa

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Email: [manager@umngeni.gov.za](mailto:manager@umngeni.gov.za)  
Website: [www.umngeni.gov.za](http://www.umngeni.gov.za)

Our Ref.: .....  
Your Ref.: .....  
Date:

**Office of the Municipal Manager**

**IN-COMMITTEE MEETING HELD ON WEDNESDAY 29 SEPTEMBER 2021 AT 09:35AM**

**C.09.21.82 APPOINTMENT OF ACTING MUNICIPAL MANAGER WHILE THE MUNICIPAL IS ON SUSPENSION**

On a proposal moved by, Councillor SM Ndlovu and seconded by the, Councillor BA Zuma, it was

**RESOLVED**

1. That Council note the report that the Municipal Manager is on suspension.
2. That Council appoint an Acting Municipal Manager for the period of Municipal Manager's absence and / or accordance with Section 54(a) of the Local Government Municipal Systems Amendment Act 7 of 2011.
3. That Acting Municipal Manager be duly authorized to endorse all documentation relating to legal matters, housing matters, project linked subsidy agreement and the likes.
4. That Councillor SM Ndlovu nominated Mr. HS Buthelezi (General Manager: Corporate Services), as an Acting Municipal Manager and seconded by Councillor BA Zuma.

---

Certified true extract of the minutes of the meeting

Signed-----  
Mr M Hloba  
Acting Municipal Manager

# WATCH | Drama at uMngeni Municipality's DA inauguration

The Witness

SHARE   

Siyamtanda Capa



0:00

 SUBSCRIBERS CAN LISTEN TO THIS ARTICLE

The DA in uMngeni walked out on its first council sitting on Friday.

The councillors whose party won KwaZulu-Natal's first municipality refused to participate in the meeting as it would be illegal.

The councillors led by mayor elect Chris Pappas said their participation in a meeting where a suspended municipal manager was present could render the sitting illegal.

The meeting was meant to see the election of a speaker who would then facilitate the election of a mayor and deputy mayor.

The inauguration started on a tense note as suspended municipal manager Thembeke Cibane refused to leave.

Cibane told The Witness on the sidelines that she had been at work for the past two days as her suspension lapsed.

She was suspended after the Special Investigating Unit found that there had been irregularities and maladministration in the way grant funding has been spent on Covid-19 relief.



Thembeke Cibane, the suspended MM for uMngeni Municipality, wants to officiate the DA's inauguration.

DA leader John Steenhuisen said the drama that unfolded at the Howick West Community Hall was proof the ANC had not accepted defeat in uMngeni.

"The municipal manager is suspended and if you're suspended you're not allowed to preside over administrative issues," said Steenhuisen.

Steenhuisen said Cibane's presence in the ball was patently illegal.

ANC Moses Mabhida RTT coordinator Mandla Zondi said what had happened was disappointing.

"We wanted to see our councillors sworn in so they can hit the ground running and ensure that services are delivered to the people," said Zondi.

The councillors have now moved to the Magistrate's court where they will be sworn in.

*Mindes*

MINDE SCHAPIRO & SMITH

"J"

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PO Box 4040 | Tyger Valley | 7536 | South Africa  
Tyger Valley Office Park | Building Number 2 | Cnr Willie van Schoor & Old Oak Roads | Bellville  
T: 021 918 9000 | 021 918 9012 (Direct Line) | F: 021 918 9070 (General) | 021 918 9070 (Direct Fax)

E: karin@mindes.co.za | www.mindes.co.za

Our Ref: DEM16/0799/ELZANNE JONKER/ks | Your Ref: | Date: 12 November 2021

THE ACTING MUNICIPAL MANAGER  
UMNGENI MUNICIPALITY  
PER EMAIL: [sandile.buthelesi@umngeni.gov.za](mailto:sandile.buthelesi@umngeni.gov.za)

