KNYSNA
Municipality
Munisipaliteit
uMasipala

Notice is hereby given
of a meeting of the

MUNICIPAL PUBLIC ACCOUNTS COMMITTEE IN COMMITTEE

to be held on

THURSDAY, 12 FEBRUARY 2026

at

10:00

In the Council Chambers
to consider the items, as indicated in the Agenda

MUNICIPAL OFFICES	DR. R MARTIN
KNYSNA	**ACTING MUNICIPAL MANAGER**

Chairperson: Cllr S Campbell
Members: Cllr S Sabbagh
Cllr L Davis
Cllr A Tsengwa
Cllr B Charlie
Cllr J White
Mr A Jacobs (Advisory Member: Audit Committee)

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AGENDA

1. OPENING AND WELCOME

2. ATTENDANCE (AS PER ATTENDANCE REGISTER)

2.1 Members: Present
2.2 Members: Absent with Leave
2.3 Members: Absent Without Leave
2.4 Other Councillors Present
2.5 Officials Present
2.6 Members of the Audit Committee Present
2.7 Members of the Public Present

3. NOTING THE PROVISIONS OF SCHEDULE 1 (CODE OF CONDUCT FOR COUNCILLORS) OF THE LOCAL GOVERNMENT MUNICIPAL SYSTEMS ACT, 2000

4. DISCLOSURE OF INTERESTS BY COUNCILLORS

5. CONSIDERATION OF THE MINUTES OF THE PREVIOUS MEETING

The Committee considers the minutes of the previous meetings:

Meeting held on 12 December 2025.

KNYSNA
Municipality
Munisipaliteit
uMasipala

MINUTES

of

the

MUNICIPAL PUBLIC ACCOUNTS COMMITTEE MEETING

held on

Friday, 12 December 2025

09h00

IN ATTENDANCE

MEMBERS:

Chairperson: Cllr S Campbell
Members: Cllr L Davis
Cllr S Sabbagh
Cllr J White
Cllr A Tsengwa

MEMBERS ABSENT WITH LEAVE

MEMBERS ABSENT WITHOUT LEAVE

OTHER COUNCILLORS PRESENT

Cllr J White

OFFICIALS

L Mapholoba	Municipal Manager
E Campher	MPAC Coordinator
T Mampana	Manager SCM

APOLOGIES

None

AUDIT COMMITTEE MEMBERS

None

MEMBERS OF THE PUBLIC

None

1. **OPENING AND WELCOME**

   The Chairperson opened the meeting and welcomed everybody present.

2. **ATTENDANCE**

   Members of the Committee were present, as per the Attendance Register.

3. **NOTING THE PROVISIONS OF SCHEDULE 7 (CODE OF CONDUCT FOR COUNCILLORS) OF THE LOCAL GOVERNMENT MUNICIPAL STRUCTURES ACT 117 OF 1998**

4. **DISCLOSURE OF INTERESTS BY COUNCILLORS**

   None

5. **CONSIDERATION OF THE MINUTES OF THE PREVIOUS MEETING**

   None

6. **ITEMS REFERRED**

   6.1 REPORT ON THE INVESTIGATION OF IRREGULAR EXPENDITURE IDENTIFIED BY THE AUDITOR-GENERAL DURING THE 2022/2024 FINANCIAL YEARS

The Chairperson welcomed Mr Naicker of Megaflow. Mr Naicker raised various concerns relating to the Council Resolution taken on by Council on 22 August 2025 relating to T21/2022/2023. He stated that the Council Resolution was unfair, irregular and arbitrary in that the MPAC and Council took a decision without giving Megaflow an opportunity to state its case. Mr Naicker further indicated that his attorneys addressed numerous letters to the Municipal Manager of which he never received a response. Cllr Tsengwa indicated that the findings of the Auditor-General relates to the expiry of the validity period of the tender and the extension of the contract by more than 20% without Council's approval and that the Committee was never authorized to investigate the tender itself.

The Municipal Manager requested the Committee to excuse Mr Naicker from further deliberations, whereafter the Chairperson indicated that the administration will respond to the correspondence received from Mr Naicker and his attorneys around the second week of January 2026.

After the Committee deliberated the concerns of Mr Naicker the Committee resolved that:

RESOLUTION

1. That the matter must stand over to a next meeting in order for the Municipal Manager to reply to the correspondence received from Megaflow;s attorneys.
2. The Committee recommends to Council that the Municipal Manager be requested to hold the execution of the Council Resolution adopted on 22 August 2025 in respect of the investigation into T21/2022/2023 in abeyance pending the finalization of the investigation by MPAC.

6.2 REPORT ON THE UIFW EXPENDITURE REDUCTION STRATEGY

The Manager SCM introduced the item and UIFW Expenditure Strategy. After deliberation, the Committee resolved to:

RESOLUTION

1. The Committee approves the UIFW Expenditure Reduction Strategy and the MPAC programme for the period January 2026 to June 2026.
2. That the UIFW Expenditure Registers be submitted to MPAC at its next in order for MPAC to identify those items that are quick wins and dispose thereof.

The Chairperson thanked everyone at the meeting for their contributions and the meeting adjourned at 12:15

b

Approved	

....
Chairpersоn: Cllr S Campbell

....
Date

-oOo-

7

REPORT ON FRUITLESS AND WASTEFUL EXPENDITURE

REPORT FROM THE DIRECTOR FINANCIAL SERVICES

PURPOSE OF THE REPORT

The purpose of this report is to submit to MPAC the report on fruitless and wasteful and expenditure to be investigated or recommend to Council to condonation.

BACKGROUND

In terms of section 32(4) of the MFMA, the accounting officer must promptly inform the mayor, the MEC for local government in the province and the Auditor-General, in writing, of

(a) any unauthorized, irregular, or fruitless and wasteful expenditure incurred by the municipality.

(b) Whether any person is responsible or under investigation for such unauthorized, irregular, or fruitless and wasteful expenditure; and

(c) The steps that have been taken :
   a. To recover or rectify such expenditure; and
   b. To prevent a recurrence of such expenditure

Definition of fruitless and wasteful expenditure

- Expenditure that was made in vain and would have been avoided had reasonable care been exercised.

DISCUSSION

During the 2015/2016, 2019/2020 and 2020/2021 financial year and as declared in the annual financial statements, expenditure has been identified as fruitless and wasteful expenditure that must be submitted to a committee of council to investigate. See attach register of fruitless and wasteful expenditure Annexure A.

2015/2016

Description	Amount
A	B
2015/2016	
Cancelation of contract with Gilbarco for vehicle rental	53,217

This relates to expenditure that was incurred while the contract was cancelled with Gilbarco. Due to the fact this occurred in 2015/2016 I could not trace any further information. Considering that this relates to 2015/16 it will not be easy to recover since the prescription period has already lapse. I therefore recommend that MPAC recommend to Council to condone the expenditure. The supporting documents are attached, see Annexure B1 and Annexure B2.

2019/2020

Description A	Amount B
2019/2020:	
Year-end function - Infrastructure Services	29,964

This relates to expenditure for a year-end-function for Infrastructure Services. The invoiced was signed by the than Director Infrastructure Mr Hariparsad. AG found that the expenditure led to non-compliance with section 61(1) of the MFMA and Regulation 10(5) of the Municipal cost containment regulations of 2019. Considering that this relates to 2019/20 it will not be easy to recover since the prescription period has already lapse. I therefore recommend that MPAC recommend to Council to condone the expenditure. The supporting documents attach, see Annexure D

2020/2021

Description A	Amount B
2020/2021:	
Interest paid on outstanding creditor account - On the Estuary	32,340

This relates to penalties levied due to late payment of invoices for accommodation. Initially On the Estuary charged discounted rates, however due to the long wait then charged the full rates as well as interest. Considering that this relates to 2020/21 it will not be easy to recover since the prescription period has already lapse. I therefore recommend that MPAC recommend to Council to condone the expenditure. See Annexure E for a full report on the events that transpired to incur fruitless and wasteful expenditure.

FINANCIAL IMPLICATIONS

The total fruitless and wasteful expenditure as per the register amounts to R115,521. See attached Annexure A.

RELEVANT LEGISLATION

In terms of section 32(4) of the MFMA.

DELEGATION

Delegated to Finance and Governance Committee to resolve (F.2.1)

RECOMMENDATION OF THE MUNICIPAL MANAGER

1. That MPAC note the report for fruitless and wasteful expenditure
2. That MPAC must decide to either condone the fruitless and wasteful expenditure.

APPENDIX / ADDENDUM

ANNEXURE A – 2015 to 2021
ANNEXURE B.1
ANNEXURE B.2
ANNEXURE D
ANNEXURE E

File Number: 9/1/2/10

Execution: Municipal Manager

Director Financial Services

Manager Budget and reporting

	2022	2021

51. Fruitless and wasteful expenditure

Reconciliation of fruitless and wasteful expenditure

Opening balance	119,231	87,818
Fruitless and wasteful expenditure - current year	-	32,340
Amount recovered - long service awards	(3,710)	(927)
Fruitless and wasteful expenditure awaiting investigation	**115,521**	**119,231**

A full investigation was conducted by MPAC. After having considered the report on the investigation, MPAC resolved and made recommendation to council. Council resolved on the matters of fruitless and wasteful expenditure. The accounting officer was instructed to ensure consequence management.

Details of current year fruitless and wasteful expenditure	2022	2021
Interest paid on outstanding account - On The Estuary	-	32,340

52. Irregular expenditure

Reconciliation of irregular expenditure

Opening balance	60,678,087	56,855,257
Irregular expenditure written off by council	-	(63,877,213)
Add: Irregular Expenditure - current year	63,844,975	67,700,043
	124,523,062	**60,678,087**

Details of irregular expenditure – current year

	2022	2021
T4/2019/2020 - Top Structures Xolweni. Tender over expenditure not approved by Council as per SCM Policy	1,600,768	-
Deviation not justified	-	291,072
Non-compliance with Upper Limit Notice (Exceeding Upper Limit Thresholds)	-	295,552
Irregular Appointment of Director Community Services, the appointment was contrary to legislative requirements	1,072,532	-
Irregular appointment of Director: Integrated Human Settlements without Council approval	7,016	765,432
T18/2021/2022 - Jobbing tender: Electrical department - Local content items purchased without being advertised for local content.	905,407	-
Preferred bidder as per BAC minutes not appointed	-	19,726
Local content % not recalculated (imported content not exempted by DTI)	-	161,387
Preference points system for evaluation of loan finance not included in tender documents	6,335,851	5,038,999
Non-compliance with SCM Regulation 32 - "Piggy-back" contracts	8,040,873	14,549,033
Non-compliance with SCM regulation 29(2) - BAC composition	15,885,466	46,578,842
Quotes - Incorrect bidding process	1,739,783	-
CIDB Act non-compliance	5,744,576	-
Deviation non-compliance	6,095,345	-
Invalid evidence accepted in support of bid	8,429,160	-
Local content PPR Non-compliance	248,734	-
PPPFA Tenders - Evaluations of bids not conducted in line with PPFA	-	-
Quotes - Declaration of interest	32,317	-
Quotes - Deviations	7,025,118	-
Quotes - Municipal services account	67,800	-
Quotes - Payments not aligned with the awards	118,217	-
Prohibited in service of the state	58,926	-
Specifications drafted in a restricted manner and 2CIDB Act non-compliance	437,086	-
	63,844,975	**67,700,043**

AUDITOR-GENERAL SOUTH AFRICA
Auditing to build public confidence
30 November 2022

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Fruitless and Wasteful Expenditure Register

Description	Amount
A	B
2015/2016	
Cancelation of contract with Gilbarco for vehicle rental	53,217
2019/2020:	
Long service award incorrectly paid to an employee	3,710
Year-end function - Infrastructure Services	29,964
2020/2021:	
Interest paid on outstanding creditor account - On the Estuary	32,340
2021/2022	
Amount recovered - long service awards	-3,710
Closing Balance	**115,521**

Annexure B.1

KNYSNA MUNICIPALITY
PAYMENT ADVICE

GILBARCO (AFS) PTY LTD
PO BOX 4123
CAPE TOWN

8000
Tel No.: 083-6770664

Page: 1
Account Number: 2/4738
Date: 29/04/2016
Fax No: 021-4182506

Date	Reference	Gross Amount	Discount	Nett Amount
22/02/16	INVOICE 113075392	6520.95		6520.95
01/03/16	INVOICE 113075732	6930.84		6930.84
07/03/16	INVOICE 113075879	4541.11		4541.11
	TOTAL	17992.90		17992.90

ELECTRONIC FUNDS TRANSFER TRANSACTION

Bank Account Number: 1009575317
Bank Branch Number: 100909
Amount Transfered: R 17992.90
Date: 30/04/2016
Reference: NEDBANK
Eft Reference: 24913

