

COURT ONLINE COVER PAGE

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

CASE NO: 2026-260309

In the matter between:

DEMOCRATIC ALLIANCE

Plaintiff / Applicant / Appellant

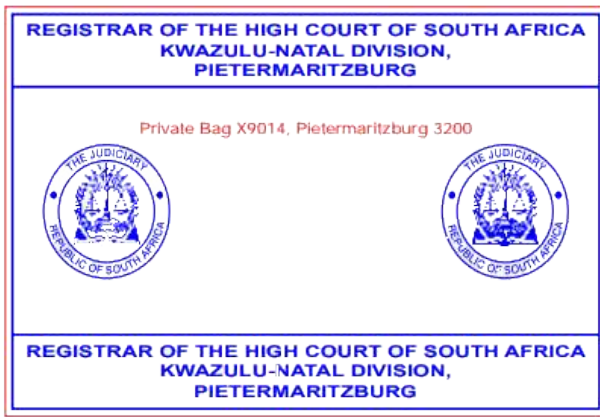
and

**ENDUMENI LOCAL MUNICIPALITY,THE
MUNICIPAL COUNCIL OF ENDUMENI
LOCAL MUNICIPALITY,THE MAYOR OF
ENDUMENI LOCAL MUNICIPALITY,THE
SPEAKER OF ENDUMENI LOCAL
MUNICIPALITY,THE MUNICIPAL
MANAGER OF ENDUMENI LOCAL
MUNICIPALITY,THE EXECUTIVE
COUNCIL OF THE PROVINCE OF
KWAZULU-NATAL,THE PREMIER OF
THE PROVINCE OF KWAZULU-
NATAL,THE MEMBER OF THE
EXECUTIVE COUNCIL FOR
COOPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS KWAZULU
NATAL,THE MEMBER OF THE
EXECUTIVE COUNCIL FOR FINANCE
KWAZULU NATAL,THE MINISTER OF
COOPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS**

Defendant / Respondent

Founding Affidavit

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Court, KwaZulu-Natal,
Pietermaritzburg.**

**IN THE HIGH COURT OF SOUTH AFRICA
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CASE NO. _____

In the matter between:

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and
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THE MUNICIPAL COUNCIL OF
ENDUMENI LOCAL MUNICIPALITY
THE MAYOR OF ENDUMENI LOCAL MUNICIPALITY
THE SPEAKER OF ENDUMENI LOCAL MUNICIPALITY
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THE EXECUTIVE COUNCIL OF THE
PROVINCE OF KWAZULU-NATAL
THE PREMIER OF THE PROVINCE
OF KWAZULU-NATAL
THE MEMBER OF THE EXECUTIVE
COUNCIL FOR COOPERATIVE
GOVERNANCE AND TRADITIONAL
AFFAIRS, KWAZULU-NATAL
THE MEMBER OF THE EXECUTIVE
COUNCIL FOR FINANCE,
KWAZULU-NATAL
THE MINISTER OF COOPERATIVE
GOVERNANCE AND TRADITIONAL
AFFAIRS**

Applicant

First Respondent
Second Respondent

Third Respondent
Fourth Respondent
Fifth Respondent

Sixth Respondent

Seventh Respondent

Eighth Respondent

Ninth Respondent

Tenth Respondent



DA'S FOUNDING AFFIDAVIT

SURAYA HOUSEN - AGA (SA)
PRACTICE NO: 20057387
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I, the undersigned,

MOHAMED SALEEM ABDOOL

state under oath that:

- 1 I am an adult male. I am a ward councillor of Endumeni Local Municipality, representing Ward 7, and a member of its Executive Committee. I have been a councillor since 24 November 2021. I am one of the DA's two councillors on the Council. My business address is 64 Victoria Street, Dundee.
- 2 I am authorised to depose to this affidavit and to bring this application on behalf of the applicant, the Democratic Alliance ("the DA"). A copy of the resolution authorising the institution of these proceedings is annexed marked "FA1".
- 3 The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise. I believe these facts to be true and correct. I attended the meetings of the Council to which I refer. Where I refer to facts that are also within the knowledge of my fellow DA councillor, Councillor N.M. Gopie, he confirms them in his confirmatory affidavit. Where I rely on documents, I identify and annex them.
- 4 Submissions of a legal nature are made on the advice of the DA's legal representatives. The DA accepts this advice as correct.



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INTRODUCTION AND OVERVIEW

- 5 Since 1 July 2026, Endumeni Local Municipality ("**the Municipality**") has been operating without an approved budget. More than three months into the 2026/27 financial year, it still has none.
- 6 A municipal budget is not a formality.
- 7 It is the legal instrument through which every rand of public money is raised and spent, and through which a municipality gives effect to the constitutional rights of the people it serves. Without it, the Municipality cannot lawfully plan; cannot lawfully initiate new expenditure; cannot lawfully fund new projects, and may draw on its own bank accounts only with the approval of the provincial MEC for Finance, and then only under narrow emergency circumstances.
- 8 Every service that the people of Endumeni depend upon is placed at risk.
- 9 The Constitution anticipated precisely this failure, and prescribes the response. Section 139(4) provides that if a municipality cannot or does not approve a budget, the provincial executive **must** intervene. Section 26(1) of the Local Government: Municipal Finance Management Act 56 of 2003 ("**the MFMA**") repeats this duty in identical, peremptory terms.



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- 10 The province has a choice as to *how* it intervenes. It has no choice as to *whether* it does so.
- 11 The provincial executive of KwaZulu-Natal has not intervened.
- 12 It cannot claim ignorance, and it cannot claim to have misunderstood its duty. In July 2026 the provincial MEC for Finance approved emergency withdrawals from the Municipality's bank account under section 26(4) of the MFMA — a power that exists only because the Municipality had no budget — and gave the Municipality until 13 July 2026 to approve one. That deadline was missed. The Provincial Treasury publicly warned that the province would have to intervene. No intervention followed. On 17 August 2026, the MEC for Cooperative Governance and Traditional Affairs ("**the MEC**") recorded in writing that the Municipality had failed to approve its 2026/27 budget, and expressly invoked section 26 of the MFMA. But instead of discharging the province's duty, the MEC issued notices to individual councillors — including me and the DA's other councillor, who had attended the budget sittings and voted against a budget we considered unfunded — calling on us to explain our conduct.
- 13 The province has thus identified a crisis that the Constitution makes its responsibility to resolve, and has occupied itself with apportioning blame to others. That is not an intervention. It is the absence of one.

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14 On 3 September 2026, the DA's attorneys wrote to the MEC, copied to the Premier, the MEC for Finance and the national Minister, setting out the province's obligations and requesting specified information within ten business days. No response has been received. The province's only substantive response to the crisis has been a resolution of the Provincial Executive to provide "intensified support" under section 154 of the Constitution, and the appointment by the MEC, on 20 August 2026, of a technical expert to the Municipality for three months. Section 154 support is not a section 139(4) intervention. As the expert's own report to the Council records, it "does not put the municipality under administration". It leaves the deadlocked Council in place and the Municipality without a budget, without rates and without a lawful means of billing for them.



