

1. **INTRODUCTION**

1.1. This is an urgent motion for the removal of the Executive Mayor, Khumalo Molefe, in accordance with the provisions of Section 58 of the Municipal Structures Act, 117 of 1998.

2. **BACKGROUND FACTS**

Allegations of misconduct against the Municipal Manager

2.1. During December 2023, the Executive Mayor tabled an item to Council in terms of which, he brought, to the attention of Council, serious allegations of misconduct against the Municipal Manager as contemplated in the Local Government Disciplinary Regulations for Senior Managers, 2010 (“the Regulations”). The Item is attached hereto as **Annexure “A”**.

2.2. The allegations related to the following:

- 2.2.1. Over payment of service providers in supply of PPE transactions as discovered by the Special Investigation Unit (“SIU”) Report;
- 2.2.2. Irregular payments to service providers for plant hire;
- 2.2.3. Irregular appointment of service providers;
- 2.2.4. Failure to address material irregularities found by the Auditor-General;
- 2.2.5. Failure to comply with Council Resolutions;
- 2.2.6. Irregular appointment of Competency Assessment Provider in the appointment of Senior Managers; and
- 2.2.7. Failure to address the Seweding and Ramosadi Villages sewer spillages.

2.3. As a result of the Executive Mayor’s report to Council, Council resolved to mandate the Executive Mayor to solicit reasons from the Municipal Manager on why he should not be suspended pending an independent investigation. Council also resolved that an external investigator be

appointed to investigate the allegations against the Municipal Manager and to report to Council within 30 (thirty) days. The Council Resolution is attached hereto as **Annexure “B”**.

- 2.4. Regulation 6(4) of the Disciplinary Regulations provides that Council should consider representations made by a Senior Manager and then resolve on whether or not to suspend such a Senior Manager.
- 2.5. Regulation 5(1) to (7) provides that Council should appoint an independent investigator to investigate allegations of misconduct and that several legal steps must follow to ensure accountability and consequence management.
- 2.6. In terms of the Regulations, the Executive Mayor, having brought the allegations of misconduct against the Municipal Manager to the attention of the Council, and having been mandated by Council to solicit representations from the Municipal Manager and to appoint an external investigator to investigate the allegations, had an obligation to return to Council to pursue the procedure outlined in the Regulations.
- 2.7. A period of approximately seven (07) months has lapsed since the allegations of misconduct against the Municipal Manager were brought to the attention of Council and the allegations remain pending and not investigated. The Municipal Manager is continuing in his duties despite the serious allegations of misconduct levelled against him.
- 2.8. The allegations against the Municipal Manager, in part, emanate from investigations conducted by the SIU in terms of a presidential proclamation. There are serious legal implications and consequences that flow from ignoring and/or failing to act on recommendations made by the SIU.
- 2.9. Currently, the Municipal Council may be viewed to have neglected to act against the Municipal Manager, to at least, investigate these allegations as contemplated in the Regulations (the law).

- 2.10. It is the Executive Mayor who has placed the Council in this precarious legal situation, due to his failure to execute the mandate issued to him by Council, to pursue the Municipal Manager's suspension and his failure to comply with the Disciplinary Regulations by failing to bring a report to Council in terms of which an investigation had to be pursued.
- 2.11. It has come to knowledge that the Executive Mayor addressed correspondence to the Municipal Manager in accordance with the Council Resolution. The correspondence is attached hereto as **Annexure "C"**. The Municipal Manager responded to the Executive Mayor's correspondence. The response is attached hereto as **Annexure "D"**. A contextual reading of the Municipal Manager's response raises an apprehension that the Executive Mayor's failure to table this matter before Council is likely connected to his endeavour to conceal from Council, the serious allegations that the Municipal Manager raises in his response. The Executive Mayor had an obligation to bring to the attention of Council all the relevant facts and information to enable Council to resolve on this matter.

Failure to disclose pertinent information to Council

- 2.12. On the 01st of August 2023, the then MEC of COGHSTA, Honourable PDN Maloyi addressed correspondence to the Executive Mayor, in terms of which he expressed his dissatisfaction and nonconcurrence with the decision of the Municipal Council to appoint Mr MJ Rassool and Ms GP Moroane as Senior Managers in the Municipality. The MEC's letters are attached hereto as **Annexure "E"** and **"F"**.
- 2.13. The MEC requested inputs and responses from the Municipal Council in relation to the appointments. The MEC contemplated taking steps to nullify the appointments as contemplated in Section 54A of the Municipal Systems Act.

- 2.14. The Executive Mayor, failed to inform Council of the MEC's position and correspondence in relation with the appointment of the two Senior Managers.
- 2.15. The appointment of Senior Managers is an exclusive competency of the Municipal Council. In essence, the letter of the MEC was addressed to the Municipal Council and it was the Municipal Council's exclusive right to resolve on the correspondence from the MEC and its legal implications. The Executive Mayor deprived the Municipal Council of its right to exercise its legislative powers.
- 2.16. The Executive Mayor's conduct as aforementioned constitutes a serious breach of his legal obligations and a breach of the Code of Conduct for Municipal Councillors.

3. **LEGAL FRAMEWORK**

3.1. The Municipal Structures Act, 117 of 1998 and Ngaka Modiri Molema District Municipality Rules of Order Standard By-Laws (herein after "Rules of Order") are applicable to the removal of the Executive Mayor. The relevant portions of the framework are discussed herein under.

3.2. Section 58 of the Municipal Structures Act states that:

"A municipal council, by resolution may remove its executive mayor or deputy executive mayor from office. Prior notice of an intention to move a motion for the removal of the executive mayor or deputy executive mayor must be given."

3.3. In **Ingquza Hill Local Municipality & Another v Mdingi (1110/2019) [2021] ZASCA 75**, the Supreme Court of Appeal held that:

"[11] The importance of giving notice to members of the council was underscored in Democratic Alliance v Matika and

Others,^[3] a matter that dealt with a removal of the executive mayor. The court there held:

'As far as national legislation is concerned, we are of the view that the provisions of section 58 of the MSA are indeed intended to facilitate and achieve the objects in the Constitution, for the simple reason that the democratic right to participate, as intended in the Constitution, cannot be exercised by a member or councillor if he/she is unaware of the fact that the meeting is going to take place.

. . .

. . . In the present case, however, the complete failure to give notice to Mr Matika and any of the other councillors had in our view frustrated the object that decisions must be taken in circumstances where all members of a council had been given the opportunity to participate and to debate before voting takes place and a decision is reached.'

[12] The court further referred to *Makume and Another v Northern Free State District Municipality and Others*,^[4] in which it was stated:

'[I]n the absence of a proper notice of the intended motion there could have been no valid council resolution to carry the . . . motion. No council resolution can be taken in a vacuum. A municipal council is an assembly of divergent political parties. These various political parties had their say when the executive mayor was enthroned by popular vote. Those various political parties ought to have their say when the executive mayor is dethroned. Logically those various political parties in the local assembly cannot democratically have their say in a meaningful way unless they are timeously notified prior to the relative council meeting by way of a written notice of the intended motion.

. . . Any councillor or any political party intending to impeach the executive mayor was legally obliged to timeously inform, not only the mayor, but also each and every member of the municipal council of his or her intention to do so. . . . Certainly it is not enough to say the executive mayor knew beforehand that he was going to be removed. The fact of the matter is that all the councillors irrespective of their political affiliations were also entitled to know. . . . Respect for law is as important as clean public administration itself. None of the two should be sacrificed on the altar of the other.'