**URGENT**

Dear Sir

**UMNGENI MUNICIPALITY COUNCIL MEETING 12 NOVEMBER 2021**

1. We represent the Democratic Alliance and all of its councillors duly elected to the uMngeni Local Municipality in the recently held Local Government Elections promulgated on 8 November 2021 (**our clients**).
2. Our instructions are as follows:
  - 2.1 You were appointed as the Acting Municipal Manager of the uMngeni Municipality (**AMM**) after the Municipality lawfully suspended the Municipality's Municipal Manager, Ms Thembeka Cibane on 26 August 2021. A copy of the letter suspending Ms Cibane is annexed marked "A". A condition of Ms Cibane's suspension is that she is not permitted to enter the premises of the Municipality.
  - 2.2 You have been acting in this position since the suspension of Cibane on 26 August 2021 after being so appointed by the Municipal Council.
  - 2.3 After the recently held Local Government Elections on 1 November 2021 you, as the duly appointed AMM, were obligated to lawfully convene the first Council meeting within 14 days after the Council was declared elected. This obligation is contained in section 29(2) of the Local Government: Municipal Structures Act 117 of 1998 (**the Structures Act**).
  - 2.4 The new Council was declared to be elected on 8 November 2021 by way of publication in the Government Gazette. Your obligation to convene a meeting was therefore triggered.

Minde Schapiro & Smith Incorporated | Attorneys Notaries & Conveyancers since 1929 | Registration number 2010/025182/21

**Directors:** Heinrich Crous BA LLB | Elzanne Jonker BA LLB | \*Jonathan Rubin B Comm LLB LLM | Venesen Reddy LLB

**Senior Associates:** Gerhard Lourens FPSA® BA LLB | Andre van Breda B Comm LLB

**Associates:** Jhané Bezuidenhout LLB | Lauren Jacobs LLB | Marlon Koen LLB

**Consultants:** Louis Meyer B Juris LLB | Marianne Olivier B Comm LLB LLM | Marais Hoon BA LLB

**Vol registration number:** 4580257428 | \*Al Greenacres, Gqeberha (previously Port Elizabeth)

MINDE SCHAPIRO & SMITH

- 2.5 You duly proceeded to lawfully convene the first inaugural meeting for 12 November 2021. The newly elected Councillors were all in attendance, together with the administrative personnel, as required by the Rules of Order.
- 2.6 Prior to the commencement of the convened meeting on 12 November 2021 it was noticed that the suspended Municipal Manager, Cibane had arrived in the Howick West Community Hall, in contravention of her suspension conditions.
- 2.7 Ms Cibane unlawfully occupied the front table where the presiding officer ordinarily sits. In blatant contravention of her suspension conditions and prepared herself to preside over the meeting in contravention of her suspension conditions. Ms Cibane had a number of council documents that had been prepared for her for the meeting. This appeared to be an agenda and councillor details.
- 2.8 Our client's councillor, Mr Christopher Pappas advised Ms Cibane that her attendance in the Council Chamber was unlawful as her suspension conditions imposed by the Council prevented her from being present.
- 2.9 At this point Ms Cibane contended that she is no longer under suspension and proceeded to chair the meeting as the Municipal manager.
- 2.10 Ms Cibane's claim that her suspension had lapsed is misplaced and incorrect. Ms Cibane was advised of her suspension in accordance with the Local Government: Disciplinary Proceedings of Senior Managers (2010) by way of notification on 26 August 2021. The legal representatives of the Municipality advised Cllr Pappas, in your presence, that Ms Cibane remained under suspension and was not entitled to be present at the meeting, let alone to preside.
- 2.11 You were aware that Ms Cibane was not allowed to be present in the hall, and was not permitted to preside over the meeting. You were aware that it was your obligation to preside over the meeting until a speaker had been elected.
- 2.12 Despite all of the above, you failed to take the Chair and proceed with the business of the day. As a result, our client, together with the Councillor of the EFF, could not remain in attendance as any decision to be taken whilst Ms Cibane purported to chair the meeting would have been unlawful. The DA and EFF councillors left the chamber. As the meeting no longer had a quorum and the meeting disbanded.