15 The DA has therefore been left with no option but to approach this Court.

16 It seeks orders declaring the province's failure unconstitutional, compelling it to intervene as the Constitution requires, and placing the matter under the supervision of this Court until a budget is in place.

17 The local government elections on 4 November 2026 do not cure this. An election replaces the Council; it does not produce a budget. A newly elected council must first be convened, elect its office-bearers, and then take a budget through the process the MFMA prescribes. On any realistic view, the Municipality will be without a budget for half of the financial year or more. The province's duty does not lapse when the councillors change. And the province cannot rely on the approaching

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elections to excuse an intervention it ought to have made in July, when it publicly said it would.

18 This affidavit is structured as follows.

18.1 First, I describe the parties,

18.2 Second and Third, I deal with jurisdiction and standing.

18.3 Fourth, I set out the constitutional and statutory framework,

18.4 Fifth, I deal with the facts.

18.5 Sixth, I address the profound consequences of the failure for the residents of Endumeni,

18.6 Seventh, I deal with why the anticipated defences are without merit.

18.7 Eighth, I explain why this application falls to be dealt with on an urgent basis.



THE PARTIES

19 The applicant is the **Democratic Alliance**, a political party registered in terms of section 15 of the Electoral Commission Act 51 of 1996, with its federal head office at Mill Street, Gardens, Cape Town. The DA is represented in the National Assembly, in the KwaZulu-Natal Provincial Legislature and in municipal councils throughout the province, including the municipal council of the Municipality, in which it holds two of the 13 seats.

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- 20 The first respondent is **Endumeni Local Municipality**, a local municipality established in terms of the Local Government: Municipal Structures Act 117 of 1998, with its offices at 64 Victoria Street, Dundee, KwaZulu-Natal. Its area of jurisdiction includes the towns of Dundee, Glencoe and Wasbank and their surrounding communities.
- 21 The second respondent is **the Municipal Council of Endumeni Local Municipality ("the Council")**, in which the executive and legislative authority of the Municipality is vested in terms of section 151(2) of the Constitution, and which bears the non-delegable responsibility of approving the Municipality's budget in terms of section 160(2)(b) of the Constitution.
- 22 The third respondent is **the Mayor of Endumeni Local Municipality ("the Mayor")**, presently Councillor A.M. Mkhize, cited in that capacity by reason of the Mayor's obligations under sections 16(2), 25(3) and 55 of the MFMA.
- 23 The fourth respondent is **the Speaker of Endumeni Local Municipality**, presently Councillor A.N. Nsibande, cited in that capacity as the office-bearer responsible for convening meetings of the Council.
- 24 The fifth respondent is **the Municipal Manager of Endumeni Local Municipality**, presently Mr M. Hadebe, who is the accounting officer of the Municipality in terms of section 60 of the MFMA. The Municipal Manager is cited by reason of the



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accounting officer's responsibility for the Municipality's expenditure, including expenditure incurred since 1 July 2026.

- 25 The sixth respondent is **the Executive Council of the Province of KwaZulu-Natal ("the Provincial Executive")**, which, in terms of section 125(1) of the Constitution read with section 132, exercises the executive authority of the province. It is the "provincial executive" on which sections 139(4) of the Constitution and 26(1) of the MFMA impose the duty to intervene.



- 26 The seventh respondent is **the Premier of the Province of KwaZulu-Natal ("the Premier")**, who heads the Provincial Executive and exercises the executive authority of the province together with its members.
- 27 The eighth respondent is **the Member of the Executive Council for Cooperative Governance and Traditional Affairs, KwaZulu-Natal**, presently Rev. T.D. Buthelezi, MPL, whose offices are at 8th Floor, Wadley House, 115 Jabu Ndlovu Street, Pietermaritzburg. The MEC is the member of the Provincial Executive responsible for local government.
- 28 The ninth respondent is **the Member of the Executive Council for Finance, KwaZulu-Natal ("the MEC for Finance")**, cited by reason of the MEC for Finance's functions under sections 26(4) and 55 of the MFMA.

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29 The tenth respondent is **the Minister of Cooperative Governance and Traditional Affairs ("the Minister")**, the Cabinet member responsible for local government. The Minister is cited by reason of the Minister's role under sections 139(6) and 139(7) of the Constitution and the interest the Minister has in these proceedings. No relief is sought against the Minister at this stage, save for costs in the event of opposition.

30 I refer to the sixth to ninth respondents collectively as **"the provincial respondents"**, and to the first to fifth respondents collectively as **"the municipal respondents"**.



JURISDICTION AND STANDING

Jurisdiction

31 This Court has jurisdiction. The Municipality falls within its area of jurisdiction; the provincial respondents have their seats in Pietermaritzburg; and the failures complained of occurred within its area.

32 This Court has jurisdiction in terms of section 172(1) of the Constitution to declare conduct inconsistent with the Constitution invalid and to make any order that is just and equitable, and in terms of section 21 of the Superior Courts Act 10 of 2013.

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Standing

- 33 The DA brings this application in its own interest, the interest of its members and the public interest.
- 34 The DA has a direct and substantial interest of its own. Its public representatives, including me, sit on the Council. They are members of the very body whose failure has triggered the province's duty to intervene, and they are directly exposed to the consequences of that failure.
- 35 That exposure is not theoretical.
- 36 Expenditure incurred outside the limits of section 26(5) of the MFMA is unauthorised expenditure, which carries the consequences prescribed in sections 32 and 173 of the MFMA, including personal liability. The longer the Municipality operates without a budget, the greater the exposure of the Municipality, its accounting officer and its councillors, including the DA's councillors.
- 37 Moreover, on 17 August 2026 the MEC issued notices to individual councillors alleging non-compliance with item 2 of the Code of Conduct for Councillors in connection with the failure to approve the budget. Two such notices were addressed to me and to Councillor N.M. Gopie — the DA's two councillors on the Council. They are annexed marked "FA2" and "FA3". To my knowledge, councillors of the ANC, who also voted against the budget, received similar notices.



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The notices suggest that the recipients "may have failed to attend and/or remain in meetings convened to consider and approve the budget". Councillor Gopie and I attended the budget sittings of 30 June and 31 July 2026, at which all 13 councillors were present, and voted against the budget because, in our assessment, it was not a funded budget. We responded to the notices jointly; our response is annexed marked "FA4". The DA has an obvious interest in compelling the province to discharge its own obligations, rather than attributing the Council's failure to individual councillors.



