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**Our Ref:** DEM16/0857/ELZANNE JONKER | **Your Ref:** | **Date:** 11 October 2022

ACTING MUNICIPAL MANAGER  
KNYSNA MUNICIPALITY

Dear Sir

**IN RE: APPOINTMENT OF VARIOUS SUPPORT STAFF TO POLITICAL OFFICE BEARERS**

I Introduction

1. We represent the Democratic Alliance (DA).
2. On 16 September 2022, at a special council meeting, the Municipal Council of the Knysna Local Municipality (Municipality) approved the creation of various support staff roles to political office bearers. By 3 October 2022, these posts were filled.
3. These posts were created and filled unconstitutionally. Council created the posts without the necessary consultation, and without any consideration for whether the posts were necessary or affordable. These posts were promptly filled, without advertising the vacancies, shortlisting and interviewing candidates, and following recruitment legal processes. In one case, the Executive Mayor has hired an individual for whom no approved post exists.
4. The process adopted by the Municipality flagrantly ignores the prescripts of the Local Government: Municipal Staff Regulations No. 890 published in Government Gazette 45181 (Regulations), the Local Government: Guidelines for the Implementation of the Municipal Staff Regulations No 891 published in Government Gazette 45181 (Guidelines), the Knysna Local Municipality Recruitment and Selection Policy of 30 May 2019 as approved in Council Resolution C03/05/19 (Recruitment Policy), and the Knysna Local Municipality Placement Policy of 30 May 2019 as approved in Council Resolution C03/05/19 (Placement Policy).
5. We write this letter to demand that you do not sign any contracts of employment between the Municipality and the persons chosen to fill the new roles. We further demand that you take steps to rectify the Municipality's unconstitutional creation of

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and appointments to the seven support staff roles. These steps include proposing subsequent council resolutions and, if necessary, approaching the High Court of South Africa for appropriate relief.

6. We emphasise up front that failure to do so may result in personal liability. Section 32 of the Local Government: Municipal Finance Management Act 56 of 2003 (MFMA) provides that the municipal manager is liable for unauthorised expenditure deliberately or negligently incurred. Section 32 further provides that an official of a municipality who deliberately or negligently committed, made or authorised an irregular expenditure, or a fruitless and wasteful expenditure, is liable for that expenditure.
7. In what follows, we set out the background to the staff support roles, then detail how the creation of and appointments to the posts are unconstitutional.

## II Background

8. On 16 September 2022, the Municipal Council, in resolution SC03/09/22, approved the creation of the following support staff roles for political office bearers:
  - 8.1. For the Executive Mayor's office: Chief of Staff (T15) and Public Relations Officer (T12).
  - 8.2. For the Deputy Executive Mayor's office: Head of Office (T14), Personal Assistant (T8), and Political Advisor (T12).
  - 8.3. For the Speaker's office: Head of Office (T14) and Personal Assistant.
9. The majority of councillors voted in favour of these appointments. There were seven votes from the African National Congress (ANC), two from the Patriotic Alliance (PA), one from the Plaaslike Besorgde Inwoners (PBI), and one from the Economic Freedom Fighters (EFF).
10. The resolution did not contain any information about the necessity or affordability of these seven positions. The resolution only provided:

Council, in terms of Resolution No: SC09/10/18, adopted a three (3) year organizational structure until June 2021, in a special Council meeting held on the 28 October 2018. Council further directed the Municipal Manager to develop an implementation plan.

Council further resolved, in terms of Resolution No: SC01/05/19, C05/08/2020 and SC04/05/2021 to approve additional positions on the organizational structure.

Currently, the organizational structure comprises of only four (4) positions for the support of the Office of the Political Office Bearers. The staff component of the political office

bearers that is permissible in terms of the staff regulations can be found in annexure F Category B, see the attached annexure F.

In line with section 5 (1) (b) Local Government: Municipal Staff Regulations, the Staff establishment should provide capacity to support the offices of the Public Office Bearers, and the below table reflects the recommended positions that should be added which are permissible in terms of the staff regulations."