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Consultants: Louis Meyer B Juris LLB | Marianne Olivier B Comm LLB LLM | Marais Hoon BA LLB  
Val registration number: 4580257428 | \*At Greenacres, Gqeberha (previously Port Elizabeth)



# Minde

MINDE SCHAPIRO & SMITH

3. As AMM you were legally obliged by section 29(2) of the Structures Act to call the first meeting of the Council within 14 days after the Council has been declared elected in order to allow a government to be formed and certain political office bearers to be elected. You – as the lawful AMM – were obliged by s 36(3) of the Structures Act to preside over that meeting to ensure the election of a speaker.
4. Despite your obligations you failed to take any steps to preside over the meeting and facilitate the election of the political office bearers. You also failed to act to prevent Ms Cibane's unlawful attendance in the Council Chamber or ensure she was removed after she made her appearance.
5. This was a serious failure of your statutory obligations. It violated the constitutional rights of the citizens of uMngeni, and the rights of our clients.
6. Due to the legislative requirement that the first Council meeting is to be convened within 14 days after the result of the Local Government Elections have been announced, you are required to urgently re-convene the Council meeting that you called for Friday 12 November 2021.
7. Our clients demand that you reconvene the Council meeting of yesterday be at **10:00 AM on Monday, 15 November 2021**, in order for the relevant political office bearers to be elected and attend to the business of the newly elected Municipal Council.
8. Should you fail to do so, our clients have instructed us to urgently approach the High Court for an interdict ordering you to fulfil your statutory obligations.
9. Should these legal steps be necessary, we will ask the Court to grant an adverse cost order against you **personally** on a punitive scale. The Municipality cannot be held responsible for your unlawful conduct.
10. Our client shall also cause the matter to be reported to the MEC for Local Government and Cooperative Governance for further action.

Yours faithfully

**MINDE SCHAPIRO & SMITH INC.**

per:

Minde Schapiro & Smith Incorporated | Attorneys Notaries & Conveyancers since 1929 | Registration number 2010/025182/21

**Directors:** Heinrich Crous BA LLB | Elzanne Jonker BA LLB | \*Jonathan Rubin B Comm LLB LLM | Venesen Reddy LLB

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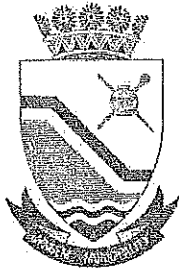
**Associates:** Jhané Bezuidenhout LLB | Lauren Jacobs LLB | Marlon Koen LLB

**Consultants:** Louis Meyer B Juris LLB | Marianne Olivier B Comm LLB LLM | Marais Hoon BA LLB

**Vat registration number:** 4580257428 | \*At Greenacres, Gqeberha (previously Port Elizabeth)

# uMngeni Local Municipality

# "K"



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Howick, South Africa  
Tel: +27 (33) 239 9200  
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Website: [www.umngeni.gov.za](http://www.umngeni.gov.za)

## OFFICE OF THE ACTING MUNICIPAL MANAGER

Our Ref.:

Your Ref.: DEM16/0799/ELZANNE JONKER/KS

Date: **14 NOV. 2021**

**Minde Schapiro & Smith Attorneys**

**P O Box 4046**

**Tyger Valley**

**7536**

SENT BY E-MAIL: [elzanne@mindes.co.za](mailto:elzanne@mindes.co.za)

Dear Sirs

### **UMNGENI MUNICIPAL FIRST COUNCIL MEETING**

Receipt of your letter dated 12 November 2021 is acknowledged.

Please be advised that I had already written to the MEC for Cooperative Governance and Traditional Affairs in KwaZulu Natal Mr. SE Hlomuka, MPL (see attached) advising him that I am unavailable to carry out the task of convening and presiding over the first council meeting/inaugural meeting. My reasons are self-explanatory and contained in the letter referred to above.