38 The DA also has an interest, as a political party that participates in municipal government, in the lawful and constitutional functioning of the municipal sphere and of the provincial supervision that the Constitution erects over it. That interest is directly engaged where a province declines to perform a mandatory constitutional function in respect of a council in which the DA is represented

39 The DA also acts in the public interest as contemplated in section 38(d) of the Constitution.

39.1 The breach alleged is of a mandatory constitutional obligation, cast in the language of "must", owed by one sphere of government to the public served by another.

39.2 The persons affected are all of the residents of the Municipality — tens of thousands of people — and in particular the poorest among them, who are

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most dependent on municipal services and least able to approach a court themselves.

39.3 The relief sought is not for the DA's private benefit. It is directed at compelling an organ of state to perform its constitutional duty, for the benefit of the entire community.

40 There is no other reasonable and effective manner in which the issue can be brought before a court. The provincial respondents have not responded to a written demand. Absent this application, the unlawful state of affairs will simply continue.



THE CONSTITUTIONAL AND STATUTORY FRAMEWORK

The Constitutional Mandate of Local Government

41 Section 152(1) of the Constitution sets the objects of local government: to provide democratic and accountable government for local communities; to ensure the provision of services to communities in a sustainable manner; to promote social and economic development; to promote a safe and healthy environment; and to encourage the involvement of communities in local government.

42 Section 153(a) obliges every municipality to structure and manage its administration, **budgeting** and planning processes to give priority to the basic needs of the community, and to promote its social and economic development. The

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budget is therefore the constitutional instrument through which a municipality gives priority to basic needs. Without one, that duty cannot be performed.

- 43 Municipalities are also bound by section 7(2) of the Constitution to respect, protect, promote and fulfil the rights in the Bill of Rights, including the rights of access to adequate housing (section 26), health care, sufficient food and water and social security (section 27), and an environment that is not harmful to health or well-being (section 24). The services through which the Municipality gives effect to those rights — electricity distribution, refuse removal, municipal roads and street lighting, community facilities and libraries, and support for indigent households — must be budgeted for. Water and sanitation services in Endumeni are provided by the uMzinyathi District Municipality and are not in issue in this application.



- 44 Section 160(2)(b) of the Constitution provides that the approval of budgets may not be delegated by a municipal council. It is a core, original responsibility of the Council.

The MFMA Budget Process

- 45 Section 16(1) of the MFMA requires the council of a municipality to approve an annual budget for each financial year **before the start of that financial year**. Section 24 requires the council to consider approval of the budget at least 30 days before the start of the budget year and to approve it, together with the resolutions imposing rates and levies and setting tariffs, before the start of the budget year.

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46 Section 25(1) provides that if a council fails to approve an annual budget, it must reconsider the budget and vote on it again within seven days of the meeting at which approval failed. Section 25(2) requires that process to be repeated until a budget is approved. Section 25(3) requires the mayor, if a budget has not been approved by the first day of the budget year, to comply immediately with section 55, which requires the mayor to report the matter to the MEC responsible for local government in the province.

47 Section 18 requires the annual budget to be funded only from realistically anticipated revenues, cash-backed accumulated funds and borrowed funds for capital purposes. Section 15 permits a municipality to incur expenditure **only** in terms of an approved budget and within the limits of the amounts appropriated for the different votes.



The Province's Duty to Intervene

48 Section 139(4) of the Constitution provides:

*"If a municipality cannot or does not fulfil an obligation in terms of the Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget, the relevant provincial executive **must intervene by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved,** including dissolving the Municipal Council and — (a) appointing an*

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administrator until a newly elected Municipal Council has been declared elected; and (b) approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality."

49 Section 26(1) of the MFMA gives statutory effect to that provision. It provides that if, by the start of the budget year, a municipal council has not approved an annual budget or any revenue-raising measures necessary to give effect to the budget, the provincial executive of the relevant province **must** intervene in the municipality in terms of section 139(4) of the Constitution by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, including dissolving the council and appointing an administrator until a newly elected council has been declared elected, and approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality. Section 136(3) of the MFMA is to the same effect.



50 The structure of section 139 is deliberate. Section 139(1) confers a **discretion** on a provincial executive to intervene where a municipality fails to fulfil an executive obligation ("may"). Sections 139(4) and 139(5), by contrast, impose a **duty** ("must"). Where a municipality has not approved its budget, the Constitution has already made the decision that intervention is required. The provincial executive's discretion is confined to the choice of appropriate steps.

51 I am advised that this distinction was recognised in *Unemployed Peoples Movement v Premier, Province of the Eastern Cape and Others* 2020 (3) SA 562

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(ECG), at paragraph 23. In that matter, the Court declared the municipality to be in breach of its constitutional obligations and directed the provincial executive to intervene, rejecting the province's contention that to do so would trespass on executive terrain. A court that orders an organ of state to perform a duty the Constitution has already imposed does not usurp the executive's function. It vindicates the Constitution.

52 Section 139(6) requires a provincial executive that intervenes under section 139(4) to submit written notice of the intervention to the Cabinet member responsible for local government, the provincial legislature and the National Council of Provinces within seven days after the intervention began.



53 Section 139(7) provides that if a provincial executive cannot or does not, or does not adequately, exercise the powers or perform the functions referred to in section 139(4) or (5), the national executive must intervene in its stead. The Constitution thus leaves no room for a municipality to be left without a budget: if the province fails, the national executive must act.

Spending in the Absence Of A Budget

54 Until a budget is approved following an intervention, section 26(4) of the MFMA permits funds to be withdrawn from the municipality's bank accounts only with the approval of the MEC for Finance, and only in accordance with section 26(5).

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- 55 Section 26(5) confines such funds to current and capital expenditure on votes for which funds were appropriated in the previous year's approved budget, and caps withdrawals in any month at eight per cent of the total amount appropriated in that budget for current expenditure — a percentage that must be scaled down proportionately if revenue flows are below the level of the previous financial year.
- 56 Expenditure outside those limits is unauthorised expenditure as defined in section 1 of the MFMA, with the consequences set out in sections 32 and 173.



The Overarching Duties of Diligence And Cooperation

- 57 Section 237 of the Constitution provides that all constitutional obligations must be performed diligently and without delay. Section 41(1) requires all spheres of government to provide effective, transparent, accountable and coherent government for the Republic as a whole, and to exercise their powers in a manner that does not encroach on the functional integrity of government in another sphere. Section 195 requires public administration to be accountable, efficient and responsive to people's needs.
- 58 Section 237 thus imposes an obligation on organs of state to act promptly to correct illegality within their sphere of responsibility. A provincial executive that has known for more than three months that a municipality has no budget, and has not intervened, has not acted diligently because it has not acted at all.