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GILBARCO
AFS

No. 1995/005540/07
No. 4320153135

Gilbarco AFS (Pty) Ltd
P.O. Box 66375
Broadway
2020 SOUTH AFRICA

Telephone +27 11 856-3600
Facsimile +27 11 616-0868

STATEMENT

ntion: Gerald Avery
Knysna Municipality
PO Box 21
Knysna

6573

Date 31/03/2016
Account Number KNY001
Payment Terms: 30 Days

Date	Reference	Order Number	Description	Due	Total Due
01/12/2015	IN 113073261	November 2015 R	A/R Invoices - KNY001	ZAR 15,414.80	ZAR 15,414.80
01/12/2015	IN 113073263	November 2015 R	A/R Invoices - KNY001 EFT 24393 4/4/16	ZAR 5,702.00 Pd	ZAR 21,116.80
13/01/2016	IN 113074187	December 2015 R	A/R Invoices - KNY001	ZAR 5,702.00	ZAR 26,818.80
22/02/2016	IN 113075392	Weekly Fuel & Oil	A/R Invoices - KNY001	ZAR 6,520.95	ZAR 33,339.75
01/03/2016	IN 113075732	Weekly Fuel & Oil	A/R Invoices - KNY001	ZAR 6,930.84	ZAR 40,270.59
29/02/2016	IN 113075771	February 2016 Re	A/R Invoices - KNY001 EFT 26223 29/3/16	ZAR 5,702.00 Pd	ZAR 45,972.59
07/03/2016	IN 113075879	Weekly Fuel & Oil	A/R Invoices - KNY001	ZAR 4,541.11	ZAR 50,513.70
29/03/2016	IN 113076475	T/60187422	A/R Invoices - KNY001	ZAR 88,920.00	ZAR 139,433.70
Total Due					**ZAR 139,433.70**

	Total	Future Remit	0 - 30	31 - 60	61 - 90	91 - 120	121+
Total	ZAR 139,433.70		ZAR 100,391.95	ZAR 12,222.95	ZAR 5,702.00		ZAR 21,116.80

Payment Terms: 30 days nett

Banking Details: Nedbank, Cape Town.
Branch Code: 100909. Account Number: 1009575317

Should you need any details please contact Baadia Bardien on (011) 856-3647 baadia.bardien@gilbarcoafs.com or AccountsReceivable@afsgroup.co.za

Printed by SAP Business One

Annexure B.2

KNYSNA MUNICIPALITY
PAYMENT ADVICE

GILBARCO (AFS) PTY LTD
PO BOX 4123
CAPE TOWN

8000
Tel No.: 083-6770664

Page: 1

Account Number: 2/4738

Date: 30/06/2016
Fax No: 021-4182506

Date	Reference	Gross Amount	Discount	Nett Amount
01/12/15	INVOICE 113073261	15414.80		15414.80
13/01/16	INVOICE 113074187	5702.00		5702.00
	TOTAL	21116.80		21116.80

ELECTRONIC FUNDS TRANSFER TRANSACTION

Bank Account Number: 1009575317
Bank Branch Number: 100909
Amount Transfered: R 21116.80
Date: 01/07/2016
Reference: NEDBANK
Eft Reference: 26602

KNYSNA
Municipality
Munisipaliteit
uMasipala

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GILBARCO
AFS

Gilbarco AFS (Pty) Ltd
P.O. Box 66375
Broadway
2020 SOUTH AFRICA
Telephone +27 11 856-3600
Facsimile +27 11 616-0868

...g. No. 1995/005540/07
...Reg No. 4320153135

TAX INVOICE: 113073261

Attention:	Gerald Avery	Date:	01/12/2015
Company Name:	Knysna Municipality	Account No:	KNY001
Company Address:	PO Box 21	Delivery Address:	Knysna Municipality
	Knysna		Monthly Rentals
	6573 SOUTH AFRICA		See remarks below

VAT Number	Order Number	Payment Terms	SalesPerson	Email	IDN
4360193876	November 2015 Rentals	30 Days	Local Government - Coast	AccountsReceivable@afsgro	

#	GL Code	Description	Total
1	1020-LG-L1	Monthly VIU Rentals	ZAR 13,521.75

Total before Discount	ZAR 13,521.75
Document Discount	
Total after Discount	ZAR 13,521.75
Vat	ZAR 1,893.05
Total	ZAR 15,414.80

CREDITORS
3478
2016-06-21
PROCESSED

Additional Remarks: 121 VIU's @ R 111.75

GOODS RECEIVED

Received in Good Order:

Name: ____________ Signature: ____________

Date & Time: ____________ Waybill #: ____________

Regno: ____________

Banking Details: Nedbank, Cape Town.
Branch Code: 100909. Account Number: 1009575317

For queries regarding this invoice please e-mail: Billing@gilbarcoafs.com
For account enquiries, account payments, or invoice and statement copies, please e-mail accountsreceivable@afsgroup.co.za

Reserve Invoice: No

ARCO

1995/005540/07
4320153135

Gilbarco AFS (Pty) Ltd
P.O. Box 66375
Broadway
2020 SOUTH AFRICA
Telephone +27 11 856-3600
Facsimile +27 11 616-0868

4738

TAX INVOICE : 113074187

Attention: Gerald Avery
Company Name: Knysna Municipality
Company Address: PO Box 21
Knysna
6573 SOUTH AFRICA

Date: 13/01/2016
Account No: KNY001
Delivery Address: C/O Clide & Queens Str
Knysna
6570 SOUTH AFRICA

VAT Number	Order Number	Payment Terms	SalesPerson	Email	IDN
4360193876	December 2015 Rentals	30 Days	Local Government - Coast	AccountsReceivable@afsgroup.c	

#	GL Code	Description	Tot
1	1020-LG-L1	Monthly FPR Rentals	ZAR 5,001.7

Total before Discount	ZAR 5,001.7
Document Discount	
Total after Discount	ZAR 5,001.7
Vat	ZAR 700.2
Total	ZAR 5,702.0

CREDITORS
3618
2016 -06- 30
UJ
PROCESSED

Additional Remarks: 81 FPR's @ R 61.75

GOODS RECEIVED

Received in Good Order:

Name: ____________________

Date & Time: ____________________

Regno: ____________________

Signature: ____________________

Waybill #: ____________________

Banking Details: Nedbank, Cape Town.
Branch Code: 100909. Account Number: 1009575317

For queries regarding this invoice please e-mail: Billing@gilbarcoafs.com
For account enquiries, account payments, or invoice and statement copies, please e-mail accountsreceivable@afsgroup.co.za

Reserve Invoice: No

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Annexure D

KNYSNA MUNICIPALITY
PAYMENT ADVICE

AUNTY B CATERING SERVICES

Page: 1

Account Number: 2/9711

Date: 12/12/2019
Fax No:

Tel No.: 044-3850777

Date	Reference	Gross Amount	Discount	Nett Amount
04/12/19	INVOICE 2019/169	2700.00		2700.00
09/12/19	INVOICE 2019/189	29964.00		29964.00
	TOTAL	32664.00		32664.00

ELECTRONIC FUNDS TRANSFER TRANSACTION

Bank Account Number: 1152340182
Bank Branch Number: 198765
Amount Transfered: R 32664.00
Date: 13/12/2019
Reference:
Eft Reference: 54581

KNYSNA
Municipality
Munisipaliteit
uMasipala

PAID 12 DEC 2019

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Aunty B's Catering

INVOICE

FROM: Name: Aunty B Catering Services
VAT Reg. No.:
Address: 516 Suwridge Str
Hornlee
Knysna 6570

Invoice No. 2019/189
T19013259

INVOICE

TO: Name Knysna Municipality
VAT Reg. No.:
Address Clyde str.
Knysna
6570

Date: 9/12/19

Qty	Description	Unit Price	TOTAL
226	Braaipacks	@ R95	R21470
2	Chicken	@ R32	R 64
2	Small fish	@ R30	R60
228	Drinks	@ R15	R3420
	TRANSPORT 3days	@ R130	R390
228	Salads (2)	@ R20	R4560

PAID 12 DEC 2019

SubTotal R29964
Taxes VAT:
TOTAL R29964

Exco Memb./Owner: B.C. STROEBEL
ID: 6110310194080
Tel.: 084 954 8057

Office Use Only

Banking Details
Bank: NEDBANK
Branch: Knysna
Code: 198765
Acc. No. 1152340182
In Name of: Aunty B Catering Serv.

BCStroebel.

09.12.2019

PLEASE BE AWARE, THAT THE FOLLOWING ITEMS ARE DELIVERED IN EXCELLENT CONDITION, THEREFORE WE WILL NOT BE HELD RESPONSIBLE SHOULD THIS DELIVERY BE SIGNED OFF AND ACCEPTED, FOR DAMAGED GOODS COMPLAINTS AFTER THE FACT.

084 954 8057 044 385 0777 babarastroebel@gmail.com

FROM: KNYSNA MUNICIPALITY

VAN: P O Box 21
KNYSNA Tel:044-3026300
Fax:044-3026340

TO: AUNTY B CATERING SERVICES
AAN:

ORDER/BESTELLING: T/19013259
REQUISITION/REKWISISIE: N /78722
DATE/DATUM: 06/12/2019
PAGE/BLADSY: 1
ACCOUNT/REKENING: 2 9711
REQUESTED BY: msa monique sass
CAPTURED BY: pms Phindiswa Ms
AUTHORISED BY: ph Pravir Harip
BTW/VAT REG : 4360193876
CONTACT/KONTAK:
FAX NO/NR:

DESCRIPTION/BESKRYWING : Infrastructure Year End Catering
:

SEQ NR	ALLOCATION TOEWYSING	LINE DESCRIPTION ITEM BESKRYWING	QTY. HOEV.	UNIT PRICE EEN. PRYS	AMOUNT BEDRAG
1	9/207-94-157	Infrastructure Year End C atering 6 Dec 2019	1	29964.00	29964.00
		TOTAL/TOTAAL	1		29964.00

**** ORDER AUTHORIZATION NOT COMPLETE ***

Please quote order number on all invoices.
NB. All deliveries must be accompanied by an invoice.

For Official Use Only

VAT NO:
COMP REG NO: 2017/346637/07
TAX CLEARANCE: 0700/2/2019/A00332479126/
EMAIL ADDR: babarastroelbel@gmail.com
HDI%: 0.00
WOMEN: 0.00
ENTERPRISE:
CATEGORY: 47-Service Provider
CORE FUNCTION:
TOWN:
BEE STATUS: LEVEL 0
BEE PROC.RECOG: 0%

ORDERS FOR		2019-2020	2018-2019
A	31	9801.73	20513.92
B	2	0.00	13675.00
R	8	0.00	30130.00
T	54	258103.00	100118.50
TOTAL ORDERS		267904.73	164437.42
Tender/RFQ		192	2437321.83

KNYSNA MUNICIPALITY REQUISITIONS

REQ NO: N/78722
REQ DATE: 06/12/2019
PRINTED: 06/12/19 08:16:18

DESCRIPTION: Infrastructure Year End Cateri

CAPTURED BY: monique sass(msa)
REQUESTED BY: monique sass(msa)
TO BE AUTHORISED BY: Pravir Hariparsad(ph)

19013259

STATUS: UNAUTHORISED
REQUIRED ORDER TYPE: T
DEVIATION REASON:
:
NUMBER OF QUOTES: 1
NO QUOTE REASON:

REQUISITION TYPE: NON STOCK (N)
SUPPLIER: 2/9711 - AUNTY B CATERING SERVICES

Whs	Stock Code	Description	Qty	Unit Price	Amount	Allocation
0		Infrastructure Year End Catering 6 Dec 2019	1	29964.00	29964.00	9/207-94-157
		TOTAL...			29964.00	

Signature ____________________

Issued ____________________

Head of Dept ____________________

*** QUOTATIONS RECEIVED ***

QUOTE NUMBER	DATE	SUPPLIER	QUANTITY	AMOUNT
54765	06/12/2019	2/9711 - AUNTY B CATERING SERVICE Year End Function 6 December 2019	1.00	29964.00

QUOTATION

Aunty B's Catering

FROM: Name: Aunty B Catering Services
VAT Reg No:
Address: 516 Suurridge Str
Hornlee
Knysna 6570

Quotation No: 2019/189

QUOTATION

TO: Name: Knysna Municipality
VAT Reg No:
Address: Clyde str.
Knysna
6570

Date: 5/12/19

Qty	Description		Unit Price	TOTAL
226	Braaipacks	@	R95	R21470
2	Chicken	@	R52	R44
2	Small fish	@	R30	R60
228	drinks	@	R19	R3420
	TRANSPORT 3days	@	R130	R390
228	Salads (2)	@	R20	R4560

Subtotal: R29964
Tax: VAT
TOTAL: R29964

Name: B. C. STROEBEL
ID: 611031 0194 080
Tel: 084 954 8057

Banking Details
Bank:
Branch:
Code:
Acc. No:
In Name of:

Signature: BStroebel

Annexure E

31/01/2021

31/01/2021 ON THE ESTUARY 55201.85

PAID 31 JAN 2021

TOTAAL/TOTAL 55201.85

31/01/2021

021613 ON THE ESTUARY

NIL NIL FIVE FIVE TWO NIL ONE 85 ***55201.85

EXPENDITURE VOUCHER

292040603002		55 201,85
	PAID 31 JAN 2021	
	Total:-	55 201,85

I herby certify that the service/goods were actually carried out/delivered and that a reasonable price was charged and that the account has not been settled before.