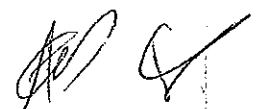
In terms of Section 29 and 36 of the Local Government Structures Act, Act 117 of 1998 as amended, in circumstance such as this, the MEC must designate a person who will convene and preside over the meeting. I am not privy to the intentions of the MEC, however, adequate notice for the meeting should be given in line with the requirements of the Rules and Orders of the municipality. Furthermore, the Chief Electoral Officer will

A handwritten signature in black ink, appearing to be the name of the Acting Municipal Manager, is written over the end of the letter.

have to be notified of the meeting, for him/her to attend to the election provided for in Section 23 and Schedule 2 of the act supra.

Even if I had not referred the matter to the MEC, which I have, it would be improbable for me to convene the meeting for Monday, 15 November 2021, given the logistics and associated arrangements.

Kind regards,  
**Mr. HS Buthelezi**  
**Acting Municipal Manager**

A handwritten signature in black ink, appearing to be 'HS Buthelezi', located in the bottom right corner of the page.

# uMngeni Local Municipality

"L"



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Howick, South Africa  
Tel: +27 (33) 239 9200  
Fax: +27 (33) 330 3006  
Email: manager@umngeni.gov.za  
Website: www.umngeni.gov.za

## OFFICE OF THE ACTING MUNICIPAL MANAGER

Our Ref.:

Your Ref.:

Date: **12 NOVEMBER 2021**

**HONOURABLE MEC  
MR. SE HLOMUKA  
WADLEY HOUSE  
PIERTERMARIZBURG  
3200**

DEAR MR. SE HLOMUKA

### **REQUEST FOR THE MEC CORPORATE GOVERNANCE AND TRADITION AFFAIRS TO DISIGNATE A PERSON TO CALL THE FIRST MEETING OF COUNCIL**

I hereby in my capacity as Acting Municipal Manager of uMngeni Local Municipality request the Honourable MEC for COGTA to designate a person to call for the first Council Meeting of uMngeni Local Municipality.

I have been appointed by Former Council to act as Municipal Manager a month ago following suspension of the Resident Municipal Manager. I am thus not able to proceed with the processes of holding the first Council Meeting as envisage by Local Government Municipality Structures 117 of 1998.

Yours Faithfully  
**Mr. HS Buthelezi**  
**Acting Municipal Manager**

A handwritten signature in black ink, appearing to be 'HS Buthelezi', is written over a dark, textured background.

Mindes

MINDE SCHAPIRO & SMITH

"M"

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PO Box 4040 | Tyger Valley | 7536 | South Africa  
Tyger Valley Office Park | Building Number 2 | Cnr Willie van Schoor & Old Oak Roads | Bellville  
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E: karin@mindes.co.za | www.mindes.co.za

Our Ref: DEM16/0799/ELZANNE JONKER/ks | Your Ref: | Date: 15 November 2021

ACTING MUNICIPAL MANAGER  
PER EMAIL: [sandile.buthlezi@umngeni.gov.za](mailto:sandile.buthlezi@umngeni.gov.za)

Dear Sir

**UMNGENI MUNICIPALITY - COUNCIL MEETING**

1. Your letter dated 14 November 2021 refers together with the correspondence addresses to the Minister of Corporate Governance and Traditional Affairs.
2. We wish to respond as follows:
  - 2.1 You were appointed as Acting Municipal Manager in accordance with Section 82 of the Municipal Structures Act 117 of 1998 (the Act) on 29 September 2021 and your appointment remains valid and operative and the resolution for your appointment does not terminate or lapse because there has been an intervening election / new council;
  - 2.2 As you are the Acting Municipal Manager, there is no "the absence of the municipal manager" as envisaged in section 29(2) of the Structures Act and the request to the MEC for COGTA for a designation is unnecessary and any designation by the MEC of COGTA would be unlawful. It will moreover cause delay and the council meeting must urgently be called because section 29 of the Structures Act requires the meeting to be called within 14 days which days will expire on 22 November 2021;
  - 2.3 You are called on to give notice of a meeting to be held on or before Monday 22 November 2021 by no later than **11am tomorrow, 16 November 2021** (Tuesday) failing which an application will be launched urgently to seek relief compelling you to do so. Such matter will be in court on Thursday 17 November and this letter serves as notice on that urgent hearing, date and relief that will be sought.
  - 2.4 This letter will be put up in correspondence accompanying the urgent application and punitive costs sought.