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THE BACKGROUND FACTS

The Municipality Failed to Approve a Budget

- 59 The Council did not approve an annual budget for the 2026/27 financial year, including the revenue-raising measures necessary to give effect to it, before the start of the budget year on 1 July 2026.
- 60 The draft 2026/27 budget was tabled in March 2026. Councillor Gopie and I raised concerns about it during the Council debate on 30 March 2026. The minutes of that meeting are annexed marked "FA5". Our concerns included that deviation payments (including payments to Munsoft and a disaster-related deviation payment) were not properly reflected; that the MIG and INEP infrastructure projects for 2025/26 remained incomplete; that insufficient provision had been made for infrastructure upgrades; and that the Municipality's increasing Eskom debt was not addressed.
- 61 The final budget was placed before the Council at its meeting on 30 June 2026. Councillors received it on 29 June 2026, the day before the meeting. The meeting was chaired by the Speaker. All 13 councillors were present. The budget was put to the vote, without amendment, and was not approved: six councillors voted for it and seven against, with no abstentions and no absences.



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62 Councillor Gople and I voted against the budget and objected to it during the meeting. Our objections, which were recorded by the Municipal Manager and the minute-taker, were that: the budget was unfunded — after discussion, the Municipality's Chief Financial Officer confirmed at the meeting that it was unfunded; there had been no public participation on the IDP; the budget poorly addressed service delivery and was not aligned with the Service Delivery and Budget Implementation Plan; and the organogram and contracted services were not aligned with the budget. The Deputy Director-General: Local Government in the provincial Department of Cooperative Governance and Traditional Affairs, Mr M.P. Khathide, later also stated in the Council that the budget was unfunded.



63 The DA's concerns are borne out by the Municipality's own documents. The executive summary of the final budget, dated 30 June 2026 (annexure "FA6"), records that the Eskom payment arrangement "has been substantially revoked due to failure to honour payment arrangement as per Eskom Debt relief conditions"; that the Municipality was responding to a "final notice of termination" from National Treasury; that electricity losses averaged 42.46%, against a National Treasury norm of 7% to 10%; and that the debtors book and employee-related costs were escalating. Yet the budget assumed collection rates of 98.9% on property rates and 99.2% on electricity, and included R25,241,582 of Eskom debt relief as revenue. On those assumptions it projected a surplus of only about R3.2 million. I am advised that section 18 of the MFMA requires a budget to be funded only from realistically anticipated revenues. Councillor Gople and I were entitled to conclude that this budget was not.

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- 64 Thereafter, the MEC for Finance, by letter to the Municipality, gave it 13 days, until 13 July 2026, to approve its budget.
- 65 The Provincial Treasury also stated publicly that the provincial government would have to intervene if the Municipality failed to approve its budget, and it was reported at the time that an intervention under section 139(4), including the dissolution of the Council and the appointment of an administrator, was in contemplation. Copies of the press reports are annexed marked "FA7". A similar warning was given at a meeting of the finance oversight committee of the KwaZulu-Natal Legislature held in Ladysmith on 12 August 2026.
- 66 A further sitting of the Council was held on 13 July 2026. Its agenda included the final MTREF budget for 2026/27 to 2028/29, the IDP and the performance management system. The budget was again not approved, and Councillor Gopie and I again objected to it. That sitting was held 13 days after the failed vote of 30 June 2026, and not within seven days as section 25(1) of the MFMA requires.
- 67 A special sitting of the Council was convened by the Speaker and held on 31 July 2026. All 13 councillors were present. The budget — in substantially the same form as had been placed before the Council on 13 July — was again not approved: six councillors (five of the IFP and one of the ABC) voted for it, and seven (five of the ANC, Councillor Gopie and I) voted against, with no abstentions and no absences. Councillor Gopie and I recorded in the meeting that cost-containment measures had not been implemented and that the budget remained unfunded.



- 68 The Council has not voted on the budget since 31 July 2026. A special meeting of the Council was held on 23 September 2026; the addendum to its agenda dealt with electricity meter audits and the section 154 support. To my knowledge, no meeting to consider the budget has been requested or scheduled.
- 69 The minutes of the meetings of 30 June, 13 July and 31 July 2026 have not been made available to me. I have described what occurred at them from my own attendance. Councillor Gopie, who also attended them, confirms these facts in his confirmatory affidavit annexed marked "FA8".
- 70 The need for a credible, funded budget is acute. The Municipality's financial position is precarious. According to the Municipal Manager, the Municipality owed Eskom approximately R600 million as at 30 September 2026, and there is no payment arrangement in place.
- 71 No budget has been approved since 31 July 2026. The Municipality has accordingly been without an approved budget for the entire first quarter of the 2026/27 financial year. These facts are not in dispute: they are recorded by the MEC in the notices to which I now turn.



The MEC's Notices of 17 August 2026

- 72 On 17 August 2026, the MEC Issued notices to individual councillors of the Municipality, including Councillor Gopie and me, titled "Notice to provide written

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representations regarding alleged non-compliance with item 2 of the Code of Conduct for Councillors" (annexures "FA2" and "FA3"). In those notices, the MEC:

72.1 recorded that "the Department has reported that Endumeni Local Municipality failed to approve its 2026/2027 Annual Budget within the statutory timeframe prescribed by the Municipal Finance Management Act";

72.2 recorded that the failure "occurred despite repeated attempts by Council and interventions by the Department";

72.3 recorded that "Section 26 provides for consequences where Council fails to approve the budget";

72.4 suggested that the councillor "may have failed to attend and/or remain in meetings convened to consider and approve the budget", while acknowledging that "a Councillor is entitled to disagree with a budget and to vote against it"; and

72.5 called on each councillor to explain, within seven days, why the councillor's conduct "should not be regarded as a contravention of Item 2 of the Code of Conduct".

73 The notices are an admission by the MEC of every fact on which this application depends: the Municipality failed to approve its budget by the start of the budget year; the MEC knew it; and the MEC knew that section 26 of the MFMA was engaged.

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74 What the notices do not record is any decision by the Provincial Executive to intervene under section 139(4). The "interventions by the Department" to which the notices refer are not identified. To the DA's knowledge, no resolution of the Provincial Executive has been taken under section 139(4), no administrator has been appointed, no temporary budget has been approved, and no notice has been given in terms of section 139(6) to the Minister, the Provincial Legislature or the National Council of Provinces. The only resolution of the Provincial Executive of which the DA is aware is a resolution to provide "intensified support" to municipalities under section 154(1), to which I return below.



- 75 Departmental support, engagement, advice or attendance at council meetings, however well-intentioned, is not an intervention under section 139(4).
- 76 The Constitution distinguishes between the general duty of provinces to support and strengthen municipalities under section 154(1) and the specific, mandatory intervention required by section 139(4). Only the latter is triggered by a failure to approve a budget, and only the latter equips the province with the instruments — dissolution, administration and a temporary budget — needed to restore lawful governance.