[13] *Finally, the court in Matika referred to the decision of the Constitutional Court in Democratic Alliance and Another v Masondo NO and Another, which held that 'inclusive deliberation prior to decision-making' is required to give effect to s 160(8) of the Constitution. It then concluded that '[i]n our view it is clear that even if a single councillor was deprived of the right to debate and to participate, because of the absence of notice, the objects of the Constitution and of the MSA would have been frustrated'.*

[14] *Therefore, notice is necessary to afford the affected member(s) an opportunity to be aware and to consider the motion before it is tabled for discussion. Additionally, it is to provide council members similarly with an opportunity to engage meaningfully in the ensuing debate before a resolution is taken."*

3.4. Clause 30.1 of the Standing Rules and Orders of Council provides that:

"A councillor may move a motion on an urgent basis provided that a notice is handed to the speaker 24 hours before a scheduled meeting."

- 3.5. Clause 30.2 of the Standing Rules and Orders of Council provides that the Speaker must consider the following factors upon receipt of an urgent motion:

- “30.2.1 *Whether the subject matter of the request is of such a serious nature that it requires immediate attention.*
- 30.2.2 *Whether the subject matter of the request relates to a specific matter of recent occurrence.*
- 30.2.3 *Whether the request is confined to one subject matter.*
- 30.2.4 *Whether the request can be dealt with by some other means in the near future.*
- 30.2.5 *Whether the request concerns a matter for which Council may be held responsible.*

- 3.6. In terms of Clause 30.3 the Speaker having considered the aforementioned factors must then make a ruling as to whether the motion will be tabled before Council.

4. **DISCUSSION**

- 4.1. The functions and powers of the Executive Mayor are regulated by Section 56 of the Municipal Structures Act.

- 4.2. Section 56 states that:

56. *Functions and powers of executive mayors*

“

- (3) *The executive mayor in performing the duties of office, must—*

....

(d) *monitor the management of the municipality's administration in accordance with the directions of the municipal council;*

....

(f) *perform such duties and exercise such powers as the council may delegate to the executive mayor in terms of section 59 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).*

.....”

- 4.3. Schedule 1 to the Municipal Systems Act, the Code of Conduct for Councillors provides as follows:

“2. General conduct of councillors

A councillor must-

- (a) *perform the functions of office in good faith, honestly and a transparent manner; and*
- (b) *at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.”*

- 4.4. It is clear from Section 56 and the Code of Conduct, that the Executive Mayor has an obligation to monitor the management of the administration, in accordance with the direction of the Municipal Council and to exercise all duties as directed and instructed by Council.
- 4.5. The Executive Mayor failed to exercise his duties in compliance with the Disciplinary Regulation for Senior Managers, by failing to pursue the suspension of the Municipal Manager and to pursue, with Council, the investigation of serious allegations of misconduct against the Municipal Manager.

- 4.6. The Executive Mayor exposed the Municipal Council to serious legal implications, by failing to pursue recommendations issued by the SIU related to malfeasance in the Municipality.
- 4.7. The Executive Mayor concealed from Council the Municipal Manager's representation, which representations contained serious allegations against the Executive Mayor. This conduct is at odds with the Executive Mayor's duty of good faith towards Council and has deprived Council of its right to exercise its powers and functions.
- 4.8. The Executive Mayor concealed the correspondence from the MEC, related to the appointment of Senior Managers, a function that is within the exclusive power and competence of the Municipal Council.
- 4.9. It is herein recommended that the Council adopts the motion to remove the current Executive Mayor in terms of the provision of Section 58 of the Municipal Structures Act.
- 4.10. Alternatively, it is recommended that the Council should place the Executive Mayor on special leave pending an investigation.

5. **RECOMMENDATIONS**

- 5.1. That Council takes cognisance of the content of this item.
- 5.2. That Council resolves on the removal of the Executive Mayor, Khumalo Molefe, with immediate effect.
- 5.3. Alternatively, that the Council resolves to place the Executive Mayor on special leave pending an investigation in terms of Clause 14(1), (2) and (3) of the Schedule 1 of the Municipal Systems Act 32 of 2000, "*The Code of Conduct for Municipal Councillors*".

Mover Cllr KD Motlhatlhedhi

Seconder Cllr W Pretorius

ITEM TO COUNCIL

November 2023

RE: THE INSTITUTION OF INVESTIGATION PROCESSES AND PLACING THE MUNICIPAL MANAGER ON SUSPENSION

1. PURPOSE

- 1.1. The purpose of this item is to recommend that the Municipal Council resolves on instituting investigation proceedings against the Municipal Manager, Mr Allan Losaba, subsequent to various allegations of misconduct reported upon by, *inter alia*, the State Investigating Unit.
- 1.2. The Municipal Council is furthermore recommended to consider placing the Municipal Manager on precautionary suspension pending finalisation of the aforementioned investigations.

2. LEGAL OR STATUTORY REQUIREMENTS

- The Municipal Systems Act.
- The Local Government: Disciplinary Regulations for Senior Managers, 2010.

3. BACKGROUND AND APPLICABLE LAW

- 3.1. The Municipal Manager is alleged to have committed serious acts of misconduct in the appointment and/or payments of service providers during the procurement of PPE and other covid related expenditure. The aforementioned allegations arise from an SIU investigation sanctioned by the President of the Republic of South Africa in terms of Proclamation 23 of 2020.
- 3.2. The aforementioned allegations of serious misconduct as contained in the SIU report are substantiated upon below. The Municipal Council is duty bound to consider the allegations and where necessary, institute investigation and disciplinary proceedings.
- 3.3. The Municipal Manager is furthermore alleged to have failed and/or refused and/or neglected to address material irregularities raised by the Auditor-General of South Africa. Furthermore, the Municipal Manager is alleged to have failed and/or refused and/or neglected to comply with the Municipality's Council resolutions. The aforementioned allegations, including the irregular appointment of a service provider to conduct competency assessments for senior managers, are substantiated below.

- 3.4. The institution of investigation processes to investigate allegations of misconduct against a senior manager are prescribed in Regulation 5 of the Local Government: Disciplinary Regulations for Senior Managers, 2010.
- 3.5. Regulation 5(3)(a) prescribes that *"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"*.
- 3.6. The placing of a senior manager on precautionary suspension is prescribed in Regulation 6 of the Local Government: Disciplinary Regulations for Senior Managers 2010, 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:
 - 4.1.1 the presence of the senior manager at the workplace may;
 - (a) jeopardise any investigation into the alleged misconduct
 - (b) endanger the well-being or safety of any person or municipal property,
 - (c) be detrimental to stability in the municipality,
 - (d) the senior manager may interfere with potential witnesses or commit further acts of misconduct.

4. DISCUSSION

Allegations arising from the SIU report

- 4.1. The SIU investigation report alleges that the following service providers, who were appointed by the Municipality to provide PPE, including latex gloves, surgical masks and sanitisers were appointed and/or paid excessive prices in comparison to prescribed National Treasury prices:
 - 4.1.1. CN Fire Safety overcharged by R24 000.00.00;
 - 4.1.2. Four Ways Projects overcharged by R161 480.00;
 - 4.1.3. Pulaneo overcharged by R48 765.00; and
 - 4.1.4. Biological Pharmaceutical overcharged by R26 858.70.
- 4.2. The SIU furthermore found that the Tractor Loader Backhoe ("TLBs") logsheets for Tamsca Construction and Plant Hire had the registration of small vehicles which are not TLBs. The Municipality, notwithstanding the aforementioned misrepresentation, effected

payment to the aforementioned service provider amounting to R752 020.00.