Minde Schapiro & Smith Incorporated | Attorneys Notaries & Conveyancers since 1929 | Registration number 2010/025182/21

Directors: Heinrich Crous BA LLB | Elzanne Jonker BA LLB | \*Jonathan Rubin B Comm LLB LLM | Venesen Reddy LLB  
Senior Associates: Gerhard Lourens FPSA® BA LLB | Andre van Breda B Comm LLB  
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Consultants: Louis Meyer B Juis LLB | Marianne Olivier B Comm LLB LLM | Marais Hoon BA LLB

Vat registration number: 4580257428 | \*At Greenacres, Gqeberha (previously Port Elizabeth)

*Minde*

MINDE SCHAPIRO & SMITH

Yours faithfully

**MINDE SCHAPIRO & SMITH INC.**

per:

*(Electronically sent therefore unsigned)*

CC: MEC COGTA

Per email: [senzelwe.mzila@kzncogta.gov.za](mailto:senzelwe.mzila@kzncogta.gov.za)



---

Minde Schapiro & Smith Incorporated | Attorneys Notaries & Conveyancers since 1929 | Registration number 2010/025182/21

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**Vat registration number:** 4580257428 | \*At Greenacres, Gqeberha (previously Port Elizabeth)

"N"

**UMNGENI MUNICIPALITY STANDING RULES AND ORDERS OF MUNICIPAL COUNCILS  
AND COMMITTEES OF THE COUNCIL BY- LAW – 2016**



Be it enacted by the Council of the uMngeni Municipality, in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996, read with section 11(3)(m) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), as follows:

**ARRANGEMENT OF SECTIONS**

*Section*

**CHAPTER 1**

1. Definitions

**CHAPTER 2**

**APPLICATION AND INTERPRETATION OF RULES AND ORDERS**

2. Application of these Rules and Orders
3. Interpretation of these Rules and Orders

**CHAPTER 3**

**FREQUENCY, ADMISSION OF PUBLIC AND NOTICE OF MEETINGS**

4. Council meetings
5. Admission of public
6. Notice to attend an ordinary council meeting
7. Special meetings
8. Service of notices and agenda
9. Non-receipt of notice

**CHAPTER 4**

**QUORUM**

10. Quorum
11. Cancellation and adjournment in absence of quorum



system, tabled in council;

(e) the decision to enter into a service delivery agreement;

(f) any reports on an award in terms of supply chain management policy;

(g) the disposal or acquisition of municipal capital asset;

(h) any other matter prescribed by legislation.

(3) The municipal manager must give notice to the public, in a manner determined by the council, of the time, date and venue of every ordinary meeting of the council or committee of the council and any special or urgent meeting of the council or committee of the council, except when time constraints make this impossible.

(4) Members of the council together with members of the public attending any council or committee meetings must accord the meeting the dignity it deserves by dressing appropriately as per Rule 41(d) and must not wear any attire which could be ascribed to a political party

#### **Notice to attend an ordinary council meeting**

6.(1) The speaker must convene meetings of the council, at least once every three months, through a duly signed "Notice of Council Meeting", stating the date, place and time of the meeting and accompanied by or containing the agenda of the proposed meeting.

(2) Notice to attend a meeting in terms of section 6(1) must be given at least –

(a) five calendar days prior to an ordinary meeting; and

(b) two calendar days prior to a special meeting.

#### **Special meetings**

7.(1) The speaker must call a special meeting of the council –

(a) for the purpose of pertinent or urgent council business; or

(b) or at the request of a majority of the councillors of the municipality.