The DA's demand of 3 September 2026

- 77 On 3 September 2026, the DA's attorneys, Minde Schapiro & Smith Inc., addressed a letter to the MEC (annexure "FA9"). The letter was copied to the Premier, the

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MEC for Finance, the Head of Department of KZN COGTA, the Head of Department of the KZN Provincial Treasury, the accounting officer of the Municipality, the Minister, the Chairperson of the NCOP Select Committee on Cooperative Governance and Traditional Affairs, and the Chairpersons of the Portfolio Committee on Cooperative Governance and Traditional Affairs and the Standing Committee on Public Accounts of the KwaZulu-Natal Legislature.

- 78 The letter set out the facts and the legal position summarised above. It recorded that the province has no discretion as to whether to intervene, that a decision to take no step at all is not an exercise of discretion but a failure to comply with section 26(1) of the MFMA and section 139(4) of the Constitution, and that there was reason to believe that the Municipality had continued to incur expenditure in excess of what section 26(5) permits.
- 79 The letter called on the MEC to furnish, within ten business days, information concerning, among other things: whether the Mayor had complied with sections 25(3) and 55; whether the Council had repeated the vote as required by sections 25(1) and (2); whether the Provincial Executive had taken any decision to intervene and, if so, a copy of the resolution and any section 139(6) notice; if no decision had been taken, the reasons and the legal basis for the province's position; whether the MEC for Finance had granted approval under section 26(4); particulars of expenditure since 1 July 2026; and any Treasury assessment of whether the tabled budget was funded in terms of section 18.



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80 To the extent that a decision had been taken not to intervene, the letter constituted a request for reasons in terms of section 5 of the Promotion of Administrative Justice Act 3 of 2000, alternatively under the principle of legality. It warned that, absent a satisfactory response, the DA would consider approaching this Court on an urgent basis for declaratory and mandatory relief.

81 The ten-business-day period expired on 17 September 2026. No response has been received from the MEC, the Premier, the MEC for Finance or any other addressee, and none of them has contacted Councillor Gopie or me about the letter.



82 The silence of the provincial respondents is telling. Had the province intervened, it would have said so and produced the resolution and the section 139(6) notice. Had it a lawful basis for declining to intervene, it would have identified it. It did neither. The only reasonable inference is that there has been no intervention and that there is no lawful justification for its absence.

The section 154 deployment

83 The Provincial Executive resolved to implement "intensified support" to municipalities in terms of section 154(1) of the Constitution. Pursuant to that resolution, the MEC appointed Mr T.L. Manda as a technical expert at the Municipality, by letter dated 20 August 2026 (annexure "FA10"). The appointment is for three months, "not beyond 31 December 2026 or until the municipal annual

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budget and Integrated Development Plans are approved by Municipal Council". His terms of reference include a diagnostic assessment, mediation of disputes, capacity-building and ensuring "that the funded budget is developed". He is remunerated at R131,000 per month. He was introduced to the Council on 7 September 2026, met the DA's caucus on 8 September 2026, met the Council on 15 September 2026, and attended the special Council meeting of 23 September 2026.



- 84 At the special meeting of 23 September 2026, Mr Manda presented a report on the implementation of the section 154 support (annexure "FA11"). The report identifies the approval of the budget as "the first hurdle and burning issue in the municipality". It records, correctly, that "Section 154 support for its part does not put the municipality under administration and does not assume the responsibility of implementing functions on behalf of the municipality. The main thrust is to technically advise and impart capacity". It proposes three committees, chaired by Mr Manda, to advise the Municipal Manager on all procurement, payments, revenue enhancement and staffing. It contains no proposal for securing the approval of a budget, or of the revenue-raising measures needed to bill rates.

- 85 The deployment is revealing in four respects.

85.1 **First**, it confirms that the province has considered the Municipality's position and has deliberately chosen to respond under section 154, rather than to intervene under section 139(4).

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85.2 **Second**, it shows that the province chose a different and weaker instrument.

Section 154 support leaves the Council in place and the Municipality without a budget. It provides no temporary budget, no temporary revenue-raising measures, no administrator and no mechanism for ending the impasse if the Council remains deadlocked.

85.3 **Third**, it has not worked. Mr Manda was appointed more than six weeks ago.

The Municipality still has no budget, and the Council has not voted on one since 31 July 2026.



85.4 **Fourth**, the deployment is framed to run until 31 December 2026 — beyond the elections. It is consistent with an approach of waiting for a newly elected council to approve a budget, rather than ensuring that one is approved now.

86 Sections 154 and 139 serve different constitutional purposes. Section 154 imposes a general, continuing duty to support and strengthen municipalities. Section 139(4) imposes a specific duty, triggered by a specific failure, to take the steps necessary to ensure that a budget is approved. The one cannot stand in for the other. A province that answers a peremptory duty to intervene by appointing an adviser has not intervened.

87 The provincial respondents may contend that the deployment is itself an "appropriate step" under section 139(4). It is not. The Provincial Executive expressly acted under section 154; it has given no notice under section 139(6); and the deployment carries none of the powers, and none of the constitutional

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safeguards, of an intervention. In substance, the province is overseeing the Municipality's payments and procurement through an advisory structure, while avoiding the accountability to the Minister, the Provincial Legislature and the National Council of Provinces that section 139 requires.

Expenditure Without a Budget

88 In July 2026, the MEC for Finance approved withdrawals under section 26(4) of the MFMA for operational purposes, limited to 8% per month of the previous year's budget. The approval was issued to the Municipal Manager; I have not seen it. That approval confirms that the Provincial Executive, through one of its members, has known since July 2026 that the Municipality had no approved budget.



89 The DA does not know whether the Municipality's expenditure since 1 July 2026 has remained within that approval and the limits of section 26(5). It does know that the Municipality has continued to conclude new contracts: on 31 July 2026, for example, the Municipal Manager signed a nine-month service level agreement with Reaga Sechaba Trading Enterprise t/a RSTE Utility Services for electricity meter audits, running until 7 April 2027 (annexure "FA12"). It also knows that the Municipality is not paying its creditors. To my knowledge, security service providers have not been paid for three months, and Eskom and other service providers, including legal firms, are unpaid. The report to the Council of 23 September 2026 records an outstanding amount of R7,228,546.64 owed to RSTE under its previous contract.

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- 90 The terms of the section 26(4) approval, and whether the Municipality's expenditure has remained within it, are matters peculiarly within the knowledge of the fifth and ninth respondents, who have not disclosed them despite being asked to do so. That is why the DA seeks an order that they report on affidavit.

THE PROVINCIAL RESPONDENTS ARE IN BREACH OF THE CONSTITUTION



- 91 The provincial respondents' breach is established on their own documents. Each element of the obligation is present:

91.1 **The trigger has occurred.** The Council did not approve a budget or the revenue-raising measures necessary to give effect to it by 1 July 2026, and has failed to do so on every occasion since. The MEC has admitted it.