Compiled by: Léhonié Scholtz **Checked by:** ....

Due to	ON THE ESTUARY		Cheque/EFT No	
			Date	31/01/2021
		Emp No		

Amount due: Statement No.			dd		
Less paid: Cheque/EFT No.			dd		

As per Council's Resolutions - SC02/01/2021 55 201,85

Refund Customer.

Bank Details:

ON THE ESTUARY OR AR'DECO

ABSA

ACCOUNT NUMBER: 4076025741

BRANCH NO: 632005

Total:- 55 201,85

Lehanie Scholtz

From: Avitha Jagaysor
Sent: 01 February 2021 11:53
To: Ray-Dean Miles; Nicolene Barnard; Lehanie Scholtz; Busiswa Kova; Judy Cordier
Cc: Morne Michaels; Elsabe Petersen
Subject: On the Estuary

Morning all

I had a discussion with the CFO regarding this item and the final decision is as follows:

Please action immediately as follows:-

1. **Lehanie** – please prepare a **requisition** for Judy to pay R 55 201.85 to On the Estuary. This must be allocated to the "Refund Suspense Vote". Treat this as a normal debtor refund. **Judy** – please **pay** today

2. **Lehani** – please process the following journals on the debtor accounts:

   a) Dr Refund Suspense Vote – R 46 302,56
      Cr Debtor Account 1-00194-000-15-5 (JJ Bekker) – R 46 302,56

   b) Dr Refund Suspense Vote – R 3 235,82
      Cr Debtor Account 1-00195-000-04-5 (AR Deco Knysna EIEN) – R 3 235,82

   c) Dr Refund Suspense Vote – R 299.97
      Cr Debtor Account 1-00195-000-18-6 (AR Deco Knysna EDS) – R 299,97

3. **Nicolene** - please process the following journal:

   a) Dr Accumulated Surplus - R 72 700.00
      Cr Refund Suspense Vote - R 72 700.00

   b) Dr Interest Paid (current year) – R 32 340,20
      Cr Refund Suspense Vote - R 32 340,20

The above transactions relate to accommodation provided to SANDF pilots during the June 2017 fire

PAID 31 ... 2021

25

6.2

SC02/01/2021	FULL AND FINAL SETTLEMENT OF OUTSTANDING INVOICES DUE TO ON THE ESTUARY, KNYSNA

REPORT FROM THE DIRECTOR FINANCIAL SERVICES

PURPOSE OF THE REPORT

To obtain Council's approval to make a full and final settlement offer to the owner of On The Estuary, Knysna for accommodation services rendered in June 2017 to the SANDF helicopter pilots during the Knysna Fire Disaster.

Recommendations accepted by Council on 28/1/2021. Minutes to be obtained from Committee Services. Actions to be implemented immediately

28/1/2021

PREVIOUS RESOLUTIONS

None applicable.

BACKGROUND

During the 2017 Knysna Fire Disaster a Joint Operations Centre (JOC) was established to co-ordinate and deal with fire disaster actions to be taken. The JOC command centre was chaired by Mr Richard Meyer (Disaster Manager) together with other officials of the Municipality (Manager: LED, Chief Fire Officer, Traffic Chief, Chief Financial Officer and several other officials) as well as external role-players (SAPS, SANDF and etcetera).

Through JOC initiatives and through the actions of the Manager: LED in co-operation with the Manager: Tourism, accommodation was arranged for people assisting with the combating of the Knysna Fires. Accommodation was paid by various stake-holders, but, through all the chaos that existed during the fire disaster, the accommodation for the SANDF Pilots at On The Estuary was never paid. Apparently it was undertaken by the Municipality that the accommodation costs of the SANDF Pilots would be paid by the Municipality. According to Mr Richard Meyer, all accommodation arranged, no matter who would pay for it, was minuted in the JOC's minutes for record purposes. Unfortunately, no trace exists in the JOC minutes of any such arrangements that was recorded in the chaos that prevailed. However, Mr Richard Meyer confirms that he was aware of such accommodation arrangements.

DISCUSSION

Attached as Annexure A to this item is a letter from the owner of On The Estuary dated 14 January 2021 wherein she clearly indicates her unhappiness of the fact that the accomodations costs due to her is outstanding for three years and six months. The SANDF Pilots stayed at the venue and the Municipality was charged a 30% discounted rate of R 470 for per person for bed and breakfast compared with her corporate rate of R 670 per night per person for bed and breakfast. The Acting Chief Financial Officer enquired about her current corporate rate (January 2021) and that is R 990 per person sharing for bed and breakfast.

The owner claims that the Municipality is in breach of contract and reverted back to her then corporate rates. The owner has now submitted revised invoices and a statement for the accomodation rendered in June 2017 enforcing her then corporate rate of R 670 per person per night. She also charges the Municipality interest of 2% per month as from July 2017. The total amount due to On The Estuary is R 155,244.56 including interest levied until

31 January 2021. She clearly indicates that if the Municipality do not settle the account before the end of January 2021, she will have no alternative but to institute legal action against the Municipality. The owner requires from the Municipality to settle her account by crediting her municipal accounts of R 49,838.35 due by the end of January 2021 – see Annexure C attached to this item – and then paying the remaining portion due to her into her bank account.

The owner has already forwarded emails with regard to the long outstanding invoices to the Premier of the Western Cape and Carte Blanche. It is in the best interest of the Municipality to honour their commitments to On The Estuary as soon as possible.

FINANCIAL IMPLICATIONS

The outstanding amount of R 155,244.56 consists of principal debt (accommodation and breakfast costs) of R 72,700.00 and interest raised of R 82,544.56 at 2% per month as from July 2017. The monthly interest rate of 2% amounts to an annual interest rate of 24% which is substantially more than the prime interest rate over the last four years.

The Municipality charges their customers interest at the prime rate plus 1% and the prime rates and their effective dates are set out on Page 5 of 5 of Annexure B attached hereto. The Municipality cannot pay the exorbitant interest rate of 24% per year and should offer the owner a fair interest rate on the outstanding invoices. A fair interest rate based on the applicable and effective prime interest rate plus 1% should be offered to be paid on the principal debt as a full and final settlement offer.

Based on the calculations on page 4 of 5 of Annexure B attached hereto; the principal debt of R 72,700 (Row 56 & Column E) and interest at the effective prime rate plus 1% of R 32,340.20 (Row 57 & Column E) adds up to R 105,040.20 (Row 58 & Column E). It is recommended that the amount of R 105,040.20 be offered as full and final settlement to the owner of On The Estuary.

RELEVANT LEGISLATION

The interest payment of R 32,340.20 would be regarded as fruitless and wasteful expenditure and will have to be disclosed as such in the 2020/2021 Annual Financial Statements. Council will also have to deal with the disclosed amount of R 32,340.20 in terms of Section 32(2) of the Municipal Finance Management Act. An item will have to submitted to the Municipal Public Accounts Committee who will have to investigate the to be disclosed fruitless and wasteful expenditure with a recommendation to Council to recover it from whomever is responsible for the fruitless and wasteful expenditure or alternatively to certify it as irrecoverable and to be written-off.

COMMENTS FROM THE ACTING MUNICIPAL MANAGER
No further comments

COMMENTS FROM CORPORATE SERVICES
Recommendations are supported

COMMENTS FROM FINANCIAL SERVICES
Recommendations supported

COMMENTS FROM TECHNICAL SERVICES
None

COMMENTS FROM COMMUNITY SERVICES
Support the recommendation.

COMMENTS FROM PLANNING AND DEVELOPMENT

None

COMMENTS FROM LEGAL SERVICES

The municipality is liable for the expenditure incurred. The prospects of success in defending the matter favors On the Estuary. Defending any such action would also in our opinion be a fruitless exercise and has the potential of amounting to more money in legal costs vis-à-vis the amount due and owing to On the Estuary. Legal Services is in agreement with the recommendation for payment of the debt in full and final settlement and regard same as being both reasonable and justifiable.

COMMENTS FROM IHS

None

RECOMMENDATION OF THE ACTING MUNICIPAL MANAGER

[a] That the report on the full and final settlement of outstanding invoices due to On The Estuary, Knysna, be noted;

[b] That Council take note of the outstanding invoices received from On The Estuary still payable for the accommodation costs of the SANDF Pilots in June 2017 during the Knysna Fire Disaster;

[c] That the payment of R 72,700 for the accommodation costs of the SANDF Pilots at the then corporate rate of R 670 per person per night for bed and breakfast, be approved;

[d] That the payment of interest of R 32,340.20 calculated at the effective prime interest rate plus 1% on the principal debt, be approved;

[e] That the payment of a full and final settlement offer of R 105,040.20 that includes the principal debt and interest as referred to in sub-resolution [c] and [d] above, be approved;

[f] That the owner's outstanding municipal accounts due by the end of January 2021 to the amount of R 49,838.35 be recovered from the full and final settlement offer amount of R 105,040.20 and that the remaining portion of R 55,201.85 be paid into the owner's bank account;

[g] That the Acting Chief Financial Officer disclose the fruitless and wasteful expenditure of R 32,340.20 in the 2020/2021 Annual Financial Statements;

[h] That the Acting Chief Financial Officer submit an item to the Municipal Public Accounts Committee to investigate and recommend to Council if the fruitless and wasteful expenditure of R 32,340.20 should be recoverred or not.

ANNEXURES

Annexure A: Letter from the Owner of On The Estuary dated 14 January 2021
Annexure B: Calculation Sheet of the On The Estuary Full and Final Settlement Offer with Interest
Annexure C: Outstanding Debtors' Accounts of On The Estuary

File Number: 8/1/P

Execution: Acting Chief Financial Officer

ON THE ESTUARY KNYSNA

Annexure A

On The Estuary Pty Ltd
2009/017915/07
150 Old Cape Road
Paradise
Knysna
6571

Tel: +27(0) 44 382 1653
Mobile: +27(0) 082 621 1983
Email: info@ontheestuary.co.za
Web: www.ontheesturay.co.za

14 January 2021

TO WHOM IT MAY CONCERN

Further to our numerous previous correspondence, meetings and attempts to receive payments for services rendered to Knysna Municipality during the 2017 fires, we are submitting a final invoice for payment.

We have received numerous promises of payment from various individuals in the past and recently, but up to this day we have not yet received payment.

Due to the fact that the invoices have been outstanding by 3 years and 6 months, we are forced to recall the initial discounted rates of R470 per person and enforcing our then corporate rate of R670 per person per night. (Please find attached revised documentation)

The above attempt to receive payment from the municipality serves as our last direct attempt to get the matter resolved and the outstanding account settled.

Should we not receive payment before the end of the month we will have not alternative but to follow legal routes to have court proceedings issued where we will be claiming not only for the outstanding amount but also court/legal fees amongst other. Please note that interest at 2% per month is claimed on amounts due 30 days and older.

We have been patient with the matter and have submit all relevant documentation re the services provided on multiple occasions, to various individuals. The undenied fact and proof there of remains; a service was rendered and no payment have been received to date.

As the municipality is aware, we have numerous accounts to settle of which our Municipal account is but one... and due to the current situation in the country concerning COVID, we are forced to take steps to receive payment. We propose that the amount due is credited and the balance left on the invoice is payable to us with no further delay.

We trust that you will find the above in order and beneficial for both parties.