(2) A special meeting must be held in compliance with section 6(2)(b) and in terms of section 7(1)(b) no later than four days from the date of receipt of a request.

(3) A request for the calling of a special meeting, as contemplated in section 7(1)(b), must –

(a) be signed by no less than fifty percent plus one of all councillors of the municipality; and

(b) be accompanied by –

(i) a duly signed notice of motion; and



**IN THE HIGH COURT OF SOUTH AFRICA**

**(KWAZULU-NATAL DIVISION, PIETERMARITZBURG)**

Case number:

In the matter between:

**DEMOCRATIC ALLIANCE**

Applicant

And

**THE ACTING MUNICIPAL MANAGER**

First Respondent

**uMNGENI LOCAL MUNICIPALITY**

Second Respondent

**MEC FOR CO-OPERATIVE GOVERNANCE AND  
TRADITIONAL AFFAIRS, PIETERMARITZBURG**

Third Respondent

**THEMBEKA CHIBANE**

Fourth Respondent

---

**CONFIRMATORY AFFIDAVIT**


---

I, the undersigned

**JANIS EMMELINE HOLMES**

do hereby make oath and say:

1. I am an adult female. I am a member of the Democratic Alliance ("DA"), DA councillor elected to the uMngeni Municipality, and speaker-elect of the uMngeni Local Municipality, the second respondent.

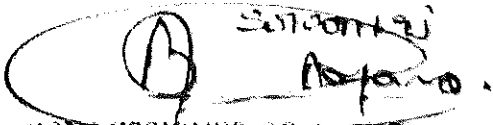
AZ. 

2. The facts contained herein are, to the best of my knowledge, true and correct and are, unless otherwise stated or indicated by the context, within my personal knowledge.
  3. I have read the Affidavit deposed to by Christopher Pappas and confirm the correctness thereof insofar as it pertains to me.
  4. I confirm specifically that I was present at the Council meeting where it was resolved to appoint the First respondent as the Acting Municipal Manager.
  5. I confirm that I have obtained a copy of the Sheriff's Return of Service confirming that the Notice of the Fourth Respondent's Disciplinary Hearing was served on her and that it confirms the disciplinary hearing had been set down for 2 November 2021.
- I attach the Return as Annexure JH1.

  
DEPONENT

Thus signed and sworn to at Howick on 16<sup>th</sup> November 2021, the deponent having declared that he knows and understands the contents of this affidavit, that he has no objection to taking the oath and that he regards the oath as binding on his conscience.

SOUTH AFRICAN POLICE SERVICE	
2021 11 16	
Zandile Mnyama	
MOLIS Moding Street	
HOWICK	

  
COMMISSIONER OF OATHS  
FULL NAME:  
DESIGNATION:  
ADDRESS:

JH1 "B"

**IN THE DISCIPLINARY HEARING  
UMNGENI MUNICIPALITY**

Case No – Saak No **NONE**



In the matter between:  
UMNGENI MUNICIPALITY  
and:  
THEMBEKA CIBANE

**EMPLOYER**  
**EMPLOYEE**

Return in accordance with the provisions of the Supreme Court Act 59 of 1959, as amended