- 4.3. The SIU furthermore found that Bosa Projects was irregularly appointed for one or more of the following reasons:
 - 4.3.1. The purchase order was issued after services were rendered;
 - 4.3.2. The appointment was in contravention of MFMA circular 100 and/or Circular 102;
 - 4.3.3. There was no request for quotations; and
 - 4.3.4. There were no standard bidding documents submitted.
- 4.4. The SIU found that Rensch Trading was irregularly appointed for one or more of the following reasons:
 - 4.4.1. The service providers was appointed without any procurement processes followed;
 - 4.4.2. There were no requests for quotations;
 - 4.4.3. The appointment did not comply with National Treasury circulars; and
 - 4.4.4. There were no standard bidding documents submitted.

Failure to address Auditor-General material irregularities

- 4.5. It is alleged that the Municipal Manager failed and/or refused and/or neglected to address, partly or wholly, the following material irregularities raised by the Auditor-General:
 - 4.5.1. Material irregularity in respect of Water Tankering and Sanitation No.2 of 2018/2019 and No.3 of 2019/2020;
 - 4.5.2. Material irregularity in respect of Systems of Expenditure Control and Management Control (Security) No.02 of 2018/2019; and
 - 4.5.3. Material irregularity in respect of New Building and Existing Building and New Gate House No.1 of 2018/2019.

Failure to comply with Council resolutions

- 4.6. It is alleged that the Municipal Manager failed and/or refused and/or neglected to implement the resolutions of the Municipal Council adopted at its Strategic Planning Retreat held from 15 to 19 May 2022. The aforementioned resolutions (which ought to be implemented by the Municipal Manager) include, but are not limited to:

- 4.6.1. Investigate all matters related to unauthorised, irregular, fruitless and wasteful expenditure and to take appropriate actions; and
- 4.6.2. Fully review, properly design and align the macro & micro organisational structure to the assigned powers & functions of the municipality.

Competency based assessment for senior managers

- 4.7. It is alleged that the Municipal Manager irregularly appointed a service provider not accredited by the Department of Cooperative Governance and Traditional Affairs to conduct competency-based assessments related to the appointment of senior managers.
- 4.8. The aforementioned service provider resultantly evaluated senior managers utilising an evaluation and/or competency assessment criterion which is not prescribed in the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers.

Seweding and Ramosadi villages sewer spillages

- 4.9. During July 2023, a bulk water pipeline between Seweding and Mmabatho disintegrated and caused sewage spillage in Seweding and Ramosadi villages.
- 4.10. On or about 18 October 2023, and in response to the aforementioned sewage spillage, the Municipal Council resolved on the following:
 - i) *Council noted the progress report on the sewerage spillages in Seweding, Ramosadi and surrounding villages, because of the burst main sewer pipeline on Bray Road.*
 - ii) *Council resolved that funding for costs relating to the following items be redirected from the 2023/24 Operations & Maintenance budget vote allocation:*
 - *Sewer pipeline refurbishment works, across the district.*
 - *Environmental rehabilitation activities, which should include plan for rehabilitation and bioremediation of affected households as per DEDECT proposal as per their directive.*
 - iii) *Council resolved that provision be made for possible litigations against the Municipality*

- iv) *Council resolved that the Municipality include the Department of Water and Sanitation (DWS) & the Municipal Infrastructure Support Agent (MISA) in the assessment of the scope of works, quantities, norms, and standards associated with the remainder of the repair works.*
- v) *Council authorized the amount of 15 million Rand to R80 Million rands for this disaster.*
- vi) *Council resolved that public participation be organized with the affected stakeholders with urgency.*

4.11. Despite the aforementioned availability of resources as authorised by the Municipal Council, the Municipal Manager has failed and/or refused and/or neglected to properly effect emergency measures directed towards resolving the aforementioned sewage spillage. The aforementioned misconduct includes the failure to appoint a service provider to attend to the sewage spillage.

Investigation

4.12. The aforementioned allegations of misconduct levelled against the Municipal Manager are of a senior nature and demonstrate maladministration and the failure to act in the best interest of the Municipality.

4.13. The Municipal Council is duty bound to appoint an external investigator to investigate allegations of misconduct considered to be serious and where there is a reasonable cause to believe that the misconduct has been committed.

4.14. It is furthermore foreseeable that during the aforementioned investigation, the Municipal Manager, as the head of administration, may interfere with and/or obstruct the investigation due to one or more of the following reasons:

4.14.1. There is a potential threat that the Municipal Manager and/or his presence during these proceedings is likely to hamper any further investigation;

4.14.2. There is a potential threat that the Municipal Manager and/or his presence could intimidate potential witnesses not to disclose all material facts and/or to fully co-operate during the proceedings; and

4.14.3. There is a real possibility that there may be a continuance of misconduct;

4.15. The placing of the Municipal Manager on precautionary suspension would be in the best interest of the investigation.

5. RECOMMENDATIONS

- 5.1. That Council takes cognisance of the content of the report.
- 5.2. That Council resolves that the allegations against the Municipal Manager are of a serious nature.
- 5.3. That Council resolves on the appointment of an external investigator to investigate the allegations of misconduct and submit an investigation report within 30 days upon date of acceptance of the appointment.
- 5.4. That Council resolves that the Municipal Manager must be provided with seven (7) days to make written representations why the precautionary suspension should not be effected.
- 5.5. That the Municipal Manager's representations should be provided to the Municipal Council within seven (7) days upon receipt thereof.



NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY

- 3. That Council resolves on the appointment of an external investigator to investigate the allegations of misconduct and submit an investigation report within 30 days upon date of acceptance of the appointment.
- 4. That Council resolves that Municipal Manager must be provided with seven (7) days to make written representations why the precautions suspension should not be affected.
- 5. That the Municipal Manager's representations should be provide to the Municipal Council within seven (7) days upon receipt thereof

DATE OF MEETING	RESOLUTION	RESOLUTION NUMBER
07 December 2023	<p style="text-align: center;">SC02/12/20203 RE: THE INSTITUTION OF INVESTIGATION PROCESSES AND PLACING THE MUNICIPAL MANAGER ON SUSPENSION</p> <ol style="list-style-type: none"> 1. Council noted of the content of the report. 2. Council resolved that the allegations against the Municipal Manager are of a serious nature. 3. Council resolved that an external investigator be appointed to investigate the allegations of misconduct and submit an investigation report within 30 days upon date of acceptance of the appointment. 4. Council resolved that the Municipal Manager be provided with seven (7) days to make written representations why the precautions suspension should not be affected. 5. Council that the Municipal Manager's representations should be provided to the Municipal Council within seven (7) days upon receipt thereof. 	C35/2023-2024

**CLLR N SHUPING
COUNCIL SPEAKER**


**MR. O.A LOSABA
MUNICIPAL MANAGER**



NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY

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OFFICE OF THE EXECUTIVE MAYOR

12 December 2023

DELIVERY BY HAND AND BY E-MAIL

"C"

Dear Mr Allan Losaba, Municipal Manager

NOTICE OF INTENTION TO PLACE YOU ON PRECAUTIONARY SUSPENSION

This notice is issued on behalf of Council of the Ngaka Modiri Molema District Municipality, subsequent to a resolution taken at its Special Council Meeting of the 7th of December 2023 which seeks to provide you with an opportunity to make written representations why you should not be placed on precautionary suspension pending finalisation of investigation processes contemplated in the Local Government: Disciplinary Regulations for Senior Managers, 2010.