We await your soonest reply,

Regards

Anita Bekker

150 Old Cape Road, Paradise, Knysna, 6571

Tel: +27 (0) 44 382 1653 Mobile: +27 (0) 82 621 1983

Email: info@ontheestuary.co.za Web: www.ontheestuary.co.za

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ON THE ESTUARY
KNYSNA

149 & 150 Old Cape Road, Paradise, Knysna, 6571
Tel: 044 382 1653 Mobile : 0826211983 e-mail info@ontheestuary.co.za
web: www.ontheestuary.co.za

STATEMENT

Reg No: 2008/017915/07

KNYSNA MUNICIPALITY **Statement Date:** **14/01/2021**

ATT : MR CARSTENS & MR ADONIS

		NORMAL RATE (R670ppp/n)
Accommodation: 09/06/2017 - 17/06/2017 **Invoice : 4471**	R	118 750,24
Standard Rooms for 8x adults @ R670 p/night (4 nights)	**R**	**21 440,00**
Self-Catering Unit for 5 adults @ R670 p/night (7 nights)	**R**	**23 450,00**
Junoir Rooms for 2 adults @ R670 p/night (8 nights)	**R**	**10 720,00**
INTEREST : 42 MONTHS of 2% on amounts due 30 days and older	**R**	**63 140,24**
Accommodation: 10/06/2017 - 13/06/2017 **Invoice : 4463**	R	27 183,89
Standard Self-Caterin rooms for 3x adults @ R670 p/night (3 nights)	**R**	**6 030,00**
Standard Self-Caterin rooms for 2x adults @ R670 p/night (5 nights)	**R**	**6 700,00**
INTEREST : 42 MONTHS of 2% on amounts due 30 days and older	**R**	**14 453,89**
Accommodation: 14/06/2017 - 15/06/2016 **Invoice : 4464**	R	9 310,43
Standard Rooms for 2x adults @ R670 p/night (1 nights)	**R**	**1 340,00**
Junoir Rooms for 2 adults @ R670 p/night (1 nights)	**R**	**1 340,00**
Breakfast : Driftwood	**R**	**1 680,00**
INTEREST : 42 MONTHS of 2% on amounts due 30 days and older	**R**	**4 950,43**

Statement of Account

Total Accommodation & Other	R	155 244.56

***Please note: Interest at 2% per month is claimed on amounts due 30 days and older**

On The Estuary or Ar'Deco
ABSA
A/c No: 4076025741
Branch No: 632005 Witbank
Swift Code: (ZAJJ) (ABSAAZAJJ)

Page 2 of 6

Cancellation Policy

Within 7 Days prior to arrival or no show - responsible for full amount
Between 7 & 14 Days prior to arrival - forfeit the full deposit
30 Days prior to arrival - forfeit 50% of the deposit
More than 4 Weeks prior to arrival - forfeit 10% of deposit
Peak season - 4 Weeks prior to arrival - forfeit the full deposit (Nov-Feb)
CHECK IN TIME : 14H00 TILL 17H00
CHECK OUT TIME : 10H30
MAIN GATE CLOSES : 20H00
PLEASE NOTE
Late arrivals without prior arrangements will not be allowed
booking will be cancelled without refund

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ON THE ESTUARY
KNYSNA

149 & 150 Old Cape Road, Paradise, Knysna, 6571
Tel: 044 382 1653 Mobile : 0826211983 e-mail info@ontheestuary.co.za
web: www.ontheestuary.co.za

INVOICE

Reg No: 2009/017915/07

Invoice To:	Knysna Municipality	**Invoice No:**	4464/4471
Contact nr:	044-302 6300	**Invoice Date:**	14/01/2021

Group: SAS Pilots - LT COL N.O. Ohlssen

Accommodation: 09/06/2017 - 13/06/2017		
Standard Rooms for 8x adults : R670 per adult per night (4 nights)	R	21 440,00
Accommodation : 09/06/2017 - 16/06/2017		
Junior Self-Catering Unit for 5x adults : R670 per adult per night (7 nights)	R	23 450,00
Accommodation: 09/06/2017 - 17/06/2017		
Junior Rooms for 2x adults: R670 per adult per night (8 nights)	R	10 720,00
INTEREST @ 2% PER MONTH - 42 MONTHS		
JULY 2017 - JUNE 2018	R	13 346,00
JYLY 2018 - JUNE 2019	R	16 549,54
JULY 2019 - JUNE 2020	R	20 521,42
JULY 2020 - JAN 2021	R	12 723,28
Statement of Account ***Total***	R	118 750,24
Total Accommodation & Other	R	118 750,24

***Please note: Interest at 2% per month is claimed on amounts due 30 days and older**

On The Estuary or Ar'Deco
ABSA
A/c No: 4076025741
Branch No: 632005 Witbank
Swift Code: (ZAJJ) (ABSAAZAJJ)

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Peak season - 4 Weeks prior to arrival - forfeit the full deposit (Nov-Feb)
CHECK IN TIME : 14H00 TILL 17H00
CHECK OUT TIME : 10H30
MAIN GATE CLOSES : 20H00
****PLEASE NOTE****

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ON THE ESTUARY

149 & 150 Old Cape Road, Paradise, Knysna, 6571
Tel: 044 382 1653 Mobile : 0826211983 e-mail info@ontheestuary.co.za
web: www.ontheestuary.co.za

INVOICE

Reg No: 2009/017915/07

Invoice To:	Knysna Municipality	**Invoice No:**	4463
Contact nr:	044-302 6300	**Invoice Date:**	14/01/2021

Group: SAS Pilots - LT COL N.O. Ohlssen

Accommodation: 10/06/2017 - 13/06/2017		
Standard Self-catering Rooms for 3 adults : R670 per adult per night (3 nights)	R	6 030,00
Accommodation: 10/06/2017 - 15/06/2017		
Standard Self-catering Rooms for 2 adults: R670 per adult per night (5 nights)	R	6 700,00
INTEREST @ 2% PER MONTH - 42 MONTHS		
JULY 2017 - JUNE 2018	R	3 055,20
JYLY 2018 - JUNE 2019	R	3 788,45
JULY 2019 - JUNE 2020	R	4 697,68
JULY 2020 - JAN 2021	R	2 912,56
Statement of Account *Total*	R	27 183,89
Total Accommodation & Other	R	27 183,89

*Please note: Interest at 2% per month is claimed on amounts due 30 days and older

On The Estuary or Ar'Deco
ABSA
A/c No: 4076025741
Branch No: 632005 Witbank
Swift Code: (ZAJJ) (ABSAAZAJJ)

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30 Days prior to arrival - forfeit 50% of the deposit
More than 4 Weeks prior to arrival - forfeit 10% of deposit
Peak season - 4 Weeks prior to arrival - forfeit the full deposit (Nov-Feb)
CHECK IN TIME : 14H00 TILL 17H00
CHECK OUT TIME : 10H30
MAIN GATE CLOSES : 20H00
PLEASE NOTE
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INVOICE

Reg No: 2009/017915/07

Invoice To:	Knysna Municipality	**Invoice No:**	4464
Contact nr:	044-302 6300	**Invoice Date:**	14/01/2021

Group: SAS Pilots - LT COL N.O. Ohlssen

Accommodation: 14/06/2017 - 15/06/2016		
Junior Rooms for 2x adults : R670 per adult per night (1 night)	R	1 340,00
Standard Self-catering Rooms for 2 adults: R670 per adult per night (1 night)	R	1 340,00
Breakfast : Driftwood	R	1 680,00
INTEREST @ 2% PER MONTH - 42 MONTHS		
JULY 2017 - JUNE 2018	R	1 046,40
JULY 2018 - JUNE 2019	R	1 297,54
JULY 2019 - JUNE 2020	R	1 608,94
JULY 2020 - JAN 2021	R	997,55
Statement of Account *Total*	R	9 310,43
Total Accommodation & Other	R	9 310,43

***Please note: Interest at 2% per month is claimed on amounts due 30 days and older**

On The Estuary or Ar'Deco
ABSA
A/c No: 4076025741
Branch No: 632005 Witbank
Swift Code: (ZAJJ) (ABSAAZAJJ)

Cancellation Policy

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30 Days prior to arrival = forfeit 50% of the deposit
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Peak season - 4 Weeks prior to arrival - forfeit the full deposit (Nov-Feb)
CHECK IN TIME : 14H00 TILL 17H00
CHECK OUT TIME : 10H30
MAIN GATE CLOSES : 20H00
****PLEASE NOTE****
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booking will be cancelled without refund

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Annexure B

On The Estuary Full and Final Settlement Interest Calculations

Row Number / Column Reference	Description	Interest period	Number of Days	Interest Rate Prime Plus 1%	Invoice Amount (Principal Debt)	Opening Balance	Interest Levied	Closing Balance
	A	B	C	D	E	F	G	H
1	Invoice 4464/4471 for Accommodation (09/06/2017 - 17/06/2017)	17/07/2017 - 20/07/2017	3	11,50%	55 610,00	55 610,00	52,56	55 662,56
2	Invoice 4463 for Accommodation (10/06/2017 - 15/06/2017)	17/07/2017 - 20/07/2017	3	11,50%	12 730,00	12 730,00	12,03	12 742,03
3	Invoice 4464 for Accommodation and Breakfast (14/06/2017 - 15/06/2017)	17/07/2017 - 20/07/2017	3	11,50%	4 360,00	4 360,00	4,12	4 364,12
4	**Sub-Totals**				**72 700,00**	**72 700,00**	**68,72**	**72 768,72**
5	Interest levied on Principal Debt and Accumulated Interest	21/07/2017 - 31/07/2017	11	11,25%	-	72 768,72	246,72	73 015,43
6	Interest levied on Principal Debt and Accumulated Interest	01/08/2017 - 31/08/2017	31	11,25%		73 015,43	697,65	73 713,08
7	Interest levied on Principal Debt and Accumulated Interest	01/09/2017 - 30/09/2017	30	11,25%	-	73 713,08	681,59	74 394,67
8	Interest levied on Principal Debt and Accumulated Interest	01/10/2017 - 31/10/2017	31	11,25%	-	74 394,67	710,83	75 105,50
9	Interest levied on Principal Debt and Accumulated Interest	01/11/2017 - 30/11/2017	30	11,25%	-	75 105,50	694,47	75 799,97
10	Interest levied on Principal Debt and Accumulated Interest	01/12/2017 - 31/12/2017	31	11,25%	-	75 799,97	724,25	76 524,22
11	Interest levied on Principal Debt and Accumulated Interest	01/01/2018 - 31/01/2018	31	11,25%	-	76 524,22	731,17	77 255,39
12	Interest levied on Principal Debt and Accumulated Interest	01/02/2018 - 28/02/2018	28	11,25%	-	77 255,39	666,72	77 922,12
13	Interest levied on Principal Debt and Accumulated Interest	01/03/2018 - 28/03/2018	28	11,25%	-	77 922,12	672,48	78 594,60
14	Interest levied on Principal Debt and Accumulated Interest	29/03/2018 - 31/03/2018	3	11,00%	-	78 594,60	71,06	78 665,66
15	Interest levied on Principal Debt and Accumulated Interest	01/04/2018 - 30/04/2018	30	11,00%	-	78 665,66	711,22	79 376,88
16	Interest levied on Principal Debt and Accumulated Interest	01/05/2018 - 31/05/2018	31	11,00%	-	79 376,88	741,58	80 118,45
17	Interest levied on Principal Debt and Accumulated Interest	01/06/2018 - 30/06/2018	30	11,00%	-	80 118,45	724,36	80 842,81

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1

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Row Number / Column Reference	Description	Interest period	Number of Days	Interest Rate Prime Plus 1%	Invoice Amount (Principal Debt)	Opening Balance	Interest Levied	Closing Balance
	A	B	C	D	E	F	G	H
18	Interest levied on Principal Debt and Accumulated Interest	01/07/2018 - 31/07/2018	31	11,00%	-	80 842,81	755,27	81 598,08
19	Interest levied on Principal Debt and Accumulated Interest	01/08/2018 - 31/08/2018	31	11,00%		81 598,08	762,33	82 360,41
20	Interest levied on Principal Debt and Accumulated Interest	01/09/2018 - 30/09/2018	30	11,00%	-	82 360,41	744,63	83 105,04
21	Interest levied on Principal Debt and Accumulated Interest	01/10/2018 - 31/10/2018	31	11,00%	-	83 105,04	776,41	83 881,45
22	Interest levied on Principal Debt and Accumulated Interest	01/11/2018 - 22/11/2018	22	11,00%	-	83 881,45	556,15	84 437,59
23	Interest levied on Principal Debt and Accumulated Interest	23/11/2018 - 30/11/2018	8	11,25%		84 437,59	208,20	84 645,79
24	Interest levied on Principal Debt and Accumulated Interest	01/12/2018 - 31/12/2018	31	11,25%	-	84 645,79	808,77	85 454,57
25	Interest levied on Principal Debt and Accumulated Interest	01/01/2019 - 31/01/2019	31	11,25%	-	85 454,57	816,50	86 271,07
26	Interest levied on Principal Debt and Accumulated Interest	01/02/2019 - 28/02/2019	28	11,25%	-	86 271,07	744,53	87 015,60
27	Interest levied on Principal Debt and Accumulated Interest	01/03/2019 - 31/03/2019	31	11,25%	-	87 015,60	831,42	87 847,02
28	Interest levied on Principal Debt and Accumulated Interest	01/04/2019 - 30/04/2019	30	11,25%	-	87 847,02	812,28	88 659,30
29	Interest levied on Principal Debt and Accumulated Interest	01/05/2019 - 31/05/2019	31	11,25%		88 659,30	847,12	89 506,42
30	Interest levied on Principal Debt and Accumulated Interest	01/06/2019 - 30/06/2019	30	11,25%		89 506,42	827,63	90 334,05
31	Interest levied on Principal Debt and Accumulated Interest	01/07/2019 - 18/07/2019	18	11,25%	-	90 334,05	501,17	90 835,22
32	Interest levied on Principal Debt and Accumulated Interest	19/07/2019 - 31/07/2019	13	11,00%	-	90 835,22	355,87	91 191,09
33	Interest levied on Principal Debt and Accumulated Interest	01/08/2019 - 31/08/2019	31	11,00%	-	91 191,09	851,95	92 043,04
34	Interest levied on Principal Debt and Accumulated Interest	01/09/2019 - 30/09/2019	30	11,00%	-	92 043,04	832,17	92 875,21
35	Interest levied on Principal Debt and Accumulated Interest	01/10/2019 - 31/10/2019	31	11,00%	-	92 875,21	867,68	93 742,90