91.2 **The duty is mandatory.** Section 139(4) and section 26(1) say "must". No interpretive exercise can turn "must" into "may".

91.3 **The duty has not been performed.** There has been no intervention under section 139(4): no resolution, no administrator, no temporary budget, no section 139(6) notice. The Provincial Executive has instead resolved to provide support under section 154.

91.4 **There is no justification.** The provincial respondents have been asked to explain themselves, and have not done so.

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92 The provincial respondents' failure is aggravated by three considerations.

92.1 **First**, it has persisted for more than three months. Section 26(1) contemplates intervention from the start of the budget year. Section 237 requires constitutional obligations to be performed without delay. Every month that passes is a further month of unlawful governance.

92.2 **Second**, it is a knowing failure. The MEC for Finance approved emergency withdrawals under section 26(4) in July 2026 and set a deadline of 13 July 2026 for the approval of the budget, and the Provincial Treasury publicly warned that the province would have to intervene if it was not approved. It was not. The MEC recorded the failure in writing on 17 August 2026, and was reminded of the province's obligations in detail on 3 September 2026. This is not oversight. The province has said what the Constitution requires of it — and then not done it.

92.3 **Third**, the province has expended its energies elsewhere. Rather than intervene, it has issued notices to councillors and sent an adviser. A section 154 deployment cannot satisfy section 139(4).

93 I am advised that the Constitutional Court has confirmed that the exercise of provincial powers under section 139 is subject to the Constitution and to judicial control: *Premier, Gauteng and Others v Democratic Alliance and Others* 2022 (1) SA 16 (CC). The same principle that requires a province to act lawfully when it intervenes requires it to act when the Constitution commands intervention.

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THE MUNICIPAL RESPONDENTS ARE ALSO IN BREACH

94 The Council has failed to comply with sections 16(1) and 24 of the MFMA. It has also failed to comply with section 25. After the vote failed on 30 June 2026, the Council did not reconsider the budget within seven days, as section 25(1) requires: it next considered it on 13 July 2026, and then on 31 July 2026. It has not considered the budget at all since 31 July 2026, although section 25(2) requires the process to be repeated until a budget is approved. The Council is in continuing breach of those provisions.



95 I understand that the Mayor reported the failure to approve the budget, but I have not seen the report, and it has not been tabled before the Council. To the extent that the Mayor has not complied with sections 25(3) and 55 of the MFMA, the Mayor is in breach of those provisions. The DA seeks an order directing the Mayor to comply, to the extent that the Mayor has not already done so, and to furnish a copy of the report.

96 The DA does not seek, in these proceedings, to determine individual responsibility for the Council's failure. That is not necessary. Section 139(4) is triggered by the objective fact that a budget has not been approved, irrespective of why. The relief sought against the municipal respondents is declaratory and facilitative: it records the breach, which is the jurisdictional fact for the province's duty, and secures the information necessary for the Court to supervise compliance.

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- 97 The DA also seeks an order requiring the newly elected Council to consider and vote on a budget within fixed periods after its first meeting, applying the process that section 25 already requires. That order does not dictate how any councillor must vote. It ensures that the process the MFMA prescribes is actually followed, alongside, and without prejudice to, the province's duty to intervene.

THE PROFOUND CONSEQUENCES FOR THE PEOPLE OF ENDUMENI

- 98 I turn to what this failure means for the people who live in Endumeni. It is for them that the Constitution requires municipalities to adopt budgets, and for them that it requires provinces to intervene when municipalities do not.



- 99 **The Municipality cannot lawfully govern.** Under section 15 of the MFMA, a municipality may incur expenditure only in terms of an approved budget. There is no approved budget. The Municipality is confined to the narrow emergency regime of section 26(4) and (5): withdrawals approved by the MEC for Finance, capped at a fraction of the previous year's budget, and only on votes funded in that budget. That regime is a short bridge to an intervention. It is not a way of running a municipality for a year.

- 100 **Services are frozen at last year's levels, at best.** Section 26(5) confines spending to votes funded in the 2025/26 budget and caps it at eight per cent per month of the previous year's current appropriation, scaled down if revenue falls.

There is no lawful room for new projects, for responding to growth in demand or for

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adjusting priorities. Capital projects planned for 2026/27 are in jeopardy. The Municipality's own project report of 18 September 2026 (annexure "FA13") records, in respect of the rehabilitation of Hajee Jamal Street in Ward 2 — a project funded by the Municipal Infrastructure Grant and about 70% complete — that "the municipal budget approval has slowed down the continuation of construction activities as the invoices have not been paid to continue the works". Other projects in the 2026/27 capital programme, including the Sithembile multi-purpose courts and the Endumeni multi-purpose community centre, remain at tender stage awaiting the appointment of contractors.



- 101 **The revenue base is collapsing.** Section 24(2) of the MFMA requires the resolutions imposing rates and setting tariffs to be adopted together with the budget, and the Local Government: Municipal Property Rates Act 6 of 2004 requires rates to be levied by resolution of the council. The 2026/27 rates and tariff resolutions have not been adopted. As a result, to my knowledge, the Municipality has issued no accounts for property rates or refuse removal to any residential or business account holder since 1 July 2026; only electricity, at the tariff approved by NERSA, is being charged. On the Municipality's own budget, property rates (net of rebates) and refuse removal were to yield about R148.6 million in 2026/27 — roughly R12.4 million a month. That revenue is not being billed, and so is not being collected. Whether it can later be recovered for the months already lost is, at best, uncertain. A municipality that cannot lawfully raise revenue cannot sustainably deliver services.

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102 **The poorest residents bear the greatest burden.** Free basic services and indigent support are budgeted programmes. The residents who depend on them — those who cannot afford to pay for electricity, refuse removal and other basic services — are precisely those who cannot replace municipal provision with private alternatives. The Constitution requires the Municipality to give **priority** to the basic needs of the community through its budgeting process (section 153(a)). Without a budget, that constitutional priority has no vehicle.

103 That burden is already being felt. Indigent applications are not being captured, so that many residents who qualify for indigent support are not receiving it. Potholes and faulty street lights — both the Municipality's responsibility — are not being repaired.

104 **Socio-economic rights are imperilled.** The Municipality is a primary instrument through which the State gives effect to the rights of access to adequate housing and to an environment not harmful to health or well-being. The Constitutional Court has repeatedly recognised that the provision of basic municipal services is closely connected to these rights and to the dignity of residents. A municipality without a budget cannot plan for, fund, maintain or expand the services through which those rights are realised. The State's duty under section 7(2) to promote and fulfil those rights is, in Endumeni, suspended in practice.