1. The following allegations of misconduct have been levelled against you:

ALLEGATIONS ARISING FROM THE SIU REPORT (PPE PROCUREMENT)

- 1.1. The following service providers, who were appointed by yourself and/or under your instruction or supervision to provide PPE, including latex gloves, surgical masks and sanitisers were appointed and/or paid excessive prices in comparison to prescribed National Treasury prices:
 - 1.1.1. CN Fire Safety overcharged by R24 000.00.00;
 - 1.1.2. Four Ways Projects overcharged by R161 480.00;
 - 1.1.3. Pulaneo overcharged by R48 765.00; and
 - 1.1.4. Biological Pharmaceutical overcharged by R26 858.70.
- 1.2. The SIU furthermore found that the Tractor Loader Backhoe ("TLBs") log sheets for Tamisca Construction and Plant Hire had the registration of small vehicles which are not TLBs. The Municipality, notwithstanding the aforementioned misrepresentation, effected payment to the aforementioned service provider amounting to R752 020.00.
- 1.3. The SIU furthermore found that Bosa Projects was irregularly appointed for one or more of the following reasons:
 - 1.3.1. The purchase order was issued after services were rendered;
 - 1.3.2. The appointment was in contravention of MFMA circular 100 and/or Circular 102;
 - 1.3.3. There was no request for quotations; and
 - 1.3.4. There were no standard bidding documents submitted.

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- 1.4. The SIU found that Rensch Trading was irregularly appointed for one or more of the following reasons:
 - 1.4.1. The service providers were appointed without any procurement processes followed;
 - 1.4.2. There were no requests for quotations;
 - 1.4.3. The appointment did not comply with National Treasury circulars; and
 - 1.4.4. There were no standard bidding documents submitted.

FAILURE TO IMPLEMENT AUDITOR GENERAL'S MATERIAL IRREGULARITIES

- 1.5. It is alleged that you failed and/or refused and/or neglected to implement wholly and institute recovery of overpayments identified by Auditor General in the following Material Irregularities:
 - 1.5.1. Material irregularity in respect of Water Tankering and Sanitation No.2 of 2018/2019 and No.3 of 2019/2020.
 - 1.5.2. Material irregularity in respect of Systems of Expenditure Control and Management Control (Security) No.02 of 2018/2019; and
 - 1.5.3. Material irregularity in respect of New Building and Existing Building and New Gate House No.1 of 2018/2019.

FAILURE TO IMPLEMENT STRATEGIC PLANNING / COUNCIL RESOLUTIONS

- 1.6. It is alleged that you failed and/or refused and/or neglected to implement the resolutions of the Municipal Council adopted at its Strategic Planning Retreat held from 15 to 19 May 2022. The aforementioned resolutions (which ought to have been implemented by Municipal Manager) include, but are not limited to:
 - 1.6.1. Investigate all matters related to Unauthorised, Irregular, Fruitless and Wasteful Expenditure and to take appropriate actions; and
 - 1.6.2. Fully review, properly design and align the macro & micro-organisational structure to the assigned powers & functions of the municipality.
 - 1.6.3. Despite having appointed a service provider for the review of the organisational structure and the municipality having paid almost a million rand, to date, same has not been finalized, completed and submitted to Council for approval.

COMPETENCY BASED ASSESSMENT FOR SENIOR MANAGERS

- 1.7. It is alleged that you irregularly used a service provider not accredited by the Department of Cooperative Governance (DCoG) to conduct competency-based assessments related to the newly appointed senior managers.
- 1.8. The aforementioned service provider resultantly assessed senior managers utilising a competency assessment criterion which is not prescribed in the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers resulting in the MEC for COGHSTA in the North West Province not supporting their appointments.

SEWEDING AND RAMOSADI VILLAGES SEWER SPILLAGE

- 1.9. During July 2023, a bulk water pipeline between Seweding and Mmabatho Waste Water Treatment Works (along Bray Road) disintegrated and caused sewage spillage in Seweding and Ramosadi villages.
- 1.10. On or about 18 October 2023, and in response to the aforementioned sewage spillage, the Municipal Council resolved on the following:
- i) Council noted the progress report on the sewerage spillages in Seweding, Ramosadi and surrounding villages, because of the burst main sewer pipeline on Bray Road.*
 - ii) Council resolved that funding for costs relating to the following items be redirected from the 2023/24 Operations & Maintenance budget vote allocation:*
 - *Sewer pipeline refurbishment works, across the district.*
 - *Environmental rehabilitation activities, which should include plan for rehabilitation and bioremediation of affected households as per DEDECT proposal as per their directive.*
 - iii) Council resolved that provision be made for possible litigations against the Municipality.*
 - iv) Council resolved that the Municipality include the Department of Water and Sanitation (DWS) & the Municipal Infrastructure Support Agent (MISA) in the assessment of the scope of works, quantities, norms, and standards associated with the remainder of the repair works.*
 - v) Council authorized the amount of 15 million Rand to R80 Million rands for this disaster.*

- vi) *Council resolved that public participation be organized with the affected stakeholders with urgency.*

Despite the aforementioned availability of resources as authorised by the Municipal Council, you failed and/or refused and/or neglected to properly effect emergency measures directed towards resolving the aforementioned sewage spillage thus putting the municipality at risk of possible lawsuits. The aforementioned misconduct includes the failure to appoint a service provider to attend to the sewage spillage crisis.

The allegations levelled against you are of a serious nature, as they relate to a possible compromise of the administration, efficiency and discipline of the Municipality.

In order to protect the best interests of the Municipality as well as yourself, the Municipal Council is contemplating to suspend you, as a precautionary measure, since it is of the view that:

1. There is a potential threat that you and/or your presence during these proceedings is likely to hamper any further investigation proceedings.
2. There is a potential threat that you and/or your presence could intimidate potential witnesses not to disclose all material facts and/or to fully co-operate during the investigation proceedings;
3. There is a real possibility that there may be a continuance of misconduct;
4. Furthermore, removing you from the premises of the Municipality would place you beyond any criticism and suspicion should documentation and/or evidence disappear during the course of the investigation proceedings.

The Municipal Council considers these potential threats as real and seriously detrimental to the interests of the Municipality and the administration of justice.

Should the Municipal Council proceed to suspend you, the conditions of your suspension will be as follows:

1. You will be suspended with immediate effect with full remuneration pending the finalization of the investigation proceedings.
2. You will be required to be available either on your cellular telephone or at home should the Municipal Council or any duly authorised representative need clarity from you concerning any of the issues relating to the matter or should any information relating to your work be required from you. Should you wish to leave the Magisterial District during normal working hours, you will be required to provide the Municipality with the necessary leave documentation;

3. You will not be allowed to remove anything from your office or the offices or premises of the Municipality, other than your personal belongings should you so wish to do so;
4. You will not be allowed to enter any premises of the Municipality or your office during the period of suspension other than to attend to any proceedings in terms of the Disciplinary Regulations for Senior Managers, 2010;
5. You will be prohibited to seek any information and/or documentation, whether in hard copy or electronic format from members of staff or councillors of the Municipality. Any requests that you may have in this regard should be addressed to the Executive Mayor directly;
6. You will be prohibited to make any official contact with members of staff or councillors of the Municipality;
7. You will be instructed to immediately hand over any access cards, computer equipment inclusive of any laptop or any other Municipal property in your possession, whether it be documentation in hard copy or electronic format.

You will be requested to adhere to these conditions punctually since any breach thereof could constitute further misconduct.

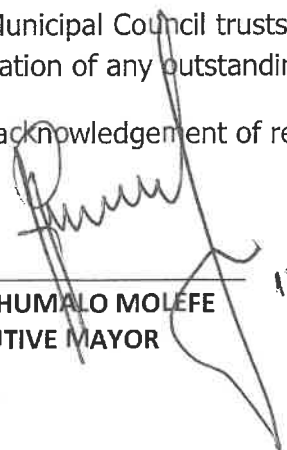
Any precautionary suspension should in no way be viewed as if a finding has already been made in relation to the allegations of misconduct as this is merely done to ensure the integrity of the investigation process to be undertaken.