11. The resolution does not provide for the financial implications of the new posts. The resolution simply provides, under the heading "Financial Implications": "Budget and Payroll should provide the costs of the changes".
12. The cumulative cost of these seven appointments is estimated at around R3 million.
13. On 3 October 2022, the DA became aware that these persons commenced employment in the newly created positions:
  - 13.1. In the Executive Mayor's office:
    - 13.1.1. Chief of staff: Ms Michelle Botha, who was a Patriotic Alliance Councillor in the Bitou Local Municipality. She is the wife of Eugene Botha, the Patriotic Alliance's legal advisor.
    - 13.1.2. Public Relations Officer: Mr Marvine Placitjies.
  - 13.2. In the Deputy Executive Mayor's office:
    - 13.2.1. Head of Office: Mr Morton Gericke. Mr Gericke is the brother of Virgil Gericke, who is the founder of the PBI.
    - 13.2.2. Personal Assistant: Ms Lorrain Helger.
  - 13.3. In the Speaker's office:
    - 13.3.1. Head of office : Mr Moyisi Magalela, an ANC stalwart.
    - 13.3.2. Personal Assistant: Ms Nendipha September. Ms September is the daughter of PA supporter and funder, Cedric September.
14. The DA also learned that Mr Elrick van Aswegen commenced employment at the Executive Mayor's office as a political advisor. Council did not approve the creation of this post on 16 September 2022. Council approved a political advisor for the Deputy Executive Mayor. But Mr Aswegen commenced employment as a political advisor in

the Executive Mayor's office. Mr van Aswegen was originally a member of the Congress of the People, but then stood for the ANC in the last local government elections.

15. There was no process leading up to the creation of these posts. The Acting Municipal Manager simply proposed that the posts be created. Similarly, there was no process prior to filling the posts. The relevant persons simply appeared to be employed by the Municipality from 3 October 2022.

III The unconstitutionality of creating and filling the posts

16. The Regulations, Guidelines, Recruitment Policy, and Placement Policy prescribe a multi-stage process for creating and filling municipal posts. The process begins with reviewing a municipality's staff establishment, proceeds to advertising, shortlisting, and interviewing, and ends with appointment.

17. The Municipal Council's decision to create the seven support roles, and their subsequent filling, breached every stage of the prescribed multi-stage process.

18. Regarding the decision to create the roles, the decision did not include—

- 18.1. A review of the Municipality's staff establishment;
- 18.2. Job descriptions for the new roles; and
- 18.3. The creation of roles authorised by the Regulations.

19. As for the decision to fill the posts—

- 19.1. The appointments did not meet general and competency requirements;
- 19.2. The Municipality did not advertise the vacant posts;
- 19.3. Applicants did not apply on the prescribed forms;
- 19.4. There was no selection committee;
- 19.5. The Municipality did not shortlist and interview applicants;
- 19.6. The Municipality did not consider references and conduct personal credential verification; and
- 19.7. The Municipality acted for an ulterior purpose.

20. Both decisions, to create and fill the posts, are thus inconsistent with the Constitution of the Republic of South Africa, 1996.

- (a) The decision to create the posts

21. First, the Acting Municipal Manager failed to review the Municipality's staff establishment as required prior to creating new roles.
22. The Regulations and Guidelines provide for a detailed process of review before a Municipal Manager may propose the creation of a new role. With respect to the Regulations:
  - 22.1. Regulation 6(1) provides that a Municipal Manager must review a staff establishment considering, inter alia, the municipality's strategic objectives, including its core and support functions.
  - 22.2. Regulation 6(3) requires the municipal manager to review a draft staff establishment in consultation with recognised trade unions within the local labour forum.
  - 22.3. Regulation 6(4) obliges a municipal manager to prepare a report on the proposed staff establishment for approval by the municipal council. Regulation 6(5) prescribes elements of the report, which include details of the financial implications of changes to staff establishment.
  - 22.4. Regulation 6(7) requires the municipal manager to submit their report to the MEC, with or without amendments as approved by the municipal council. Only once the MEC considers the report, and provides comments (if any), can the Municipal Council approve the staff establishment.
23. The Guidelines, in guideline 1A, further provide:
  - 23.1. Reviews of staff establishments must be driven by, inter alia, any material changes to the powers and functions of a municipality (clause 1(1)). Changes to staff establishment, in other words, cannot just occur on the whim of a municipal manager. Reviews must be driven by changes at the municipality.
  - 23.2. A review includes a diagnosis that should firstly identify the need and intent of staff establishment review. The diagnosis must include an analysis of whether the municipality's service delivery model and staff establishment, among other things, support the municipality's mandate and complies with regulations (clause 2(1)).
  - 23.3. The main objective of the review is to ensure that it reflects the municipality's mandate and meets its obligations to its community (clause 4(1)).