105 **Electricity supply is at risk.** The Municipality owes Eskom approximately R600 million and has no payment arrangement in place. Its own budget documents



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record that its arrangement under the Eskom debt relief programme has been substantially revoked, and that it has received a final notice of termination. A municipality in that position, without a budget that lawfully provides for its bulk purchases and for a credible plan to service that debt, faces the real prospect of supply restrictions or interruptions. Those would fall on every household, clinic, school and business in Endumeni.

- 106 **Employees, suppliers and creditors face uncertainty.** Salaries, contracts with service providers, bulk purchases and maintenance contracts all depend on lawful expenditure authority. Procurement in terms of the Municipality's supply chain management policy cannot lawfully commit funds that have not been appropriated. The risk of service interruptions, litigation by creditors and the breakdown of essential maintenance grows each month. That risk is materialising: as set out above, security providers, Eskom and other creditors are unpaid. According to the information available to me, the Municipality's cash balance as at 1 October 2026 was R37,242,929.74. Its employee-related costs alone exceed R16 million a month, according to the report placed before the Council on 23 September 2026. Salaries have so far been paid.

- 107 **Transfers from the national fiscus are at risk.** A municipality that does not comply with the budgetary requirements of the MFMA exposes itself to the stopping or withholding of transfers under section 216(2) of the Constitution and the Division of Revenue Act. The equitable share — on which free basic services depend — and conditional infrastructure grants are both at risk.



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108 **Accountability is undermined, and personal liability accumulates.**

Unauthorised expenditure must be recovered from the persons liable for it under section 32 of the MFMA, and may constitute financial misconduct or an offence under the MFMA. Every month without a budget increases the exposure of the Municipality, its accounting officer and its councillors, and further entrenches irregularity in the Municipality's finances — the effects of which will be visited on future audits and future budgets.

109 **Democratic accountability is hollowed out.** The budget is the principal mechanism through which residents participate in, and hold accountable, their municipal government: it is tabled, published, consulted upon and debated. A municipality that governs without one governs without the democratic authority the Constitution requires.

110 These consequences are precisely why the Constitution does not leave intervention to provincial discretion. The framers recognised that a municipality without a budget is a municipality in constitutional crisis, and that the people affected cannot wait for the political process to resolve itself. The province's inaction has rendered that constitutional safeguard a dead letter in Endumeni.



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THE LOCAL GOVERNMENT ELECTIONS OF 4 NOVEMBER 2026

- 111 The general election of all municipal councils will be held on 4 November 2026. I address the effect of the election on this application directly, because the provincial respondents will no doubt rely on it.

The Election Will Not Produce a Budget

- 112 The election replaces the Council. It does not approve a budget. Once the results are declared, the following must happen before a budget can be approved:



- 112.1 the municipal manager must call the first meeting of the newly elected council within 14 days after it has been declared elected, as section 29(1) of the Municipal Structures Act requires;
- 112.2 at that meeting, or thereafter, the council must elect its Speaker and its Mayor;
- 112.3 the Mayor must then table a budget — whether the budget previously tabled or a new one — before the council;
- 112.4 the budget must be made public, and the local community must be invited to make representations on it, in terms of section 22 of the MFMA; and
- 112.5 the council must consider those representations, and the views of the National and Provincial Treasuries, before it approves the budget, in terms of section 23 of the MFMA.

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113 On any realistic view, therefore, a newly elected council will not approve a budget before January 2027. That is half or more of the 2026/27 financial year. Throughout that period, the Municipality will remain subject to the emergency regime of section 26(4) and (5) of the MFMA. If the newly elected council is itself divided, the impasse may continue for longer still.

114 The election thus does not end the period without a budget. It extends it — and it makes the need for a lawful financial framework during the interregnum more pressing, not less.



The Province's Duty Does Not Lapse

115 Section 139(4) is triggered when a **municipality** cannot or does not approve a budget. The duty is owed in respect of the municipality as an institution, not in respect of a particular complement of councillors. The Municipality has had no budget since 1 July 2026, and it will have none on 5 November 2026. The province's duty to take appropriate steps to ensure that a budget is approved continues for as long as that remains so.

Dissolution and The Province's Own Delay

116 I accept that, with the general election weeks away, dissolving the Council and appointing an administrator may now serve little practical purpose.

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117 But that state of affairs is of the province's own making. Had the province intervened in July 2026 — when the budget failed, when its Treasury set deadlines, and when it publicly warned that it would intervene — an administrator and a temporary budget could have governed the Municipality lawfully for four months. The province cannot rely on the futility of a remedy that its own delay has produced. A party may not benefit from its own default.

118 The DA accordingly does not ask this Court to order the dissolution of the Council. It leaves that measure within the range of steps available to the Provincial Executive, as section 139(4) does.



A Temporary Budget Remains Essential

119 What the residents of Endumeni need now is a lawful financial framework for the months between now and the approval of a budget by the newly elected council. That is precisely what section 139(4)(b) contemplates: a temporary budget or revenue-raising measures "to provide for the continued functioning of the municipality".

120 Temporary revenue-raising measures are especially important. Because no rates or tariff resolutions have been adopted, the Municipality is not billing rates or refuse charges. Unless the province approves temporary revenue-raising measures, the Municipality will not lawfully raise those charges for the 2026/27 year until a newly

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elected council adopts the necessary resolutions — on any realistic view, not before 2027. The Municipality cannot survive that long without that revenue.

The application will not become moot

121 This application is set down for hearing on 23 November 2026, after the newly elected council will have been declared elected. The relief sought is framed for that situation:



121.1 Paragraph 8 of the notice of motion sets a timetable within which the newly elected council must consider and vote on a budget, and requires the Provincial Executive to continue to take appropriate steps until a budget is approved.

121.2 Paragraph 5 of the notice of motion requires the Provincial Executive to secure a lawful financial framework, including temporary revenue-raising measures, for the period until that budget is approved.

122 In addition, the Provincial Executive is directed to intervene, and the matter remains under the supervision of this Court until a budget is approved.

123 The third, fourth and fifth respondents are cited in their official capacities. An order against them binds their successors in office, including office-bearers elected by the newly elected council.

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- 124 Even if some of the relief were overtaken by events, the declaratory relief would retain real practical effect.
- 125 It bears on the lawfulness of the expenditure the Municipality has incurred since 1 July 2026, and on any liability for that expenditure under section 32 of the MFMA. It settles the distinction between section 154 support and section 139(4) intervention, which matters to every municipality in the province. And it determines whether a province may simply wait out the term of a council that has failed to adopt a budget, rather than intervene. That question will arise again at the end of every municipal term.



URGENCY

- 126 This application is urgent, and the DA will not obtain substantial redress at a hearing in due course.
- 127 **The breach is continuing and compounding.** This is not a single historical wrong. Every day that passes without an intervention is a further day of unconstitutional conduct by the provincial respondents and of unlawful governance in the Municipality. Each month adds another month of expenditure without budgetary authority and another month of frozen services.
- 128 **The harm is irreversible.** Services not delivered, maintenance not performed and projects not commenced cannot be restored retrospectively. Unauthorised

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expenditure, once incurred, cannot be undone. The financial year cannot be lived again. If this application were to be heard in the ordinary course — which I am advised could take six months or more in this Division — the 2026/27 financial year would be largely or wholly over before relief is granted. Any order would then come too late to protect the people it is intended to protect.