Under these circumstances, the Municipal Council is contemplating to suspend you, as a precautionary measure as provided for in Regulation 6 of the Disciplinary Regulations for Senior Managers, 2010, and you are hereby given notice to submit any written representation which you may wish to, to the Executive Mayor, **within seven (7) days upon receipt of this notice.**

Once the Municipal Council has had an opportunity to properly consider all material facts and any representations that you may make, you will be notified of the Municipal Council's decision in writing.

The Municipal Council trusts that it can rely on your cooperation and understanding until the finalisation of any outstanding processes.

Your acknowledgement of receipt hereof will be appreciated.


Cllr. KHUMALO MOLEFE
EXECUTIVE MAYOR

12/12/2023



NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY

Cnr. Carrington Str and 1st Avenue, Industrial Site, Mahikeng, 2745 | Tel: (018) 381 9400 | Fax (018) 381 4300
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"D"

OFFICE OF THE MUNICIPAL MANAGER

Executive Mayor
Ngaka Modiri Molema District Municipality
Private Bag X2167
Mahikeng, 2745

ALLEGATIONS LEVELLED AGAINST THE MUNICIPAL MANAGER AND HIS INTENDED SUSPENSION AND OTHER

1. Purpose

The purpose of this submission is:

- To respond to the submission received by the writer hereof on 12 December 2023 at around 16:00 hours hand delivered in the presence of the NMMDM legal advisor.
- To negate each allegation levelled against the writer hereof, and
- To raise issues that would potentially shake the administrative foundation of the municipality

2. Synoptic Background

The background as reflected is informed by all laws and regulations governing municipalities in the Republic of South Africa. These include the Municipal Systems Act, the Municipal Structures Act, the Municipal Finance Management Act, the Constitution of the Republic of South Africa, and any other policy and regulations associated with the acts of parliament

associated with municipalities. Time is and was of the essence. And to that end. Portfolios or evidence are not attached but as the matter has all legalities, these shall be provided on as and when needed basis.

A special council meeting was held on 7 December 2023. It is in the morning of the said day that everyone, from a cleaner to a manager indicated to the MM that he was directly or indirectly the subject matter within council. The MM did not take heed of that until an item titled Executive Mayor's report," (to be discussed in Committee).

Once the first item was deliberated, council deliberated on whether the MM should be present or should be recused. The dominant sentiment, which the MM agreed to, was that he should not be present as he is the subject matter.

Meanwhile, the very document that was meant to deliberate on the MM's suspension was distributed and he was also favoured with a copy. Council resolved that the MM be excused and before he left the chamber the popular copy, he was served with was recalled: he surrendered same to the Speaker of Council.

The Executive Mayor tabled his report, council adjourned and no one had the audacity to recall those that were recused: an administrative error that should have been avoided since the deliberation of the in-committee sessions were not recorded and are reliant on the respective memories of everyone present within the in-committee session.

Meanwhile, everyone kept asking if the MM had received a letter from the mayor after the council of 7 December 2023. Subsequent thereto council

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later met on 12 of December at Scott Manor Conference Centre (Lichtenburg). It was after that meeting that an audience with the Municipal Manager was called by the Executive Mayor, not to discuss the content and/or what the correspondence was all about. The session referred to was nothing else but a delivery exercise which lasted no more than three minutes. The MM took the write up on the provision that the MM responds within 7 **seven working days** (own emphasis)) post the delivery. Therefore, the seven days should be 22 December 2023. The letter from the mayor did not address itself to the seven working days but just days including the 15 – 17 December long weekend. Be that as it may, the MM found it prudent to respond before midnight on 20 December 2023. The date set is over and beyond the 7 days per the calendar. One trusts that the seven plus one days shall be acceptable. This is said given the background that a few hours after the seven days may be an issue raised by the EM as he is in an effort to raise any issue to his advantage.

3. The Allegations

The accusations levelled against the Municipal Manager are stated hereunder. Before addressing each allegation as captured by the Executive Mayor, posterity requires that the process of accountability be presented given the value chain of same.

The authors of the law had a fair understanding of accountability. There is a value chain to accountability as an MM collaborates with respective Senior Managers reporting directly to him. In this context, the role of an accounting authority is to ensure that the required infrastructure with responsible managers is available to implement resolutions.

In the NMMDM's context, there are user departments headed by a Senior Manager. Reporting to a Senior Managers are level I, II, and III Managers that are responsible for the operational side of things. For example, an Accounting Officer's role would be to ensure that there is a SCM contract for the provision of stationery. The timely distribution of same lies with a unit manager through their own departmental SCM value chain.

One of the issues raised by the Executive Mayor is that during COVID 19 pandemic, the Accounting Officer should have noticed that a TLB was driven with a license disc for an ordinary car. Holding the MM liable for this is, with due respect, a mockery. Why? It is a mockery in that the MM is now expected to be on site and check the disc of each car on site. As recent as the past week, one of the NMMDM's officials was caught delivering water to a swimming pool of a private individual. One guesses that had the incident happened before the EM's letter, the incident would have been part of the charges despite the fact that the MM has an oversight responsibility over water delivery and the deal to deliver water to someone else's pool would not be the competency of the MM. What is expected of the MM is to ensure that the matter is investigated to its fullness and the necessary action is taken.

Therefore, the assertion that the MM is accountable for all transactions and activities is devoid of reason and should not be entertained at all. Entertaining such thinking means that the MM is not in office as he has to physically ensure that 50 boxes of stationary are delivered and not depend on the responsible unit manager.

The examples provided above suggest two things, and these are the operational side and the oversight side of transactions. For example, in as far as water and sanitation are concerned, the responsible managers for water and sanitation should ensure that the actual and physical work are conducted whereas, the Senior Manager and MM should ensure that the necessary infrastructure and processes are available for operations to be conducted. This is the context from within which some of the allegations levelled at the MM should be seen.

There is a need to strike the difference between process driven transactions and action (event) oriented transactions. For example, a bid (tender) is informed by processes including but not limited to need identification, specification, evaluation, and adjudication of each bid. All management issues are process driven including material irregularities and other processes.

The detail provided by the Executive Mayor/Council are addressed are stated for ease of reference:

- 3.1 SIU report and its related findings
- 3.2 Implementation of Material irregularities identified by the AGSA
- 3.3 Failure to Implement Strategic Planning Resolutions
- 3.4 Competency Assessment by SALGA
- 3.5 Seweding and Ramosadi Spillage
- 3.6 Threat to investigation by my presence

Special Investigation Unit Findings

The Covid virus hit these shores in 2019. There was a general lockdown around the country and the NMMDM was not an exception. At the same time service delivery took place and procurement, mostly informed by the lock down, also took place.

The MM needs to report on each SIU matter raised but indicate what has or is happening with the SIU finding. The SIU has an option to refer a matter investigated to law enforcement agencies where there is a prima facie case against an individual. This referral means that the HAWKS or SAPS come to the party an arrest a suspect.

The other side of the coin is where the SIU identifies an irregularity and the matter is referred back to the municipality for the institution of disciplinary processes.

To that end, the municipality did institute disciplinary hearings against employees not directly reporting to the municipal manager. Among other, these included the Manager Water Services.

It is the MM's further understanding that during his hiatus of October – December 2022, council deferred the SIU report to a later date. It must be put on record that the municipal manager has no control of a council's agenda. Therefore, the blame cannot be put on the MM's doorstep where council opted to defer and later not finding time to deliberate on this matter. Further validation of this response is that there are other matters of an investigatory nature that council had deferred. These refer to allegations that the EM had something to do and/or influenced strikes and demonstrations against the municipality by the local business forums, the Deelpan transactions and other.