On this 22nd day of OCTOBER 2021 at 14:30 I served this LETTER DATED 12 OCTOBER 2021, INDEX TO EMPLOYER'S BUNDLE, FORENSIC INVESTIGATION REPORT BY MHLANGA INCORPORATED, LETTER FROM DEPARTMENT OF COOPERATE GOVERNANCE AND TRADITIONAL AFFAIRS DATED 31 MARCH 2020, LETTER FROM NATIONAL TREASURY DATED 2 JUNE 2020, BUSINESS PLANS SUBMITTED BY ULM TO COGTA ON 7 APRIL 2020, AMENDED BUSINESS PLAN SUBMITTED TO COGTA BY ULM ON THE MIG-MIS SYSTEM, MIG-MIS PRINTOUTS OF PROJECTS REGISTRATION FORMS SUBMITTED BY ULM, NOTIFICATION OF REGISTRATION OF PROJECTS ("NOR") FOR ULM, LETTER FROM NATIONAL TREASURY DATED 26 JUNE 2020, NOTICE OF MOTION AND FOUNDING AFFIDAVIT OF THEMBEKA CIBANE DATED 8 JULY 2021 FILED AT THE LABOUR COURT IN DURBAN UNDER CASE NUMBER D419/2021 WITH ANNEXURES, FULL SET OF ALL COUNCIL MEETINGS FOR THE YEAR 2020, MINUTES OF COUNCIL MEETING HELD ON 30 SEPTEMBER 2020, AGENDA OF THE COUNCIL MEETING OF 28 OCTOBER 2020 WITH ANNEXURES, MINUTED OF COUNCIL MEETING HELD ON 28 OCTOBER 2020, COPY OF PAYMENT PACK FOR OKHAMBULA FOR HIRING OF 30 TONN EXCAVATOR, COPY OF PAYMENT PACK OF OKHAMBULA FOR CLEANING OF ILLEGAL DUMPING SITES, COPY OF PAYMENT PACK FOR OKHUMBULA FOR TRANSPORTATION, INSTALLATION AND CONSTRUCTION OF JOJO STANDS, COPY OF PAYMENT PACK OF SANIZERO CONSTRUCTION FOR SUPPLYING DELIVERY OF 20 TON EXCAVATOR, COPY OF PAYMENT PACK OF SANIZERO CONSTRUCTION FOR TRANSPORTING JOJO TANKS FROM CATO-RIDGE TO HOWICK, COPY OF PAYMENT PACK OF SANIZERO CONSTRUCTION FOR HIRE OF 20 TONN EXCAVATOR FOR MINING, COPY OF PAYMENT PACK FOR SIYANDA FARMING FOR FENCING OF DUMP SITES, COPY OF PAYMENT PACK FOR GESH FOR SUPPLYING 30 SKIP BINS AND 5 SKIP TRAILERS, COPY OF NATIONAL TREASURY MFMA CIRCULAR 100, UMNGENI MUNICIPALITY SUPPLY CHAIN MANAGEMENT POLICY DATED 1 JULY 2019, UMNGENI MUNICIPALITY SUPPLY CHAIN MANAGEMENT POLICY: PART 2 DATED 1 JULY 2019, SPECIAL INVESTIGATION REPORT, AFFIDAVIT OF SM CHAMANE, GOVERNMENT GAZETTE PROCLAMATION NO. R23 OF 2020, LETTER FROM THE DEPARTMENT OF COOPERATIVE GOVERNANCE, BUSINESS PLAN SUBMITTED ON THE MIG-MIS SYSTEM, APPROVAL OF FUNDING FROM COGTA, COPY OF NATIONAL TREASURY MFMA CIRCULAR 100, UMNGENI MUNICIPALITY SUPPLY CHAIN POLICY DATED 1 JULY 2019, AFFIDAVIT OF MR LEPULE, COPY OF PAYMENT PACK OF OKHAMBULE FOR HIRING OF 30 TON EXCAVATOR, COPY OF PAYMENT PACK OF OKHAMBULE FOR CLEANING OF ILLEGAL DUMPING

Continued ..

Sheriff Fees Baljuggelle	Date Datum	Tax Invoice Number Belastingfaktuur Nr.
 		