129 **The Municipality's finances are deteriorating by the month.** No rates or refuse accounts have been issued since 1 July 2026; creditors are going unpaid; the Eskom debt stands at about R600 million; and the Municipality's cash of about R37 million compares with employee costs alone of more than R16 million a month. Every month of delay brings the Municipality closer to being unable to meet its basic obligations.



130 **The elections heighten the urgency.** For the reasons set out above, the elections of 4 November 2026 will not end the period without a budget. They will extend it, and they create a risk that the province will treat the change of council as a reason to do nothing for several more months. An order of this Court will ensure that the province acts in the period before a budget is approved, and that the newly elected council approves a budget within a fixed period after it takes office.

131 **The harm falls on the vulnerable.** The persons most severely affected are residents dependent on basic services, who have no means of protecting themselves.

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- 132 After the budget failed on 30 June 2026, the MEC for Finance gave the Municipality until 13 July 2026 to approve it, and the Provincial Treasury publicly warned that the province would intervene if it did not. The DA was entitled to expect that the province would do what it had said it would do. Litigation while the province's own process was running would have been premature.
- 133 When the budget failed again on 13 July and 31 July 2026 without an intervention, the only provincial responses were the MEC's notices to individual councillors of 17 August 2026 and the appointment of a section 154 adviser on 20 August 2026. On 30 August 2026, the DA stated publicly that it would approach the court if the province did not act (annexure "FA14").
- 134 On 3 September 2026, its attorneys addressed a comprehensive letter of demand to the provincial respondents and others.
- 135 The DA afforded the provincial respondents a reasonable period of ten business days to respond, which expired on 17 September 2026. It was right to do so: an organ of state should be given an opportunity to explain itself, or to correct its conduct, before being taken to court.
- 136 While that period was running, the section 154 adviser began work at the Municipality: he was introduced to the Council on 7 September 2026 and met the Council on 15 September 2026. It was reasonable for the DA to allow its deadline to run, and to see whether that support would produce a budget. It has not.



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137 The period after 17 September 2026 was used to assemble the facts and documents on which this application depends. Councillor Gopie and I completed detailed written instructions on 3 October 2026, together with the documents in our possession, and the DA's legal representatives then prepared these papers. That period was reasonable, given the number of documents involved and the importance of placing a full and accurate record before the Court.

138 The timetable in the notice of motion gives the respondents ample time to answer this case fully. Any respondent that opposes has until 10 November 2026 — nearly four weeks from the launch of this application — to deliver its answering affidavits, and the parties will exchange heads of argument before the hearing. That is sufficient time for every respondent to place a complete version before the Court, and there can be no suggestion of prejudice. The provincial respondents have been on notice of the DA's complaint since 3 September 2026, when the DA's attorneys set out in detail the facts and the legal position on which this application rests. The facts are within their own knowledge and their own records: the resolution of the Provincial Executive, the appointment of the technical expert, the section 26(4) approval and the Municipality's financial records are all their documents. The central fact — the absence of a budget — is common cause. The case raises no complex factual dispute that would require more time to answer.

139 The DA has not sought to depart from the Rules more than the circumstances require. I am advised that the extent to which an applicant may abridge the ordinary forms and time periods must be commensurate with the urgency of the matter: *Luna Meubel*

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 1977 (4) SA 135 (W). The DA has therefore not asked for a hearing within days. It has
 chosen the earliest date on which the matter can fairly be determined on full papers.

140 The application is accordingly set down for hearing on 23 November 2026.

THE RELIEF SOUGHT IS JUST AND EQUITABLE

141 Section 172(1)(a) of the Constitution obliges this Court to declare conduct that is
 inconsistent with the Constitution to be invalid to the extent of its inconsistency.
 Section 172(1)(b) empowers the Court to make any order that is just and equitable.



142 The relief sought is carefully confined:

142.1 It **declares** the breaches by the Council and the provincial respondents.

142.2 It declares that the section 154 support provided by the province does not
 discharge its duty under section 139(4) and section 26(1).

142.3 It **directs** the Provincial Executive to intervene in terms of section 139(4) and
 section 26(1) within a short, fixed period, by taking any appropriate steps to
 ensure that a budget is approved and that the Municipality functions lawfully
 in the meantime. It identifies a temporary budget and temporary revenue-
 raising measures as the measures most clearly called for, and leaves
 dissolution within the range of measures available to the Provincial
 Executive, without asking the Court to order it.

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142.4 It requires the newly elected council to consider and vote on a budget within a fixed period after its first meeting, applying the process that section 25 of the MFMA prescribes.

142.5 It requires the Provincial Executive to give the notice that section 139(6) already requires, so that the oversight bodies the Constitution designates — the Minister, the Provincial Legislature and the NCOP — are properly engaged.



142.6 It requires the Mayor to comply with sections 25(3) and 55.

142.7 It requires the accounting officer and the MEC for Finance to disclose, on oath, the terms of the section 26(4) approval and whether expenditure since 1 July 2026 has remained within it — information that is necessary to assess the extent of the harm and that the DA has been unable to obtain.

142.8 It places the matter under the **supervision** of this Court through periodic reporting until a budget is approved, and preserves the DA's right to return to Court, including for relief arising from section 139(7) should the province fail to comply.

143 Supervisory relief is appropriate here. The provincial respondents have been aware of their obligation for months and have not acted; they have not responded to a formal demand. A bare declarator would invite further delay. Reporting obligations ensure that the order is effective and that the Court, rather than the DA, is the guarantor of compliance.

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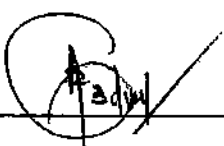
CONCLUSION

144 The Constitution does not permit a municipality to govern without a budget, and it does not permit a province to look on while one does. Section 139(4) leaves the provincial executive of KwaZulu-Natal no choice. For more than three months it has made the choice the Constitution forbids.

145 The people of Endumeni are entitled to a lawfully funded municipality. The Constitution gives them a mechanism to secure one. The DA asks this Court to ensure that the mechanism works.



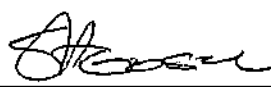
146 I accordingly ask that an order be granted in terms of the notice of motion.



DEPONENT

I certify that the deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and sworn to before me at
 on this _____ day of OCTOBER 2026, the
 regulations contained in Government Notice No. R1258 of 21 July 1972, as amended,
 and Government Notice No. R1648 of 19 August 1977, as amended, having been
 complied with.

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