Page 2 of 5

Row Number	Description	Interest period	Number of Days	Interest Rate Prime Plus 1%	Invoice Amount (Principal Debt)	Opening Balance	Interest Levied	Closing Balance
Column Reference	A	B	C	D	E	F	G	H
36	Interest levied on Principal Debt and Accumulated Interest	01/11/2019 - 30/11/2019	30	11,00%		93 742,90	847,54	94 590,43
37	Interest levied on Principal Debt and Accumulated Interest	01/12/2019 - 31/12/2019	31	11,00%	-	94 590,43	883,71	95 474,14
38	Interest levied on Principal Debt and Accumulated Interest	01/01/2020 - 16/01/2020	16	11,00%	-	95 474,14	460,37	95 934,51
39	Interest levied on Principal Debt and Accumulated Interest	17/01/2020 - 31/01/2020	15	10,75%	-	95 934,51	423,82	96 358,33
40	Interest levied on Principal Debt and Accumulated Interest	01/02/2020 - 29/02/2020	29	10,75%	-	96 358,33	823,01	97 181,34
41	Interest levied on Principal Debt and Accumulated Interest	01/03/2020 - 31/03/2020	31	10,75%	-	97 181,34	887,28	98 068,62
42	Interest levied on Principal Debt and Accumulated Interest	01/04/2020 - 14/04/2020	14	10,75%	-	98 068,62	404,37	98 472,98
43	Interest levied on Principal Debt and Accumulated Interest	15/04/2020 - 30/04/2020	16	8,75%	-	98 472,98	377,70	98 850,68
44	Interest levied on Principal Debt and Accumulated Interest	01/05/2020 - 21/05/2020	21	8,75%	-	98 850,68	497,64	99 348,32
45	Interest levied on Principal Debt and Accumulated Interest	22/05/2020 - 31/05/2020	10	8,25%		99 348,32	224,55	99 572,88
46	Interest levied on Principal Debt and Accumulated Interest	01/06/2020 - 30/06/2020	30	8,25%	-	99 572,88	675,19	100 248,06
47	Interest levied on Principal Debt and Accumulated Interest	01/07/2020 - 23/07/2020	23	8,25%	-	100 248,06	521,15	100 769,22
48	Interest levied on Principal Debt and Accumulated Interest	24/07/2020 - 31/07/2020	8	8,00%	-	100 769,22	176,69	100 945,91
49	Interest levied on Principal Debt and Accumulated Interest	01/08/2020 - 31/08/2020	31	8,00%	-	100 945,91	685,88	101 631,79
50	Interest levied on Principal Debt and Accumulated Interest	01/09/2020 - 30/09/2020	30	8,00%	-	101 631,79	668,26	102 300,05
51	Interest levied on Principal Debt and Accumulated Interest	01/10/2020 - 31/10/2020	31	8,00%		102 300,05	695,08	102 995,13
52	Interest levied on Principal Debt and Accumulated Interest	01/11/2020 - 30/11/2020	30	8,00%	-	102 995.13	677,23	103 672,36
53	Interest levied on Principal Debt and Accumulated Interest	01/12/2020 - 31/12/2020	31	8,00%	-	103 672,36	704,40	104 376,76

Page 3 of 5

Row Number	Description	Interest period	Number of Days	Interest Rate Prime Plus 1%	Invoice Amount (Principal Debt)	Opening Balance	Interest Levied	Closing Balance
Column Reference	A	B	C	D	E	F	G	H
54	Interest levied on Principal Debt and Accumulated Interest	01/01/2021 - 29/01/2021	29	8,00%	-	104 376,76	663,44	105 040,20
55	Totals				72 700,00		32 340,20	105 040,20
56				Principal Debt =	72 700,00			
57				Accumulated Interest at Prime Plus 1% =	32 340,20			
58				Full and Final Settlement Offer =	105 040,20			

4

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39

Standard Bank and FNB Prime Overdraft Rates			
Row Number	Effective Date	Prime Overdraft Interest Rate Percentage (%)	Recommended Interest Rate Prime Plus 1%
Column Reference	A	B	C
1	2020/07/24	7,00	8,00
2	2020/05/22	7,25	8,25
3	2020/04/15	7,75	8,75
4	2020/03/20	8,75	9,75
5	2020/01/17	9,75	10,75
6	2019/07/19	10,00	11,00
7	2018/11/23	10,25	11,25
8	2018/03/29	10,00	11,00
9	2017/07/21	10,25	11,25
10	2016/03/18	10,50	11,50

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ANNEXURE C

1-00194-000-15-5

000000	100194000	2790.00	31/12/20
		1605 150 OLD CAPE ROAD	
		Paradise	

BEKKER JJ
150 OLD CAPE ROAD
PARADISE
KNYSNA
6570

TAX INVOICE 100194000155-12-20

DATE	REFERENCE	DETAIL	VAT	AMOUNT
		BALANCE BROUGHT FORWARD		78 894.25
31/12/20	8%	INTEREST WTR CNS		9.91
31/12/20	8%	INTEREST ELEC CNS		17.39
31/12/20	8%	INTEREST REFUSE		1.54
31/12/20	8%	INTEREST SUNDRY		1.42
31/12/20	8%	INTEREST SEWER		2.10
31/12/20	8%	INTEREST RATES		141.44
31/12/20	250544	WTR RESIDENTIAL CONS (Meter No: 250544)	197.40	1 436.79
		37025 - 36980 = 45 Kl 30 DAYS (01/11/2020-01/12/2020)		
		2.96 Kl @ 0.0000 = 0.00		
		8.88 Kl @ 12.3217 = 109.42		
		12.82 Kl @ 20.3391 = 260.75		
		14.79 Kl @ 30.5043 = 451.16		
		5.55 Kl @ 45.7565 = 253.95		
	TAR:1807	BASIC: = 174.11		
31/12/20	440064	ELEC DOMEST 3Ph 60AMP (Meter No: 440064)	119.13	913.30
		869075 - 888966 = 109 KWH 30 DAYS (01/11/2020-01/12/2020)		
		49.32 KWH @ 1.0730 = 52.92		
		59.68 KWH @ 1.3620 = 81.28		
	TAR:1313	BASIC: = 660.05		
31/12/20	INSTALL	REFUSE BASIC CHARGE-INSTALMENT	15.08	115.62
31/12/20	INSTALL	ENCROACHMENTS	13.89	106.49
31/12/20	INSTALL	SEW/SAN BASIC CHGE-INSTALMENT	20.54	157.67
31/12/20	INSTALL	RATES INSTALMENT		4 509.55

TOTAL VAT: 356.06

0.00	0.00	25 365.60	20 936.96	31/01/2021	46 302.56

SnapScan zapper masterpass

100194000155

POST OFFICE 0187 100194000155

SPAR Post Office

ELECTRONIC PAYMENTS CAN BE MADE TO THE FOLLOWING BANK ACCOUNT:

NEDBANK

11346100194000155

REFERENCE: 1-00194-000 15-5

EasyPay >>>>>915971001940001556

Page 1 of 3

ACCOUNT NUMBER
1-00195-000-04-5

3005000	10019[illegible]010	0.00	31/12/20
	928 149 OLD CAPE		
2009/017915/07	Knysna Heights		

AR'DECO KNYSNA (EIEN)BESPERK
150 OLD CAPE ROAD
PARADISE
KNYSNA
6571

TAX INVOICE 100195000045-12-20

DATE	REFERENCE	DETAIL	VAT	AMOUNT
		BALANCE BROUGHT FORWARD		275.82
09/12/20	Z/10889	RECEIPTS		-3 2[illegible].82
31/12/20	INSTALL	REFUSE BASIC CHARGE-INSTALMENT	15.04	115.62
31/12/20	INSTALL	ENCROACHMENTS	13.89	106.49
31/12/20	INSTALL	SEW/SAN BASIC CHGE-INSTALMENT	20.56	157.67
31/12/20	INSTALL	RATES INSTALMENT		2 656.04

VAT Registration number: 2009/017915/07 TOTAL VAT: 49.53

0.00	0.00	0.00	3 235.82	31/01/2021	3 235.82

zapper
masterpass

1001950000045

POST OFFICE: 0187 100195000045

ELECTRONIC PAYMENTS CAN BE MADE TO THE FOLLOWING BANK ACCOUNT:

REFERENCE: 1-00195-000-04-5

12346100195000045

>>>>>31597100195000045 5

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1-00195-000-18-6

	100195000	1317.00		31/12/20
		149 OLD CAPE ROAD		
		Knysna Heights		

AR'DECO KNYSNA (EDS)BPK
149 OLD CAPE ROAD
PARTDISE
KNYSNA
6571

100195000186-12-20

DATE	REFERENCE	DETAIL	VAT	AMOUNT
		BALANCE BROUGHT FORWARD		217.51
09/12/20	R/412B98	RECEIPTS		-217.51
31/12/20	407	WTR RESIDENTIAL CONS (Meter No: 407)	39.12	299.97
		7485 - 7475 = 10 Kl 30 DAYS (01/11/2020-01/12/2020)		
		2.96 Kl 0.0000 0.00		
		7.04 Kl 12.3217 86.74		
	TAR:1600	BASIC: 174.11		

TOTAL VAT: 39.12

0.00	0.00	0.00	299.97	31/01/2021	299.97

SnapScan zapper masterpass

11346100195000186

100195000186

0197 100195000186

ELECTRONIC PAYMENTS CAN BE MADE TO THE FOLLOWING BANK ACCOUNT:

1-00195-000-18-6

SPAR Post Office NEDBANK

EasyPay >>>>>91597100195000186 8

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REPORT ON FRUITLESS AND WASTEFUL EXPENDITURE

REPORT FROM THE DIRECTOR FINANCIAL SERVICES

PURPOSE OF THE REPORT

The purpose of this report is to submit to MPAC the report on fruitless and wasteful and expenditure to be submitted to the Disciplinary Board for investigation or for MPAC to investigate or condone the fruitless and wasteful expenditure.

BACKGROUND

In terms of section 32(4) of the MFMA, the accounting officer must promptly inform the mayor, the MEC for local government in the province and the Auditor-General, in writing, of

(a) any unauthorized, irregular, or fruitless and wasteful expenditure incurred by the municipality.

(b) Whether any person is responsible or under investigation for such unauthorized, irregular, or fruitless and wasteful expenditure; and

(c) The steps that have been taken :
   a. To recover or rectify such expenditure; and
   b. To prevent a recurrence of such expenditure

Definition of fruitless and wasteful expenditure

- Expenditure that was made in vain and would have been avoided had reasonable care been exercised.

DISCUSSION

During the 2022/2023 financial year and as declared in the annual financial statements, expenditure has been identified as fruitless and wasteful expenditure that must be submitted to a committee of council to investigate. See attach register of fruitless and wasteful expenditure Annexure A.

Item no. 8 relating to legal fees has not been addressed by MPAC, hence the resubmission of the item to MPAC for consideration.

ANNEXURE A

No. 8

8	2022/2023			Identfied by AG Comaf 71	R2,477,527.00	Legal Fees

FINANCIAL IMPLICATIONS

The total fruitless and wasteful expenditure as per the register amounts to R2,477,527.00. See attached Annexure A.

RELEVANT LEGISLATION

In terms of section 32(4) of the MFMA.

DELEGATION

Delegated to Finance and Governance Committee to resolve (F.2.1)

RECOMMENDATION OF THE MUNICIPAL MANAGER

1. That MPAC note the report for fruitless and wasteful expenditure
2. That MPAC submit the item to the Disciplinary Board for investigation or MPAC must decide to either condone the fruitless and wasteful expenditure or further investigate to determine who is responsible for the fruitless and wasteful expenditure.

APPENDIX / ADDENDUM

ANNEXURE A – Register of fruitless and wasteful expenditure.

File Number: 9/1/2/10

Execution: Municipal Manager

Director Financial Services

Manager Budget and reporting

AUDITOR-GENERAL
SOUTH AFRICA

The Accounting Officer
Knysna Municipality
PO Box 21
Knysna
6570

20 November 2023

Reference: ComAF 71 of 2023

Dear Mr Sebola

COMMUNICATION OF FINDINGS IDENTIFIED DURING THE AUDIT OF THE ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2023

Background

1. In performing the audit of the financial statements we identified a misstatement as described in the annexure. We have recorded the internal control deficiency that gave rise to the misstatement and our recommendation for correcting the misstatement for your consideration.

2. The finding will be included in the management report, including your comments and our final response.

Required

3. You are requested to indicate whether you agree with the facts stated in the annexure, including whether you agree with the identified internal control deficiency. Should you disagree, please provide us with documentary evidence to the contrary within five days from the date of this communication, as agreed in the engagement letter.

4. Should you agree, you are hereby requested to make the necessary corrections.

5. Should you choose not to make the necessary corrections, kindly communicate your reasons for this within five days from the date of this communication, as agreed in the engagement letter. The remaining uncorrected misstatement will then be evaluated for reporting purposes based on materiality.

6. Should you choose to make the necessary corrections, kindly refer the point(s) described below and provide us with the necessary information within five days from the date of this communication, as agreed in the engagement letter.

7. Please provide us with copies of the proposed adjusting journal entries and the supporting documentation.

8. Once we have received this information, we will perform additional audit procedures to determine whether there are remaining uncorrected misstatements.

9. If the results of these procedures are satisfactory, we will accept the proposed adjusting journal entries and you may pass the journal entries.

10. If the results of these procedures are not satisfactory or there are remaining uncorrected misstatements, we will evaluate these for reporting purposes based on materiality.