VAT Reg No. I&TW Reg Nr.	You may require this account to be taxed and vouched before payment. U kan versoek die hierdie rekening getelks en geslaaf word voor betaling	
	Totaal Totaal	

**Allan Murugan**  
Acting Sheriff  
Durban South  
P O Box 47407  
Greyville  
4023  
Tel 031 3097062  
Fax 031 3097369  
accounts@sheriffdnorth.co.za  
Premises  
Bank: FNB  
Branch: 210 654  
Account: Acting Sheriff  
Durban South  
Acct. No. 627 6900 9757

Form Deklar © Sheriffsdien Noord (Pty) Ltd

Account No. ♦ Rekening Nr.  
Your Reference ♦ U Verwysing  
My Reference ♦ My Verwysing

JH 1

IN THE DISCIPLINARY HEARING  
UMGENI MUNICIPALITY

Case No - Saak No NONE

In the matter between:  
UMNGENI MUNICIPALITY  
and:  
THEMBEKA CIBANE

EMPLOYER  
EMPLOYEE

Return in accordance with the provisions of the Supreme Court Act 59 of 1959, as amended

AND COPIES, COPY OF PAYMENT PACK OF ORHAMRULU FOR TRANSPORTATION, INSTALLATION AND CONSTRUCTION OF JOJO STANDS, AFFIDVIT OF MS LBPULU, COPY OF PAYMENT PACK OF SANIZERO FOR SUPPLY AND DELIVERY OF 20 TON EXCAVATOR, COPY OF PAYMENT PACK OF SANIZERO FOR TRANSPORTING JOJO TANKS FROM CATO RIDGE TO HOWICK, COPY OF PAYMENT PACK OF SANIZERO FOR HIPE OF 20 TON EXCAVATOR FOR MINING, AFFIDAVIT OF MR MANSOOR, AFFIDAVIT OF THEMBSILE KHUMALO, ANNEXURES "TK1" - "TK7", SPECIAL INVESTIGATION REPORT, ANNEXURES "A1" - "A5", NOTICE OF MOTION AND FOUNDING AFFIDAVIT, FOUNDING AFFIDAVIT, DRAFT ORDER, DRAFT ORDER, AFFIDAVIT BY RICHARD SIZWE SOKHELA, SUI ACKNOWLEDGMENT OF RECEIPT, LETTER FROM SUI DATED 7 MAY 2021 TOGETHER WITH ANNEXURES, EMAIL CORRESPONDENCES, AND DISCIPLINARY REGULATIONS FOR SENIOR MANAGERS 2010 upon THEMBEKA CIBANE personally at 4 SAN PABLO 3 TECOMA KINGSBURGH by handing to the abovementioned a copy thereof after exhibiting the original and explaining the nature and exigency of the said process. (Rule 4(1)(a)(i)).

Appearance Date: 02 NOVEMBER 2021.

Note: The original return together with the original abovementioned process is despatched to the mandator.

Sheriff Fees Hefoggende	Date Datum	25.10.2021	Tax Invoice Number Belasting/faktuur Nr.	I 61163	
			Description	Qty	Vat Amount
			REGISTRATION	1	1.63 11.00
			RETURN	1	6.30 42.90
			SERVICE	1	10.50 70.50
			TRAVELLING	1	69.00 460.00
			EMERGENCY FEE	1	67.50 450.00
			EMAIL SENT	1	3.63 23.50
			VAT COPY	1	0.10 1.00
			HANDLING CHARGES	1	3.38 23.50
			VAT / BTW		162.10
VAT Reg. No. HIW Reg. Nr.	4140208549	You may require this account to be issued and validated before payment. U kan verzoek doen hierdie rekening getekend en gevalideerd word voor betaling		Total Totaal	1244.30
MHLANGA INC ATTORNEYS PO BOX 3221 DURBAN 4000 (DOCEX: 25 DURBAN)			Account No. • Rekening Nr. Your Reference • U Verwysing My Reference • My Verwysing Ref: 164009/SHANTAL/1	3684 VatReg MR HLONGWANE/LM/L:UO	
			DAMIRI CROUSE Deputy Sheriff <b>Allan Murugan</b> Acting Sheriff Durban South P.O. Box 47107 Geyville 1023 Tel: 031 3097062 Fax: 031 3097369 accounts@shantalfinnorth.co.za Bank: FNB Branch: 210 554 Account: Acting Sheriff Durban South Code: 627 6900 9757		
			Registrar: UMGENI MUNICIPALITY		