AGSA Material Irregularities

Material Irregularities (MI) are a product of the Public Audit Act. The process is structured such that the AGSA identifies a material irregularity and informs that municipality about same.

As a point of departure, the AGSA instructs the municipality to investigate a material irregularity. A number of material irregularity were identified and the Municipal Manager approached council with a request to procure the services of accounting and legal firms to assist with the investigation.

It should be noted that the AGSA did not insist on outsourcing these investigations. The reason to outsource them was informed by the level of skill within the municipality. Simply put, the NMMDM does not have the requisite capacity to investigate any of the MIs raised.

The table below provides for the firms that were contracted through SCM processes:

Number	Name of Firm	Area of Specialty
1.	Maine / Mokgetle Joint Venture	Finance / Law Firm
2.	MNB Chartered Accountants	Finance
3.	Morar Incorporated *	Finance

Maine / Mokhetle JV investigated the material irregularities in respect of the new building and gate house, water tankering and sanitation, and assets. MNB Accountants were appointed to investigate security contract and Morah Incorporated was appointed to investigate one of the MIs. They failed to come to the party and their contract was terminated.

In bullet three above, an attempt was made to strike the difference between process driven outcomes and activity/event driven outcomes. MIs are a classic example of this in that it all starts with a regulatory audit and move on to investigation and remedial action, if need be, and end up

with a resolution once all processes are dispensed with. **It is therefore incorrect and misleading to say nothing is being done with respect to MIs.**

The only handicap is that these investigations come at a cost and the municipality is awaiting the adjustment budget to be able to fund the MI investigations.

Strategic Planning Session

The strategic planning session was arranged and hosted in Rustenburg. A number of issues were raised and primary to these was an organizational structure that was last viewed in 2014. Council went through same and deliberated on the structure.

Related thereto were proposed changes given the July 2022 ministerial regulations. Eventually, the structure was declared one of the first deliverables. A process of consultation was embarked upon. The service provider came in frequently engaging respective managers. All these activities took place under the backdrop that the Manager Employee Wellness is delegated to facilitate engagement, and that happened. MM later sought to engage Senior Manager as courtesy. That did not happen because the service provider was owed and was not keen to further engage. Service provider sought to take the NMMDM to court over the payment, the MM intervened successfully. That last payment was not made in that the CFO is still scrutinizing the invoice and responses are awaited from the Acting Senior Manager Corporate Support and the Manager Employee Wellness.

In the MM's last engagement with the EM, it was indicated that the structure is the competency of politicians and consultations with new senior managers are a courtesy as council has in principle saw the direction of the structure, recommended new positions as in LED and other, sought to revisit the operations of water and sanitation and as a result, Troika/Mayco/Council needs to decide on the structure. The MM's parting shot with the EM was that **"Sir, this is your structure, call the service provider to address the structure either to Troika or MAYCO for approval as the process is political and not administrative.** The EM never did and an action that required the EM to act is now part of allegations against the MM. An attempt was made to lure the service provider to present before the council recess, unfortunately they were not available. It therefore cannot be true that the MM is not implementing council decisions, and as a result the allegation is untrue and misleading.

Senior Managers Competency Assessment Tool

The competency assessment tool is a policy matter that all senior management candidates are subjected to. The MM is also expected to write same and he has. As a matter of fact, the MM has written more than four assessments with Gijima for a variety of positions. It is indeed fact that the MM did well in each one of them.

The MM applied for the current position and was told to write the competency. The MM's first impression was that the assessment must be conducted in Sandton, Johannesburg. He was told, by the erstwhile Senior Manager Corporate Support Services that the NMMDM has opted for SALGA in that the service free.

The assessment was written and as fate would have it, the MM was the only successful candidate. The matter was raised by the Troika before the appointment of senior managers. The MM's parting shot was that all candidates that wrote the SALGA competency must rewrite the Gijima competency. The utilization of SALGA (used by all NW municipalities) was not the MM's call but a call by and from the municipality. The NMMDM is affiliated to Salga at a cost of more than three million rands a year. The current EM is the provincial chairperson of SALGA and the fact that the EM oversaw the recruitment of the MM cannot be placed on the doorstep of the MM, but rather the EM. As at the time the NMMDM recruited the MM, the latter had no influence in processes related to the recruitment. Today, the MM is accused of using an unaccredited service provider for the competency. Sincerely, if the advisory body to all local municipalities can lead municipalities to an irregularity, losses must be counted thus determining the presence and future of the relationship.

Note that this matter affects all newly appointed senior managers as they did not invite SALGA to assess them. It would be a different issue had the MM wrote the SALGA competency and allowed everyone else to write the other. The incumbent MM thought the only solution is for all to rewrite, an offer made to the Troika before the council endorsed the appointment of senior managers. The offer was unfortunately not accepted **and the MM is once more offering to rewrite the assessment with an accredited service provider.**

Seweding/Ramosadi Spillage

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Council and management are both privy to all facts around and about the Seweding/Ramosadi/Bray Road disaster. The NMMDM has followed all processes leading up to council, approving the R15m for the mayor and the R80m for the project sourced from the equitable share.

The COHGSTA NW has assembled a team of experts to turn ailing municipalities around. The department is also supportive of the municipality's efforts of reprioritising the MIG which in turn also touch on the disaster. Added thereto, the MM has always cautioned that the problem needs to be understood in *toto* before committing resources on Bray Road while the problem might be in the network and points 1, 2, 3 and 4 might be symptoms and not a problem themselves. To that end, a formation styled as Themak (NMMDM Panel) is providing expert advice.

Preliminary reports suggests that the pipeline should be rerouted towards the Vryburg Road since many houses are built on top of the pipeline. The MM holds a view that this is the best solution as it would not negatively impact the legacy of more than 50 years and yet address the current problem before us.

Pumping the sewer out is costly, and managers, through the MM must find a way of maintaining the costs. Other than the narration presented, one may not discount the strikes and office shutdowns emanating from the Bray Road disaster. Service provided have been chased off site and such actions contributed to the slow movement of the project. Be that as it may, let it be cautioned that a hasty decision may not work in the interests of government and the people.

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It might as well be mentioned that the NMMDM wanted to proceed with the professional service provider appointed by Mahikeng Local Municipality. The EM indicated that the arrangement should be aborted: a process that council agreed to. Later on, the goal posts were changed and the Mahikeng Local Municipality's service provider was preferred. What does this say, at some point the MM and relevant senior manager are to be accused of not responding to issues as presented by the EM.

Management is launched in meetings, and all we are asking for is that EM, lets meet and agree on the approach. Imagine that you are in a public meeting and the community is told that this is to be done by the MM and the relevant Senior Manager. The position would not have been caused and guess what the dominant view would be that the EM has issued an instruction and the MM is not implementing. Obviously, the MM's would upset politicians assumes failure. Was it ever communicated? No.

Senior Managers are called to the EM's office outside of the knowledge of the MM. They come and complain to the MM and the latter is veteran of administration. He can't be seen to be fight the EM and the glorious movement. He lets these things pass through, but come the end of time, he ends up being the victim of the EM. The MM has been disrespected at the behest of the EM. Senior Managers come over to the MM to raise concerns that are embarrassing, what does one do? The MM encourages officials to work in the interests of communities we serve.

Threat of my presence during investigation/disciplinary hearing

The matters raised against the municipal manager are not in control of the municipality. Critical to these are the MIs, the SIU, and others. The MM is

not in any position to influence outcomes of any sort. Parties implicated or deemed to be implicated have the liberty of "saving" themselves by reporting the MM to authorities should such a need arise.