Yours sincerely

Ntombokhanyo Ndzamela
Senior Manager: Western Cape

Enquiries:	Anette Krieg
Telephone:	(021) 528 4100
Fax:	(021) 528 4200
Email:	anettek@agsa.co.za

Acknowledgement of receipt by management:

Received by ______________________ Date ______________________

DETAILED AUDIT FINDING

Irregular expenditure - Appointments

Audit finding

The definition of irregular expenditure contained in section 1 of the Muncipal Finance Management Act, 2003 (MFMA) includes any "*expenditure incurred by a municipality that is in contravention of, or that is not in accordance with, a requirement of this Act*".

Section 83 of the Municipal Finance Management Act No. 56 of 20023 (MFMA) states:
"(1) The accounting officer, senior managers, chief financial officers and other financial officials of the municipality must meet the prescribed financial management competency levels".

The Municipal Regulations on Minimum Competency Levels states:
***"5. Minimum competency levels for chief financial officers** - The chief financial officer of a municipality or municipal entity must comply with the minimum competency levels required for higher education qualification, work related experience, core managerial and occupational competencies and be competent in the unit standards prescribed for financial and supply chain management competency areas as set out below."*

MINIMUM COMPETENCY LEVELS FOR CHIEF FINANCIAL OFFICERS		
Description	*(a) All municipalities with annual budgets of a value below R1 billion, to be adjusted by the consumer price index as determined by Statistics South Africa by 1 July of each year; and* *(b) All municipal entities of a parent municipality with annual budgets of a value below R1 billion, to be adjusted by the consumer price index as determined by Statistics South Africa by 1 July of each year.*	*(a) All municipalities with annual budgets of a value equal to or above R1 billion, to be adjusted by the consumer price index as determined by Statistics South Africa by 1 July of each year; and* *(b) All municipal entities of a parent municipality with an annual budget of a value equal to or above R1 billion, to be adjusted by the consumer price index as determined by Statistics South Africa 1 July of each year.*
Higher Education Qualification	*At least a Bachelor degree in Accounting, Finance or Economics or a relevant qualification registered on the National Qualifications Framework at a NQF level 7 with a minimum of 360 credits.*	*At least a Post Graduate Degree or qualification in the fields of Accounting, Finance, or Economics registered on the National Qualifications Framework at NQF Level 8 with a minimum of 120*
Work-Related Experience	*Minimum of 5 years at middle management level*	*Minimum of 7 years at senior and middle management levels, of which at least 2 years must be at senior management level.*
Core and Leading Competencies	*As prescribed in the Annexure A (Local Government: Competency Framework for Senior Managers) to the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers as published in Government Notice 21 Government Gazette 37245 of 17 January 2014.*	*As prescribed in the Annexure A (Local Government: Competency Framework for Senior Managers) to the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers as published in Government Notice 21 Government Gazette 37245 of 17 January 2014.*
Financial and Supply Chain Management Competency Areas:	***Required Minimum Competency Level in Unit Standards***	***Required Minimum Competency Level in Unit Standards***
Strategic leadership and management	*116358; 116361*	*116358; 116361*

48

Strategic financial management	*116361; 116342; 116362*	*116361; 116342; 116362*
Operational financial management	*116345; 119352; 119341; 119331; 116364*	*116345; 119352; 119341; 119331; 116364*
Governance, ethics and values in financial management	*116343*	*116343*
Financial and performance reporting	*116363; 119350; 119348; 116341*	*116363; 119350; 119348; 116341*
Risk and change management	*116339*	*116339*
Project management	*119343*	*119343*
Legislation, policy and implementation	*119334*	*119334*
Stakeholder relations	*116348*	*116348*
Supply Chain Management	*116353*	*116353*
Audit and assurance	*116351*	*116351*

Section 56(1)(c) of the Municipal Systems Act No. 32 of 2000 (MSA) states:
"A person appointed in terms of paragraph (a) (ii) may not be appointed to act for a period that exceeds three months: Provided that a municipal council may, in special circumstances and on good cause shown, apply in writing to the MEC for local government to extend the period of appointment contemplated in paragraph (a), for a further period that does not exceed three months."

Section 56(1)(b) of the MSA states:
"(b) A person appointed in terms of paragraph (a) (i) or (ii) must at least have the skills, expertise, competencies and qualifications as prescribed."

Section 10(1) of GNR.890 of 20 September 2021: Local Government: Municipal Staff Regulations (Government Gazette No. 45181) states:
"Principles.- The recruitment, selection and appointment of a staff member to a post on the staff establishment must-
- *(a) comply with the requirements of the municipality's employment equity policy and plan: Provided that if a municipality is unable to adhere to the employment equity plan due to specialised scarce skills required for a specific post, the municipality must record reasons for deviation from the policy;*
- *(b) be integrated with other human resource management systems and procedures;*
- *(c) use objective competencies specified in the Regulations; and*
- *(d) be filled through advertising in accordance with regulation 14."*

Commented [NN(1]: For an Act we refer to Section but for the regulations then this should be regulation 10

The Municipal Regulations on Minimum Competency Levels states:
"6. General competency levels for senior managers.-(1) A senior manager of a municipality must generally have the skills, experience and capacity to assume and fulfil the responsibilities and exercise the functions and powers assigned in terms of the Act to that senior manager.

(2) A senior manager of a municipal entity must generally have the skills, experience and capacity to assume and fulfil the responsibilities and exercise the functions and powers assigned in terms of the Act to that senior manager.

(3) A senior manager must note that any failure to comply with any financial management responsibilities, functions and powers entrusted to that senior manager may constitute financial misconduct.

7. Minimum competency levels for senior managers.- A senior manager of a municipality or municipal entity must comply with the minimum competency levels required for higher *education qualification, work related experience, core managerial and occupational competencies and be competent in the unit standards prescribed for financial and supply chain management competency areas as set out below."*

MINIMUM COMPETENCY LEVELS FOR SENIOR MANAGERS		
Description	*(a) All municipalities with annual budgets of a value below R1 billion, to be adjusted by the consumer price index as determined by Statistics South Africa by 1 July of each year; and* *(b) All municipal entities of a parent municipality with annual budgets of a value below R1 billion, to be adjusted by the consumer price index as determined by Statistics South Africa by 1 July of each year.*	*(a) All municipalities with annual budgets of a value equal to or above R1 billion, to be adjusted by the consumer price index as determined by Statistics South Africa by 1 July of each year; and* *(b) All municipal entities of a parent municipality with an annual budget of a value equal to or above R1 billion, to be adjusted by the consumer price index as determined by Statistics South Africa by 1 July of each year.*
Higher Education Qualification	*At least a Bachelor degree or a relevant qualification registered on the National Qualifications Framework at NQF level 7 with a minimum of 360 credits.*	*At least a Post Graduate Degree or relevant qualification registered on the National Qualifications Framework at NQF Level 8 with a minimum of 120 credits in a field relevant for the senior management position.*
Work-Related Experience	*Minimum of 5 years at middle management level*	*Minimum of 7 years at senior and middle management level, of which at least 2 years must be at senior management level*
Core and Leading Competencies	*As prescribed in the Annexure A (Local Government: Competency Framework for Senior Managers) to the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers as published in Government Notice 21 of 17 January 2014.*	*As prescribed in the Annexure A (Local Government: Competency Framework for Senior Managers) to the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers as published in Government Notice 21 of 17 January 2014.*
Financial and Supply Chain Management Competency Areas	***Required Minimum Competency Level in Unit Standards***	***Required Minimum Competency Level in Unit Standards***
Strategic leadership and management	*116358; 116361*	*116358; 116361*
Operational financial management	*119341; 119331; 116364*	*119341; 119331; 116364*
Governance, ethics and values in financial management	*116343*	*116343*
Financial and performance reporting	*116363; 119350; 119348; 116341*	*116363; 119350; 119348; 116341*
Risk and change management	*116339*	*116339*
Project management	*119343*	*119343*
Legislation, policy and implementation	*119334; 116361*	*119334; 116361*
Supply Chain Management	*116353*	*116353*
Audit and assurance	*116351*	*116351*

Section 12 (5) of GN 21 of 17 January 2014: Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers (Government Gazette No. 37245) states:
" A panel member must disclose any interest or relationship with shortlisted candidates during the shortlisting process."

Finding 1: Acting Chief Financial Officer 1

The acting chief financial officer (CFO) for the period from 15 August 2022 to 7 June 2023 did not meet the minimum competencies prescribed in regulation 5. The employee was not certified competent in the following modules:

- Strategic leadership and management: 116358; 116361
- Strategic financial management: 116361; 116342; 116362
- Operational financial management: 116345; 119352; 119341; 119331; 116364
- Governance, ethics and values in financial management: 116343
- Financial and performance reporting: 116363; 119350; 119348; 116341
- Risk and change management: 116339
- Project management: 119343
- Legislation, policy and implementation: 119334
- Stakeholder relations: 116348
- Supply Chain Management: 116353
- Audit and assurance: 116351

This resulted in non-compliance with regulation 5 of GNR.493 of 15 June 2007: Municipal Regulations on Minimum Competency Levels.

The incumbent also did not hold a NQF level 8 degree as required by regulation 5.

The extension of the official's acting contract beyond 3 months by the municipal council was made without the approval of the MEC of Local Government and therefore it was in direct contravention of section 56 of the MSA.

The appointment of this employee resulted in the incurring of irregular expenditure by the municipality of R926,904.

Finding 2: Acting Chief Financial Officer 2

The official occupying the position of the acting chief financial officer for the period of 25 July 2022-until further notice, as well as 8 June 2023 to 22 June 2023, did not meet the minimum competencies in terms of regulation 5. The employee did not hold a NQF level 8 qualification and was not certified competent in the following modules:

- Strategic leadership and management: 116358; 116361
- Strategic financial management: 116361; 116342; 116362
- Operational financial management: 116345; 119352; 119341; 119331; 116364
- Governance, ethics and values in financial management: 116343
- Financial and performance reporting: 116363; 119350; 119348; 116341
- Risk and change management: 116339
- Project management: 119343
- Legislation, policy and implementation: 119334
- Stakeholder relations: 116348
- Supply Chain Management: 116353
- Audit and assurance: 116351

This resulted in non-compliance with regulation 5 of GNR.493 of 15 June 2007: Municipal Regulations on Minimum Competency levels and irregular expenditure of R2 634.

Finding 3: Acting Chief Financial Officer 3

The acting chief financial officer appointed to serve in this position from 19 June 2023 did not meet the minimum competencies in terms of the regulation 5. The employee has not been certified competent in the following modules:

- Strategic leadership and management: 116358; 116361
- Strategic financial management: 116361; 116342; 116362
- Operational financial management: 116345; 119352; 119341; 119331; 116364
- Governance, ethics and values in financial management: 116343
- Financial and performance reporting: 116363; 119350; 119348; 116341
- Risk and change management: 116339
- Project management: 119343
- Legislation, policy and implementation: 119334
- Stakeholder relations: 116348
- Supply Chain Management: 116353
- Audit and assurance: 116351

This resulted in non-compliance with regulation 5 of GNR.493 of 15 June 2007: Municipal Regulations on Minimum Competency levels and irregular expenditure of R 2 898.

Finding 4: Acting Chief Financial Officer 4

The acting chief financial officer for the period of 1 July 2022 to 31 July 2022 did not meet the minimum competencies in terms of the regulation 5. The incumbent does not hold a NQF level 8 Qualification in Accounting, Finance or Economics.

This resulted in non-compliance with regulation 5 of GNR.493 of 15 June 2007: Municipal Regulations on Minimum Competency levels and irregular expenditure of R31 980.

Finding 5: Acting Director Corporate Services 1

The acting director corporate services appointed for the period 19 June 2023 until the earliest of 3 months or the appointment of a permanent director did not meet the minimum competencies in terms of regulation 7, since the incumbent did not hold a NQF level 8 qualification.

The MEC of Local Government (MEC) did notify the Municipal Manager in writing that this appointment was in contravention of the Act and that the municipality should set aside this appointment or take steps to remedy the appointment. In response to the letter from the MEC the Municipal Manager and Executive Mayor wrote a letter to the Minister of Finance asking for a condonation of the non-compliance. The response by the Minister of Finance was not submitted to audit, thus it was not possible to confirm that the appointment was condoned as requested.

Therefore this appointment was non-compliant with the regulation and has resulted in irregular expenditure. No payment was identified to have been made to him in the year under review.

Finding 6: Acting Director Corporate Services 2

From 19 Sept 2022 until 7 June 2023 the acting director corporate services:

1. Did not meet the experience in terms of regulation 7. In his CV the incumbent failed to prove that he has at least 2 years' experience as a senior manager. When comparing his CV's the first CV that he used to apply for the secondment to Knysna Municipality did not include his employment at Coastal Entertainment Pty Ltd.

2. The extension of the acting appointment beyond 3 months was done without the approval of the MEC, as required by section 56 of the MSA.
3. The extension of the contract beyond 6 months was also found invalid by the High Court of the Western Cape.

Therefore, the appointment of this director was in contravention of the act and resulted in irregular expenditure of R818 711.

The official was subsequently permanently appointed to the position. However, a selection panel member was a reference in his CV, and the panel member did not disclose any interest or relationship with shortlisted candidates during the shortlisting process as required by the Act. This calls into question the independence of the panel.

