



Vaal River City, the Cradle of Human Rights

Web: www.emfuleni.gov.za

OFFICE OF MUNICIPAL MANAGER

Tel: +27 16 950 5102
Fax: +27 16 950 5030
E-mail: mmsecretary@emfuleni.gov.za

P.O. Box 3

c/o Klasie Havenga Street and
Frikkie Meyer Boulevard
VANDERBIJLPARK
1911

Web: www.emfuleni.gov.za

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5. COGTA050

(I) **The Outcome of the disciplinary hearing against the CFO, Mr.Dyakala**
He has been found guilty in respect of Charges 1 (Contravention of Sections 55 and 67 of the Municipal Systems Act; as well as Section 61 of the Municipal Finance Management Act) and Charge 5 (Contravention of Item 2 (d) of the Code of Conduct for Municipal Staff Members). He was exonerated in respect of Charges 2-3 and 4.

Subsequent to the outcome, the sanction imposed by the Presiding Officer was as follows:

- The employee is directed to publish an *unconditional* apology to all those who are members of the work related WhatsApp group on the same platform within **24 hours** of reporting for duty and no later than **72 hours** of this ruling, and also to send a formal written apology to the Human Resources Department for keeping in his employee file.
- In such an apology, he must *inter alia*, record his unequivocal regret for the unjustified vitriolic comments made previously against his colleagues and undertake not do so ever again. Failure to comply with this ruling will constitute an act of misconduct.
- The employee should report for duty on **25 August 2022**
- The employee is issued with a **FINAL WRITTEN WARNING** which should be extant for 12 months reckoned from the date of this ruling.

The Municipality proceeded to institute review proceedings before the Labour Court to set aside both the ruling (on the "not guilty" outcome) and the grossly lenient and erroneous sanction imposed.

(II) **The role of Rasegoete Attorneys in the matter**

- Rasegoete Attorneys conducted an investigation into the allegations of misconduct against Mr.Dyakala; and furnished the Municipality with the investigation report that formed the basis of the disciplinary proceedings against Mr.Dyakala. They (Rasegoete Attorneys) further testified in the disciplinary hearing in respect of their

investigation report and its recommendations that culminated in a disciplinary hearing against Mr.Dyakala.

(III) When the Municipality utilised the services of Rasegoete Attorneys:

- Rasegoete Attorneys were appointed on the **17th of March 2022** as a result of the Council Resolution of the **16th of March 2022**. Their services concluded on the **29th of April 2022** when they furnished the Municipality with an investigation report. However and in the same breath, they were called upon to testify in the disciplinary proceedings against Mr.Dyakala, as the said proceedings were resulted from the findings and recommendations made in their report.

a) What services were required from Rasegoete Attorneys

- The Municipality required Rasegoete Attorneys to conduct an investigation and furnish the municipality with an investigation report into the allegations of misconduct against Mr.Dyakala in relation to the following:
 - The extension of contracts for Municipal staff members employed in the Political Offices during October 2021;
 - Potential breach of SCM processes in respect of appointment of service provider for the burial of the late Councillor Mnune;
 - The appointment of the service providers for the short-term insurance brokerage services;
 - SCM irregularities - supply of COVID-19 PPE;
 - SCM irregularities - printing of municipal accounts;
 - Regulation 32 of the Municipal Chain Management Regulations; and
 - Disparaging social media remarks made by Mr.Dyakala against his colleagues.
- Furthermore, Rasegoete Attorneys were subsequently called upon to testify in the disciplinary proceedings against Mr.Dyakala, as the disciplinary proceedings resulted from the findings and the recommendations in their investigation report.

b) The amounts that Rasegoete Attorneys was

- Rasegoete Attorneys was paid in accordance with the agreed tariff with the Service Provider in terms of the Service Level Agreement.

(IV) Detailed breakdown of the R2 407 474.07 in legal fees associated with the CCMA and the Bargaining Council

- These fees were paid in accordance with the tariffs applicable as provided for in the Service Level Agreement.

(V) The amount of R2 075 562.07 in legal fees associated with the Labour Court and the Labour Court

- These were paid in accordance with the tariffs applicable as provided for in the Service Level Agreement.

(VI) **How many times has the Municipality had to defend the matter at various forums:**

- **The CCMA:** The Municipality has appeared **two (2) times** at this forum, under case number **GAVL3318-2**. This is to the exclusion of other legal activities associated with such appearances, including but not limited to the compilation of the necessary pleadings and arguments.

As a matter of fact, a ruling has now been issued, indicating that the CCMA does not have jurisdiction over the matter due to the principles of LisPendens, and should in fact be ventilated at the Labour Court under the auspices of the Review Application proceedings that Mr.Dyakala is not cooperating with.

- **The Bargaining Council:** The Municipality appeared **one (1) time** at this forum; and the matter was transferred to the CCMA due to the fact that Mr.Dyakala does not fall under the Collective Agreement on account of his position as CFO.

- **The Labour Court:** The Municipality has appeared eight (8) times in the Labour Court, broken down as follows:
 - Case Number J454/22 (**two times**)
 - Case Number J1198/22 (**two times**)
 - Case Number J1311/22 (**one time**)
 - Appearance on costs (**three times**)

Each appearance was also characterised by other associated legal activities such as the compilation of pleadings and arguments. All of these appearances were at the instance of the CFO who took the Municipality to court; and all his applications were dismissed with costs.

- **The High Court:** The matter has not commenced at this forum.

(VII) **The monies that have been recovered from the suspended CFO amount to**

- **R450 570.24**

5. COGTA052.With regard to the employee of Emfuleni Local Municipality, Mr. Silence Azwindini Munwai, could the MEC please indicate the following:

- (i) The position Mr.AS Munwai holds;**
 - Senior Engineering Technician
- (ii) The exact date that Mr.Munwai manager filed for a protection Order against him**
 - The Manager: Parks & Cemeteries file protection order on 11th May 2016.

(iii) **What the reasons for this protection order were;**

- Allegation: Threatening to shoot and kill the Manager Parks and Cemeteries. This was triggered by his always absent from work.

(iv) **What Mr.Monayi's annual salary is, in rands and cents;**

- R597 012.00 pa

(v) **The total amount paid to Mr.AS Munwai by the municipality since a protection order was instituted against him to date.**

- Annual Salary R597 012.00 pa. (Mr SA Munwai is still getting his monthly salary.

(vi) **By when the municipality will finalize this matter?**

- Mr SA Munwai was transferred to the department Sports and his matter is still pending.

April Ntuli

Municipal Manager