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- 23.4. In reviewing the staff establishment of the municipality, the municipal manager should look for opportunities to create posts that explicitly define and streamline roles and responsibilities and eliminate non-value added or waste activities (clause 9(1)).
- 23.5. Before conducting staff establishment reviews, municipal managers should ask “Have you unpacked the intent behind reorganising or redesigning your municipality?”, “Do you understand what value is created and how to enhance it within your municipality?”, and “Do you have a clearly articulated strategy in line with the municipality’s integrated development plan?” (Table 5).
24. None of these requirements relating to the review of a staff establishment were met. The Acting Municipal Manager simply proposed the creation of seven new roles, with no review of the Municipality’s staff establishment. There was no consideration of the Municipality’s objectives and budget, no consultation with trade unions, no report, no submission to the MEC—nothing.
25. Second, the Acting Municipal Manager failed to present job descriptions for the new roles.
26. Regulation 7 of the Regulations provides that every job on the staff establishment of a municipality must have a written job description. A job description must contain at least the job title, purpose of the job, the location of the job on the staff establishment, key responsibilities, competencies and minimum requirements of the relevant job.
27. Guideline 1B provides:
- “The development of a job description must be preceded by—
- (a) collection of relevant information about the job, including but not limited to interviewing the supervisor and where applicable, the incumbent of the post, a labour representative or conducting a comparative analysis of similar posts in other similar sized municipalities;
  - (b) completion of the job analysis questionnaire and the job description template;
  - (c) verification of the correctness of the job description; and
  - (d) consultation with the relevant signatories of the job description for final authentication and approval”
28. The Acting Municipal Manager failed to present job descriptions for the new roles, let alone undertake the required preceding steps in guideline 1B.
29. Third, the Acting Municipal Manager and the Council failed to create posts consistent with the Regulations.

30. Regulation 5(3) provides that “the number of posts as set out in Annexure F may be provided on the approved staff establishment of the offices of the political office bearers, subject to the category, size and affordability of municipality, including approval by council of the municipality”.
  31. Annexure F lists the possible support staff available to political office bearers.
  32. With respect to executive mayors of Category B municipalities, the possible support staff are: Chief of Staff, Administrative Secretary, Private Secretary, Special Advisor, Community Liaison Officer, Receptionist, and Driver.
  33. With respect to deputy executive mayors, Annexure F provides these support staff roles: Head of Office, Administrative Secretary, Private Secretary, and Driver.
  34. Annexure F does not include a Public Relations Officer for executive mayors. Annexure F does not include a political advisor for deputy mayors. Yet the Council approved the creation of such posts in the Executive Mayor’s and Deputy Mayor’s respective offices. So, the Council contravened Annexure F. The Council created roles not authorised by Annexure F.
  35. Regulation 5(4) provides that a municipality may deviate from regulation 5(3) “in exceptional circumstances and upon good cause shown, and in consultation with the relevant MEC for local government”. Deviation may occur after considering various factors, including the the financial capacity of the municipality.
  36. The Acting Municipal Manager and Council did not make out a case for deviating from regulation 5(3). They did not consult the MEC for local government. They did not consider the various relevant factors. The resolution does not even provide for the financial implications of deviating from regulation 5(3). It cannot be suggested then that the Municipality properly deviated from regulation 5(3) in terms of regulation 5(4).
  37. For these three reasons, the decision to create the seven posts is unconstitutional.
- (b) The decision to fill the posts
38. First, the appointments did not meet general and competency requirements.
    - 38.1. Regulation 9(4)(c) obliges the Municipality to conduct a job evaluation before filling a new post. No job evaluation was conducted.



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38.2. Regulation 11 (3) provides that a vacant post may only be filled if it is budgeted for and approved by the municipal manager. The appointment of the seven staff was not budgeted for.

38.3. Regulations 12 and 13 provide that no person may be appointed to a post unless he or she possesses the relevant competencies, qualifications and experience as set out in Annexure A to the Regulations. The Municipal Council and the Acting Municipal Manager did not even consider whether the appointed persons possess these qualifications. The DA's councillors do not know whether the persons qualify for the relevant posts because of the furtive appointment process.

38.4. Guideline 2A provides:

When a vacancy occurs or a new post has been created that has not been filled, the supervisor within whose delegated authority the post falls must—

- (a) confirm with the manager responsible for human resources that the post is approved and funded;
- (b) develop the required job description, in collaboration with human resources;
- (c) complete a written request and motivation to fill the vacant or new post; and
- (d) ensure that the specified inherent requirements of the job are reasonable and necessary to perform the duties associated with the post and are non-discriminatory.

38.5. None of these requirements were met. There was no confirmation of funding. There was no job description. There was no request and motivation to fill the vacant or new post.

38.6. With respect to the Executive Mayor's political advisor, the Municipality appointed a person to a post that does not exist. The Council did not approve the creation of a political advisor for the Executive Mayor's office.

39. Second, the new positions were not advertised at all.

39.1. Regulation 14 provides that the municipality must advertise a post after the approval referred to in subregulation 11(3)(a) has been obtained. Regulation 14 spells out, in significant detail, how the advertisement is to be made.