Therefore, suspending the MM on such issues is nothing but an academic exercise that is easy to deal with. SIU reports are just that, the AGSA reports cannot be changed and whether the MM is here or not does not change the colour of paint or the price of bread. The MM is a judicious person and would never allow his presence to allow that which has to be done.

4. Other

Administrative Interference

EM the rules and protocols are clear, a mayor is expected to ensure that council decisions and resolutions are implemented. This does not in any way or form suggest that the mayor should interfere in administrative processes. With due respect Sir, you are interfering and not intervening in administrative processes.

As recent as the past week, the shortlisting of the Senior Manager Corporate Support Services was cancelled at the last minute. Regulations specifies the time within which the shortlisting should take place. The EM cancelled the engagement the day before. Why is this important? The AGSA is likely to raise a material irregularity in that there is no strong reason for the cancellation. Upsetting the situation even further is the fact that the cancellation was not communicated to the MM. A junior official from HR came in to report that the EM has cancelled the interview. What a surprise and untoward conduct. The MM asked for reasons and was told

that a political process be embarked upon my change the complexion of the game, once suspects that the envisaged suspension of the MM was the political process referred to.

In the same space the Manager Water Services wrote me a lengthy and untasteful what's app message alleging that they are not reporting to the EM but to the MM. OF course, wisdom called on me to intervene and calm the storms down. The Manager tells me that sometimes he is called by the EM before an evaluation committee asking for an award to a specific company. The EM does this under the auspices of some legislation that the mayor shall provide guidance on the budget and fiscal affairs. With all due respect Sir, directing an official to sway a bid to a particular direction is not providing guidance in budgetary and fiscal matters.

A few months ago, business forums in the city sought to close municipal offices informed by the fact that there was a list of subcontractors emanating from the EM's office. The MM got site of that list and pleaded ignorance as the media sought to elucidate responses from the MM. Once more Sir, such is not providing guidance in budgetary and fiscal affairs of the NMMDM.

Sir, calling for the economic empowerment of local businesses is a policy issue that happens to be your full competence. However, expecting the MM to tell you what supplier was paid and how much, expecting the MM to always tell what bid is evaluated each time the committee meets means the MM has no function but to chase procurement and payments and report them to the political head of the institution. That Sir is not providing guidance in the budgetary and fiscal affairs of the NMMDM.

I should give it to you though, the issues of local empowerment focusing on women and youth is a policy matter and therefore, provides guidance in budgetary and fiscal affairs of the NMMDM.

In our Monday meetings, which you claim I have ignored, you want me to report about awards to service providers. You're thinking in respect to the MFMA is flawed in that you want me to tell you and provide details of a bid in question. I cannot do that for some reason and that is, you receive a procurement plan for the whole year, and once received which is appropriate you want to know what is discussed at evaluation level. That is not the intent of the MFMA that calls on the mayor to provide a fiscal direction in the financial affairs of the municipality.

The manager responsible for water called you to say EM, **"I don't report to you and yet you want information that the head of administration would not necessarily demand as he would have appointed relevant committees to deal with procurement and administrative issues."**

You have in the past called the Chairperson of the evaluation committee and given him a name of a company to be empowered. He asked, "is that an instruction?" You did not respond. He then sent the most popular WhatsApp message where you were accused of interfering in management issues. You later sent me the same message saying, "I shall leave it in your capable hands."

As recent as a month or two ago, your office, on your official letter head, sought to appoint subcontractors for a number of projects. What known out there is that you have appointed subcontractors and the MM is

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refusing to implement. Rest assured; I shall never appoint people illegally no matter who they are. Who is at risk here? Indeed, it is the MM with two kids that may be held accountable or have his two kids orphaned.

For the past year and months, you have instructed me to tell you about all evaluations and payments to service providers. Imagine the additional work it would put on my desk as I do so. You have instructed that I give you the bids and companies to be evaluated and those paid. Wow! Where do I get the time for that. At this stage we are at a crossroads because of the information you demand.

Note that as this is happening, you are sitting with the procurement plans and once that is approved, I need not send you information of specification, evaluation, and adjudication. For what purpose do you want it? I don't know and it should not be my business. You always complain that Rassool and Senwedi are not reachable over the phone. Smell the coffee and know why they are not. Simply put, they would rather not speak to you, because they never know what next is expected from you.

There is nothing as difficult as going to a public meeting with you EM. You make commitments that are not informed by the availability of funding> what happens is that you call an official's name and tell all and sundry that you are bringing a borehole for water. At that time, you would have not engaged the relevant member and communities are ready to say the EM has committed and it is his officials that are not delivering. Once is tired of being insulted by members of the community who honestly believe that you have spoken and inaction is on management.

You have disrespected me as a person. You have always told me that senior managers should not be operational but strategic. I have held meetings with you and officials from other departments and municipalities. You have asked me operational questions and derived joy out of the fact that I would not know the size of a bolt and/or the size of the pipe. You have reduced me to an excuse citing those close to you as experts, and if I were to think at their level, I would have so much to unlearn.

The last time that I recall, you asked about the DBSA deal which you are on record to say you "do not want to leave a debt that would be inherited by those after you." Please note that the DBSA has a menu of services they can offer to municipalities and at that meeting you undressed me before people that needs the next ten years to acquire the wealth of my experience. You later proposed a meeting with me the next day but guess what I did not honour it because the damage was already done. Guess what the sphere says, "that NMMDM MM is useless." I don't believe that as I have worked with the best. Who is the best? Martin Kuscus, Darkey Ephraim Africa, Maurene Modiselle, Ndleleni Duma, Mmaphefo Matsemela, Tebogo Modise, Motlalepule Rosho, to remember but a few. Never have I experienced what am going through. In their tenure, I was an official and not a political player that is accused by all that you are alleging. This is the first time in my professional life that I am accused of what you are alleging. This is the twilight of my career which I wanted to let go with my integrity in place and space.

Can it really be possible that during the erstwhile Makolomakwa the NMMD could spend the MIG and under your command the entity cannot spend given your intervention in respect of Lomanyaneng. You are quoted as having praised the PMU Manager for spoiling and contaminating the bid. Good Lord have mercy. What more are you going to say about that? Let fate have its cause.

In conclusion, you and I do not have to be friends, I doubt if we would have been friends before we met at the NMMDM. All we need to be is friendly towards each other, and in real, and come rain or shine, there is no way in hell that we could have been friends. The contents of this write up are not an attack against you since I would derive no benefit in being you enemy. It must set on record thought, that this is not the end of it. I have no gold and silver. All the MM has is the person he is and its associated integrity and this shall never be lost to you and anyone else. Meanwhile be good as I am.

In conclusion Sir, you can never find officials in waster services and sanitation. They choose not to engage with you because you always demand the impossible. You launched on public platforms and the dominant view on the ground is that you work but your management fails you. Go to wherever you have been, people believe that you good for them but you have no support of your management. I understand myself; I appreciate the nature of the job I do; I know it is thankless as one is always in the corner, but I shall do it again given an opportunity.

It's said that I am difficult to find over weekends, but every response you get is initiated by me. I am not operational, but in every meeting, I have with you particularly with outside stakeholders, you always throw me under the bus but my ribs and chest are strong enough to absorb the pressure.

The MM never thought all shall come to this, but let it be what it is, and this is the beginning of a battle that shall not and never end in the corridors of the NMMDM.

Submitted without prejudice with all rights reserved.