Finding 7: Acting Director Planning & Economic Development

From 1 May 2023 to 31 July 2023 the acting director planning & economic development did not have a NQF level 8 degree in Building Science/Architecture and he also did not have the 2 years' experience in senior management.

His appointment was in direct contravention of the Act and therefore led to irregular expenditure of R9,811.

Finding 8: Political office bearers' administrative staff

The employees who were employed in the offices of the municipal office bearers were appointed without following the proper steps as stated in the act and also did not follow the municipality's Human resource policies. The court interdicted the payment of these employees, resulting in any payments made to them meeting the MFMA definition of irregular expenditure. It also is non-compliance with the Local Government Municipal Staff Regulations.

Issue 2: Fruitless and wasteful expenditure – Legal fees

The definition of fruitless and wasteful expenditure contained in section 1 of the MFMA state:
"***fruitless and wasteful expenditure*** *means expenditure that was made in vain and would have been avoided had reasonable care been exercised"*.

Matter 1:
The auditor assessed the merits of the case:
MEC // Knysna Municipality // Executive Mayor & Others Case 2286/23 Appointments: Acting Director Corporate Services & Acting Chief Financial Officer – High Court

In the email correspondence dated 10 February 2023 from the *Appointed legal representative*, amongst other things the following was noted in relation to the court case:

It was noted in the email that the court case is based on two propositions:
-The appointees not meeting the minimum competency requirements and
- The municipal council not having received the necessary authorisation from the MEC for the "further extension".

"The level of facts, we will have to answer the following questions:
1. Does the ACFO and the ADCS meet the minimum requirements or not? If not, then there is merit in the challenge unless there is a provision in the legislation that provides for an exemption. If the ACFO and ADCS in fact meet the requirements, then this leg of the challenge fails.

2. Do the extensions of the ACFO and ADCS appointments fall within the provisions of S56(1)(c) or not? If yes, then there is merit in the challenge. If not, then this leg of the challenge must fail.

It is evident from the legal representatives what the factors were that the municipality had to confirm before defending the matter in court. The required minimum competencies for the CFO position and DCS was audited above, refer to Finding 1: Acting Chief Financial Officer 1 and Finding 6: Acting Director Corporate Services 2. It was concluded that the officials did not have the required minimum competencies for the positions and therefore, the municipality should not have incurred the legal costs in relation to the legal matter.

Therefore, the expenditure could have been avoided if the municipality had investigated and verified if the appointed ACFO and ADCS met the minimum requirements as questioned by the legal representative of the municipality, before incurring the legal costs.

Matter 2:

The auditor assessed the merits of the cases:
MEC // Knysna Municipality //Council // MM // L Sotshede - Case 3488/23 Appointment: Acting Chief Financial Officer – High Court **consolidated with** MEC // Knysna Municipality // Council // MM // L Loliwe - Case 4884/23 Appointment: Acting Director Corporate Services – High Court

Based on the evidence included in the court case documents for case 3488/23, the below were the basis of the cases:

"The appointment of the ACFO in breach of S56(1)(c) of the MSA which provides as follows: "a person appointed as [Acting CFO of a municipality] may not be appointed to act for a period that exceeds three months; Provided that a municipal council may, in a special circumstance and on a good cause shown, apply in writing to the MEC for local government to extend the period of appointment contemplated in paragraph (a) for a further period that does not exceed three months"

When the appointment was made on 14 February 2023, the ACFO had already acted in the position of CFO for a period of six months without any written application having been made to the MEC to extend the ACFO's appointment for a further three month period before the second appointment was made.

Before the re-appointment on 14 Feb 2023, the MEC instituted an application on 9 February 2023- for an order declaring the first and second acting appointment (along with consecutive acting appointment in respect of another senior manager, DCS) to be unlawful and invalid, and reviewing and setting them aside.

The appointment was also unlawful for breach of S56(1)(b) of the MSA, which provides that "a person appointed as [ACFO] must at least have the skills, expertise, competencies and qualifications as prescribed". The ACFO did not have the qualifications prescribed for an acting CFO of the municipality".

Based on the evidence included in the court case documents for case 4884/23, the below were the basis of the cases:

"The appointment of the ADCS in breach of S56(1)(c) of the MSA which provides as follows: "a person appointed as [Acting manager directly accountable to the municipality] may not be appointed to act for a period that exceeds three months; Provided that a municipal council may, in a special circumstance and on a good cause shown, apply in writing to the MEC for local government to extend the period of appointment contemplated in paragraph (a) for a further period that does not exceed three months"

When the impugned appointment was made on 15 March 2023, ADCS had already acted in the position of DCS for a period of six months without any written application having been made to the MEC to extend the DCS's appointment for a further three month period before the second appointment was made.

Before the re-appointment on 14 Feb 2023, the MEC instituted an application on 9 February 2023- for an order declaring the first and second acting appointment (along with consecutive acting appointment in respect of another senior manager, DCS) to be unlawful and invalid, and reviewing and setting them aside."

Refer to Finding 1: Acting Chief Financial Officer 1 and Finding 6: Acting Director Corporate Services 2. Based on the audited information,
- The extension of this contract beyond 3 months by the municipal council was made without the approval of the MEC and therefore it was in direct contravention of section 56 of the MSA.

Therefore, if the municipality had verified whether the municipality had obtained the approval of the MEC to extend the acting contracts of the ACFO and ADCS beyond 3 months, they would have confirmed that this had not been received. This would have prevented the incurring of the legal costs incurred to defend the matter, thus avoiding the expenditure that was "*made in vain and would have been avoided had reasonable care been exercised*".

The municipality incurred legal costs amounting to R2 477 527 in relation to legal representation provided by the municipality to defend cases which, if reasonable care had been exercised, would have been avoided. This expenditure meets the definition of fruitless and wasteful expenditure as defined in the MFMA.

Internal control deficiency

Financial Management and Performance management.

Review and monitor compliance with applicable laws and regulations.

Management did not implement systems and processes to ensure, prior to the acting appointments, that the acting senior managers have the minimum competencies, qualifications and expertise as outlined in section 56 of MSA and the related regulations.

Management failed to prevent the incurring of legal fees to defend cases in the courts which had no real chance of success, thereby incurring fruitless and wasteful expenditure.

Leadership

Exercise oversight responsibility regarding financial and performance reporting and compliance and related internal controls.

Leadership did not exercise oversight responsibility regarding compliance with applicable laws as the appointments was tabled with council, however they did not identify that these appointments do not comply with legislation.

Leadership did not sufficiently interrogate the decisions by management to defend the noted court cases and to question the merits of the cases, resulting in legal fees incurred in defense of cases where the defense was not justified.

Recommendation

Management and leadership should ensure that all appointments of senior managers comply with the legislation, by thoroughly investigating the competencies of each applicant and verifying same prior to their appointment.

Management should investigate the irregular and fruitless and wasteful expenditure incurred and deal with it in terms of the Consequence management policies.

SS

Management response

Management response:

Management comment on audit finding **<u>Issue 1</u>** **Finding 1** Management is in agreement with above 3 conclusions reached with regards to the non-compliance with Regulation 5 of the Competency Regulations, the NQF qualification and the extension of the acting period beyond the 3 months. Judgement attached. **Finding 2** Management is in agreement with the finding. **Finding 3** Management is in agreement with the finding. Management further would like to indicate that this official is currently participating in the District MMC group, with the anticipated date of completion on ?? **Finding 4** Management is in agreement with the finding. The incumbent holds an NQF level 8 qualification, however the qualification is not relevant to the CFO position. **Finding 5** Management is in agreement with the finding. As correctly stated, a request was submitted to the Minister of Finance for condonation, however no response thereon to date. **Finding 6** Management is in agreement with the finding in as far as point 2 and 3 of the finding. **Finding 7** Management is in agreement with the finding **Finding 8** Management is in agreement with the finding **<u>Issue 2</u>** Matter 1 and 2, management is agreement with the finding.
Management comment on internal control deficiencies Management is in agreement with the internal control deficiencies.
Management comment on recommendation Management is in agreement with the recommendation
Remedial action

What actions will be taken	*By whom*	*By when*
1.Disclose the irregular expenditure as follow: Remuneration of the Acting Director Financial Services - M Michaels in the amount of R 2,634 Remuneration of the Acting Director Financial Services - AK Jagaysor in the amount of R 2,898 Remuneration of Director Financial Services - BS Gunqisa in the amount of R 31,977 Remuneration of the Acting Director Financial Services - L Sotshede in the amount of R 927,614 Remuneration of the Acting Director Planning and Development - Mr RL Daames in the amount of R 9,811 Remuneration of the Director Corporate Services - Mr L Loliwe in the amount of R 818,708 Remuneration paid to political office bearers' administrative staff in the amount of **???**	*Manager SCM & Manager: Financial Statements*	
2.Disclose the fruitless and wasteful expenditure as follow: Legal fees R 2 477 527	*Manager Expenditure & Manager: Financial Statements*	
3. Develop and implement a compliance checklist in line with the regulations on the appointment of municipal managers and senior managers and acting appointments.	*Manager HR, Director Corporate & Municipal Manager*	*31 January 2024*
4 Ensure that all items tabled to Council in relation to acting appointments are accompanied by the acting roster and CV's of potential candidates submitted with Council agenda.	*Manager HR, Director Corporate & Municipal Manager*	*31 January 2024*
5.Review of the system of delegations and ensure that a proper documented risk assessment is in place for before decision taking to defend or not defend legal matters.	*Municipal Manager & Manager Legal Services*	*31 March 2024*

If the above finding affects an amount(s) disclosed in the financial statements:		
	~~**YES**~~	**NO**
If yes, please indicate the accounting entry N/A		
If no, please provide the reason why such a conclusion has been reached Explained in detail above		

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Name:
Position:
Date:

Auditor's conclusion

THE REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: **3488/2023**

In the matter between:

MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT AND DEVELOPMENT PLANNING, WESTERN CAPE PROVINCE	Applicant

and

KNYSNA MUNICIPALITY	First Respondent
COUNCIL OF KNYSNA MUNICIPALITY	Second Respondent
MUNICPAL MANAGER OF KNYSNA MUNICIPALITY	Third Respondent
LONDIWE SOTSHEDE	Fourth Respondent

In the counter- application:

KNYSNA MUNICIPALITY	First Applicant
COUNCIL OF KNYSNA MUNICIPALITY	Second Applicant
MUNICPAL MANAGER OF KNYSNA MUNICIPALITY	Third Applicant
LONDIWE SOTSHEDE	Fourth Applicant

and

MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT AND DEVELOPMENT PLANNING, WESTERN CAPE PROVINCE	First Respondent
THE MINISTER OF COOPERATIVE GOVERNMENT AND TRADITIONAL AFFAIRS	Second Respondent

And in

Case No: **4884/2023**

In the matter between:

MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT AND DEVELOPMENT PLANNING, WESTERN CAPE PROVINCE Applicant

and

KNYSNA MUNICIPALITY First Respondent
COUNCIL OF KNYSNA MUNICIPALITY Second Respondent
MUNICPAL MANAGER OF KNYSNA MUNICIPALITY Third Respondent
LUVUYO LOLIWE Fourth Respondent

In the counter- application:

KNYSNA MUNICIPALITY First Applicant
COUNCIL OF KNYSNA MUNICIPALITY Second Applicant
MUNICPAL MANAGER OF KNYSNA MUNICIPALITY Third Applicant
LUVUYO LOLIWE Fourth Applicant

and

MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT AND DEVELOPMENT PLANNING, WESTERN CAPE PROVINCE First Respondent
THE MINISTER OF COOPERATIVE GOVERNMENT AND TRADITIONAL AFFAIRS Second Respondent

This judgment is handed down electronically by email circulation to the parties' legal representatives' email addresses.

JUDGMENT

SLINGERS J

Introduction

[1] In the application instituted under WCHC: 3488/2023, the Member of The Executive Council For Local Government, Environmental Affairs And Development And Development Planning, Western Cape Province **('the MEC')** seeks following substantive relief:

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(a) that the resolution taken by the Council of Knysna Municipality on 14 February 2023 to appoint Londiwe Sotshede **('Sotshede')** as the acting chief financial officer **('CFO')** of the Knysna Municipality is:

(b)(i) declared to be unlawful, *ultra vires*, and null and void by virtue of its contravention of section 56(1)(c) of Local Government Municipal Systems Act, Act 32 of 2000 **('the Systems Act')**;

(b)(ii) declared to be unlawful, *ultra vires*, and null and void by virtue of its contravention of section 56(1)(b) of the Systems Act; and

(b)(iii) reviewed and set aside;

(c) that the Knysna Municipality **('the Municipality')** is directed to pay the costs of the application which costs are to include the costs of two counsel.