- 39.2. Guideline 2A, clause 5.1.1 of the Recruitment Policy, and clause 9.1.1.4 of the Placement Policy similarly require that the Municipality advertise a post before filling it.
- 39.3. But the appointments were clandestine and surreptitious. There was no attempt to advertise the positions.
40. Third, applicants did not apply on the prescribed forms.
- 40.1. Regulation 15(1) provides that “[a]n application for a vacant post must be made on the form that is attached as Annexure B”. The requirement is peremptory. Regulation 15(5) provides that “[a]pplications not made on the prescribed application form will render any appointment or contract entered into, between the municipality and the successful candidate invalid”.
- 40.2. Clause 5.1.2 of the Recruitment Policy similarly provides for application forms and requires their use by applicants.
- 40.3. Accordingly, the appointment of the candidates is invalid.
41. Fourth, there was no selection committee. Regulation 16 provides that the municipal manager must appoint a selection panel for each advertised post to recommend the appointment of a suitable person to the vacant post. Clause 5.1.3 of the Recruitment Policy similarly envisages a selection committee. But, in this case, there was simply no selection committee. The DA is in the dark as to who selected the relevant persons for the new support roles.
42. Fifth, not only was there no selection committee, but there were also no selection criteria, shortlisting of candidates, and interviews.
- 42.1. Regulation 17(1) requires the municipality to compile a shortlist of all applications received for the post evaluated against the relevant competency requirements for the post.
- 42.2. Guideline 2A obliges the appointed selection panel to determine the selection criteria, according to the specific competencies, skills and abilities required for satisfactory performance in the job, and the key performance areas of the vacant post. Clause 5.1.3 of the Recruitment Policy is similar in effect, while clause 5.3 provides for competency tests during the recruitment process.
- 42.3. Regulation 18(4) provides that the selection panel must interview shortlisted candidates. Guideline 2A provides the same. The purpose of the interview is to

expand on information provided in the application, collect new information, further assess the applicant's degree of competence and assess whether the applicant matches the requirements of the job

- 42.4. None of this happened. The Municipality appointed persons without selection criteria, shortlisting, and interviews.
43. Sixth, the Municipality did not consider references and conduct personal credential verification.
- 43.1. Regulation 19, Guideline 2A, and clause 5.4 (of the Recruitment Policy) prescribe reference checks and personal credential verification for shortlisted candidates. A written report on the outcome of the reference checks and personal credential verification must be compiled and considered before the appointment is concluded.
- 43.2. The relevant persons were appointed without any of these checks. To the DA's knowledge, the Municipality did not even perform police clearance tests on the appointed persons.
44. Seventh, the Municipality acted for an ulterior purpose.
- 44.1. The Municipality appointed persons affiliated to political office bearers and councillors.
- 44.2. Ms Michelle Botha is the wife of Eugene Botha, the PA's legal advisor. The PA voted in favour of the creation of a post for Ms Botha.
- 44.3. Mr Morton Gericke. Mr Gericke is the brother of Virgil Gericke, who is the founder of the PBI. The PBI voted in favour of creating a post for Mr Gericke.
- 44.4. Ms Nendipha September is the daughter of PA supporter and funder, Cedric September.
- 44.5. The PA, PBI, and ANC only voted to create the posts so that they can secure employment for their associates. Patently, this is an ulterior purpose. Councillors can only vote to create new posts at a municipality to further that municipality's objectives and fulfil constitutional duties. Councillors cannot vote to create posts only to benefit their friends and family. To do so is to act for an ulterior purpose.
45. For these seven reasons, the Municipality's decision to fill the posts is unconstitutional.

IV Conclusion

46. The DA demands that the Acting Municipal Manager cease any steps in the appointments to the seven posts. The Acting Municipal Manager must not sign any employment contracts with the relevant persons, or otherwise facilitate their appointment.
47. The DA further demands that the Acting Municipal Manager takes steps to reverse the appointments, to the extent that the appointments have already been made, and the creation of the posts. These steps may include introducing a resolution to repeal the appointments and the creation of the posts. The steps could also include approaching the High Court for appropriate relief.
48. If the Acting Municipal Manager fails to take these steps, then the DA reserves the right to approach the High Court for appropriate relief. The relief could include personal orders, like costs orders, against the Acting Municipal Manager and office bearers involved in the above illegalities. We reiterate that section 32 of the MFMA envisages personal liability for irregular and wasteful expenditure.
49. The DA requests a response to this letter within seven days, by 17 October 2022.

Yours faithfully

**MINDE SCHAPIRO & SMITH INC.**

per: 