[Handwritten signature]
O. ALLAN LOSABA
MUNICIPAL MANAGEDATE 20/12/2023

[Handwritten notes: PK16, OAK 19]



NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY


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OFFICE OF THE MUNICIPAL MANAGER

CONFIRMATION OF RECEIPT

This serves to confirm that the Executive Mayor (Khumalo Molefe), or the Council Whip (Crosby Maema) and/or the Speaker of Council (Nthabiseng Suping), hereby confirm that I have received the Municipal Manager's submission relating to the Memo/Letter served on him by the Executive Mayor purporting to suspend and charge him for a variety of charges levelled against him.

Duly Signed


20/12/2023
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EXECUTIVE MAYOR/COUNCIL WHIP/SPEAKER OF COUNCIL

NGAKA MODIRI MOLEMA DISTRICT MUNICIPALITY

20 DECEMBER 2023



coghsta

Cooperative Governance, Human Settlements and
Traditional Affairs
North West Provincial Government
REPUBLIC OF SOUTH AFRICA



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Enquiry /M Matseke

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**THE MAYOR
NGAKA MODIRI MOLEMA DM
PRIVATE BAG X 2167
MAHIKENG
2745**

ATTENTION: HON. CLLR. KHUMALO MOLEFE

**SUBJECT: FEEDBACK ON THE APPOINTMENT OF SENIOR MANAGER
TECHNICAL SERVICES OF NGAKA MODIRI MOLEMA DM –
M J RASSOOL**

Your letter to the Department of Cooperative Governance, Human Settlements and Traditional Affairs (COGHSTA) in the above regard refers.

1. In evaluating the report you have submitted, in terms of Section 56(4A) (a) of the Local Government Municipal Systems Amendment Act, I did confine myself to the requirements of Section 56(1) of the local government municipal systems act which requires the municipal council to appoint senior managers who have skills, expertise, competencies and qualifications as prescribed.
2. Your letter annexes the appointment reports of three (3) potential candidates who were recommended for appointment in the positions of Senior Manager Technical

Services: submitted in terms of Section 56(4A) (a) of the Local Government Municipal Systems Act, 2011 (the Systems Act).

3. Section 56 (1)) of the Systems Act prescribes that a person appointed as manager directly accountable to the municipal manager must at least have the skills, expertise, competencies and qualifications as prescribed to carry out the duties associated with their posts. The Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers (Appointment Regulations) prescribes minimum competency requirements, competency descriptors and achievement levels for all core functional areas of senior managers. The regulations explicitly oblige persons considered for appointment as senior managers to undergo a competency-based assessment as a requirement for recruitment and selection, development and performance management.
4. Due to the technical nature of the expertise required for the competency-based assessment system, the National Department of Cooperative Governance contracted professional service providers, who have been trained and accredited on local government specific assessment batteries to conduct competency testing for senior managers in municipalities, namely; Gijima, The Assessment Toolbox, Work Dynamics and Landelahni.
5. Upon analysing the appointment reports submitted by your municipality, the Department noted that you used different competency assessment batteries developed by the South African Local Government Association (SALGA), diametrically measuring a different set of qualities than those prescribed in the Regulations. This action by your municipality is in contravention of the provisions of the Appointment Regulations and casts aspersion on the integrity of the competency-based assessment system determined by National Cogta and consequently, opens flood gates for litigation cases against the Municipality.
6. Your municipality submitted screening results from SALGA and the letter from National COGTA only, screening report compiled by Municipal Manager as contemplated in Regulations 14 (2) of Local Government Regulations on appointment and conditions of employment of senior managers is not attached.

7. The attached newspaper is not a National Newspaper.

8. Comparable competency profile and the incumbent's qualifications for the post of the Director Technical Services is hereby evaluated.

Prescribed qualifications and experience as per Annexure B	Mr MJ Rassool	Comments
Qualifications Bachelor of Science Degree in Engineering/ B Tech Engineering or equivalent.	Qualifications <ul style="list-style-type: none">• MBA• National Diploma in Engineering: Civil	Non Compliant, Qualifications are not consistent with Annexure B to the regulations.
Experience 5 years' experience at middle management level or as programme/project manager. 3 – 4 years must be at professional/ management level engineering management experience.	Experience 5 years 3 months at middle management level. 5 years at senior management level	Comments Compliant
Competency	Municipality used non accredited service providers.	Non Compliant

9. Based on the above mentioned information, the appointment is not supported.

Regards



HON. P D N MALOYI

MEC : COGHSTA.

01/08/23

DATE



coghsta

Cooperative Governance, Human Settlements and
Traditional Affairs
North West Provincial Government
REPUBLIC OF SOUTH AFRICA



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Enquiry /M Matseke

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mmatseke@nwppg.gov.za

**THE MAYOR
NGAKA MODIRI MOLEMA DM
PRIVATE BAG X 2167
MAHIKENG
2745**

ATTENTION: HON. CLLR. KHUMALO MOLEFE

**SUBJECT: FEEDBACK ON THE APPOINTMENT OF CHIEF FINANCIAL OFFICER
OF NGAKA MODIRI MOLEMA DM – G P MOROANE**

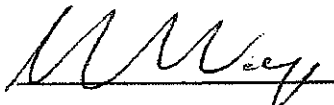
Your letter to the Department of Cooperative Governance, Human Settlements and Traditional Affairs (COGHSTA) in the above regard refers.

1. In evaluating the report you have submitted, in terms of Section 56(4A) (a) of the Local Government Municipal Systems Amendment Act, I did confine myself to the requirements of Section 56(1) of the local government municipal systems act which requires the municipal council to appoint senior managers who have skills, expertise, competencies and qualifications as prescribed.
2. Your letter annexes the appointment reports of three (3) potential candidates who were recommended for appointment in the positions of Chief Financial Officer: submitted in terms of Section 56(4A) (a) of the Local Government Municipal Systems Act, 2011 (the Systems Act).

3. Section 56 (1)) of the Systems Act prescribes that a person appointed as manager directly accountable to the municipal manager must at least have the skills, expertise, competencies and qualifications as prescribed to carry out the duties associated with their posts. The Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers (Appointment Regulations) prescribes minimum competency requirements, competency descriptors and achievement levels for all core functional areas of senior managers. The regulations explicitly oblige persons considered for appointment as senior managers to undergo a competency-based assessment as a requirement for recruitment and selection, development and performance management.
4. Due to the technical nature of the expertise required for the competency-based assessment system, the National Department of Cooperative Governance contracted professional service providers, who have been trained and accredited on local government specific assessment batteries to conduct competency testing for senior managers in municipalities, namely; Gijima, The Assessment Toolbox, Work Dynamics and Landelahni.
5. Upon analysing the appointment reports submitted by your municipality, the Department noted that you used different competency assessment batteries developed by the South African Local Government Association (SALGA), diametrically measuring a different set of qualities than those prescribed in the Regulations. This action by your municipality is in contravention of the provisions of the Appointment Regulations and casts aspersion on the integrity of the competency-based assessment system determined by National Cogta and consequently, opens flood gates for litigation cases against the Municipality.
6. Your municipality submitted screening results from SALGA and the letter from National COGTA only, screening report compiled by Municipal Manager as contemplated in Regulations 14 (2) of Local Government Regulations on appointment and conditions of employment of senior managers is not attached.

7. The attached newspaper is not a National Newspaper.
8. You are further required to provide the information contrary to the information at my disposal within three days of the receipt of this letter failing which I will invoke the provision of section 56(5) of the Local Government Municipal Systems Act.
9. Based on the above mentioned information, the appointment is not supported.
10. In case our assertion as a department is correct, you are advised to rectify your appointment decisions consistent with the requirements of the applicable local government prescripts.

Regards



HON. P D N MALOYI
MEC : COGHSTA.

01/08/23
DATE