[2] In the counter-application, the respondents[1] sought the following substantive relief:

(a) that the Minister of Co-operative Government and Traditional Affairs **('the Minister')** be included as a necessary party to the counter-application in accordance with Rule 10A;

(b) that to the extent necessary, declaring that:

(b)(i) section 56(1)(c) of the Systems Act is unconstitutional, unlawful and invalid;

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[1] The Municipality, the Council of Knysna Municipality, the Municipal Manager of Knysna Municipality and Sotshede

(b)(ii) the Council of Knysna Municipality **('the Council')** was entitled, at its meeting held on 14 February 2023, to appoint Sotshede as its acting CFO; and

(b)(iii) the Municipality, the Council and the Municipal Manager of Knysna Municipality **('the Municipal Manager')** did not require the authorisation of the MEC to appoint Sotshede;

(c) that to the extent necessary:

(c)(i) declaring that the Local Government: Regulations on the Appointment and Conditions of Employment of Senior Managers, 2014, promulgated by the Minister in Government Gazette number 37245 on 17 January 2014 **('the Appointment Regulations')**, became unlawful, invalid and ineffective with effect from 9 March 2019;

(c)(ii) setting aside the 2014 Appointment Regulations with effect from 9 March 2019;

(c)(iii) declaring that the 2014 Appointment Regulations did not apply in respect of the appointment of Sotshede as the CFO;

(c)(iv) in the alternative to (c)(i) to (iii)

(c)(iv)(1) declaring that Regulation 9 of the 2014 Appointment Regulations, and annexures A and/or B thereto, became unlawful, invalid and ineffective with effect from 9 March 2019;

(c)(iv)(2) setting aside Regulation 9 of the 2014 Appointment Regulations, and annexures A and/or B thereto, on the basis that they became unlawful, invalid and ineffective from 9 March 2019; and

(c)(iv)(3) declaring Regulation 9 of the 2014 Appointment Regulations, and annexures A and/or B thereto, did not apply to the appointment of the Sotshede as the CFO;

(d) insofar as may be necessary, granting condonation for the relief in paragraph (c) in accordance with section 9 of the Promotion of Administrative Justice Act, Act 3 of 2000 **('PAJA')**;

(e) in the event of opposition, that such opposing party be liable for the costs of the counter-application, the costs whereof are to be determined by the court.

[3] On 14 April 2023, the parties took an order by agreement in terms whereof the Minister was included as a necessary party in the counter-application in accordance with Rule 10A. Furthermore, it was agreed that both the main and counter-applications would be postponed to 5 May 2023 for hearing.

[4] In the application instituted under WCHC: 4884/2023, the MEC seeks the following substantive relief:

(a) that the resolution taken by the Council on 15 March 2023 to appoint Luvuyo Loliwe **('Loliwe')** as the Acting Director: Corporate Services **('DCS')** of the Knysna Municipality-

(b)(i) be declared unlawful, *ultra vires*, and null and void by virtue of its contravention of section 56(1)(c) of the Systems Act;

(b)(ii) be declared to be unlawful, *ultra vires*, and null and void by virtue of its contravention of regulation 7 of the Municipal Regulations on Minimum Competency Levels, 2007, promulgated under the Local Government: Municipal Finance Management Act, Act 56 of 2003; and

(b)(iii) is reviewed and set aside.

(c) the first respondent is directed to pay the costs of the application, including the costs of two counsel.

[5] The following substantive relief is sought in the counter-application:

(a) that the Minister be joined as a necessary party to the counter-application in accordance with Rule 10A;

(b) that to the extent necessary, declaring that:

(b)(i) section 56(1)(c) of the Systems Act is unconstitutional, unlawful and invalid;

(b)(ii) the Council was entitled, at its meeting held on 15 March 2023, to appoint the Loliwe as it Acting DCS; and

(b)(iii) the Municipality, the Council and the Municipal Manager did not require the authorisation of the MEC to appoint Loliwe; and

(c) in the event of opposition, that such opposing party be liable for the costs of the counter-application, the costs whereof are to be determined by the court.

[6] As with the application instituted under WCHC:3488/2023, an order was taken by agreement in terms whereof the Minister was included as a necessary party in the counter-application in accordance with the provisions of Rule 10A, and both the main and counter-applications were postponed for hearing to 5 May 2023.

[7] Prior to the hearing on 5 May 2023, the MEC brought a formal application to have the applications instituted under WCHC: 4884/2023 and WCHC: 3488/2023 consolidated. The consolidation was sought as both matters pertained primarily to the proper interpretation and application of section 56(1)(c) of the Systems Act. The only substantive issue not common to both applications was the Municipality's contention in the Sotshede application[2] that the Appointment Regulations fell away, alternatively was rendered invalid on 9 March 2019 following the Constitutional Court's judgment in *SAMWU v Minister of Cooperative Governance and Traditional Affairs.*[3]

[8] It was argued that the consolidation of the applications would serve to avoid a multiplicity of applications and costs, would contribute to the efficient use of judicial time and resources and would avoid the risk of disparate outcomes in the applications if they were heard separately.

[9] The application for consolidation was not opposed and was accordingly granted by the court. It is these consolidated applications which serve before me.

[10] At the stage of filing his replying papers in the Sotshede application, the MEC sought leave to amend paragraph 2.2 of his Notice of Motion by including an alternative ground on which it attacked the lawfulness of Sotshede's appointment.

[2] The application instituted under WCHC: 3488/2023
[3] 2017 (5) BCLR 641 (CC)

[11] In its unamended form the MEC sought to have Sotshede's appointment declared unlawful, *ultra vires*, and null and void by virtue ofthe appointment's contravention of section 56(1)(b) of the Systems. In its amended form, the MEC sought to have Sotshede's appointment declared unlawful, *ultra vires*, and null and void by virtue of its contravention of section 56(1)(b) of the Systems, *alternatively (b) its contraventions of Regulation 5 of the Municipal Regulations on Minimum Competency Levels, 2007, published under GN R 493 in GG 29967 of 15 June 2007, as amended by GN 1146 in GG 41996 of 26 October 2018.*[4]

[12] The parties have filed papers and have presented both written and oral submissions in this amendment application. I return to this amendment application later in the judgment.[5]

Background to the Sotshede application

[13] Sotshede was first appointed as the acting CFO from 15 August 2022 for a three month period. Thereafter, she was re-appointed from 16 November 2022 for another three month period. On 14 February 2023, the Council took a resolution to appoint Sotshede as acting CFO for a further period from *'16 February 2023 or until such time as the vacant position of Chief Financial Officer is filled, whichever period comes first.'*[6]

[14] On 12 October 2022, the MEC was furnished with a copy of the minutes of a special meeting of Council of 12 August 2022. At this meeting the first acting appointment of Sotshede was approved by Council.

[15] The MEC wrote to the Executive Mayor of the Municipality wherein he advised that it did not appear that Sotshede met the requirements prescribed under

[4] The requested amendment is in italics.
[5] This is the one of three amendment applications brought by the MEC.
[6] Paragraph 10 of the founding affidavit in application instituted under WCHC: 3488/2023

Regulation 5 of the Competency Regulations made under the Municipal Finance Management Act. In response hereto, the Executive Mayor advised the MEC that the Council was satisfied with Sotshede's performance and intended to extend her employment contract until such time that the vacancy had been filled satisfactorily.

[16] On 31 January 2023, the MEC was furnished with an excerpt from the minutes of an ordinary meeting of the Council held on 27 October 2022. The said minutes recorded that the Council had unanimously resolved to appoint Sotshede from 16 November 2022 in the position of acting CFO for a further three month period.

[17] On 8 February 2023, the MEC addressed letters to *inter alia* the Executive Mayor and the Municipal Manager in which he noted the alleged unlawful resolutions to appoint Sotshede. The MEC also requested urgent undertakings from the Executive Mayor, the Speaker and the Municipal Manager that pending the finalisation of an application which was due to be instituted, the Council would not make any further resolutions to further extend the acting appointment of Sotshede, that no further acting appointment of Sotshede would be implemented, and that no further employment contract would be concluded in terms whereof Sostshede was appointed as an acting CFO. No undertakings were furnished.

[18] On 9 February 2023, the MEC instituted urgent application proceedings wherein he sought an interim interdict preventing the Municipality from appointing Sotshede as acting CFO after 15 February. This application was heard on 14 February 2023 when it was struck from the roll for lack of urgency.

[19] Subsequently, Sotshede's appointment as acting CFO has twice been extended.

[20] The MEC also seeks to set aside the appointment of Sotshede for non-compliance with the provisions of section 56(1)(b) of the Systems Act. The MEC argues that an acting CFO is subject to the requirements prescribed in regulation 5 of the Competency Regulations which provides that:

'The chief financial officer of a municipality or municipal entity must comply with the minimum competency levels required for higher education qualification, work related experience, core managerial and occupational competencies and be competent in the unit standards prescribed for financial and supply chain management competency areas as set out [in the table] below.'

[21] Therefore, the MEC argues, Sotshede as the acting CFO of a municipality which has an annual budget of a value equal to or above R1 billion must have at least a post graduate degree or qualification in the fields of accounting, finance or economics registered on the National Qualifications Framework at NQF level 8 with a minimum of 120 credits or chartered accountant. These minimum competency requirements have not been waived by the Minister responsible for local government and therefore remain applicable to Sotshede's appointment.

[22] It is not disputed that Sotshede does not meet the minimum competency requirements prescribed for an acting CFO. The Municipality argues, however, that the prescribed minimum competency requirements are not applicable to the position of an acting CFO.

Background to the Loliwe application

[23] Loliwe was appointed as the Municipality's acting DCS from 16 September 2022 for a three month period. On 12 October 2022 the MEC was furnished with a

copy of the minutes of a special meeting of the Council held on 16 September 2022 where it resolved to appoint Loliwe as the acting DCS.

[24] In a letter dated 8 November 2022, the MEC advised the Executive Mayor of the Municipality that it appeared as if Loliwe failed to meet the requirements prescribed under regulation 7 of the Competency Regulations. The Executive Mayor was requested to advise the MEC within 7 days of the steps taken to remedy the situation. In a letter dated 23 November 2022, the Executive Mayor advised the MEC that the Council was satisfied with Loliwe's performance and that it intended to extend his contract until the vacancy has been filled satisfactorily. Furthermore, the MEC was advised that the Municipality was in the process of finalising the permanent recruitment process for the position which would in all likelihood be conducted at the end of February 2023.

[25] In accordance with regulation 7 of the Competency Regulations, the MEC avers that Loliwe must have:

(a) at least a post graduate degree or relevant qualification registered on the National Qualifications Framework at NQF level 8 with a minimum of 120 credits in a field relevant to the senior management position; and

(b) a minimum of seven years' experience at senior and middle management levels, of which a minimum of two years must be at senior management level.

[26] It is not disputed that Loliwe does not have the required minimum seven years' experience. However, the Municipality disputes that regulation 7 of the Competency Regulations are applicable to Loliwe. The MEC also challenges Loliwe's appointment on the basis that it is *ultra vires*, unlawful, and null and void in terms of section 56(2)(b) of the Systems Act.

[27] On 7 February 2023, the MEC received an excerpt from the minutes of an ordinary meeting of the Council held on 13 December 2022. These minutes recorded that the Council unanimously resolved to appoint Loliwe as acting CFO for a further three month period.

[28] On 8 February 2023, the MEC addressed letters to *inter alia* the Executive Mayor and the Municipal Manager in which he noted the unlawful resolutions to appoint Loliwe. The MEC also requested urgent undertakings from the Executive Mayor, the Speaker and the Municipal Manager that pending the finalisation of an application which was due to be instituted that the Council would not make any further resolutions to further extend the acting appointment of Loliwe, that no further acting appointment of Loliwe would be implemented, and that no further employment contract would be concluded in terms whereof Loliwe was appointed as an acting DCS.

[29] In response to the letter of 8 February 2023, the Executive Mayor advised that the Council has referred the matter for a legal opinion, which would be shared with the MEC. NNiether the legal opinion or the requested undertakings were furnished.

[30] The MEC sought urgent interdictory relief wherein he sought to prevent the Municipality from appointing Loliwe as acting DCS after 15 February 2023. This application was heard on 14 February 2023 when it was struck from the roll for lack of urgency.

[31] The interpretation of sections 56(1)(c) of the Systems Act is central to determining the validity of the appointments of both Sotshede and Loliwe. On the interpretation favoured by the MEC, the appointments are invalid, whilst on the interpretation favoured by the Municipality, the appointments are valid. In the

event that the MEC's interpretation is accepted, the Municipality brought counter applications wherein it challenges the constitutionality of section 56(1)(c) of the Systems Act.

[32] I turn now to the interpretation of section 56(1)(c).

Section 56(1)

[33] Section 56 reads as:

> ***'56 Appointment of managers directly accountable to municipal managers***
>
> *(1)(a) A municipal council, after consultation with the municipal manager, must appoint-*
>
> *(i) a manager directly accountable to the municipal manager; or*
>
> *(ii) an acting manager directly accountable to the municipal manager under circumstances and for a period as prescribed.*
>
> *(b) A person appointed in terms of paragraph(a)(i) or (ii) must at least have the skills, expertise, competencies and qualifications as prescribed.*
>
> *(c) A person appointed in terms of paragraph(a)(ii) may not be appointed to act for a period that exceeds three months: Provided that a municipal council may, in special circumstances and on good cause shown, apply in writing to the MEC for local government to extend the period of appointment contemplated in paragraph(a), for a further period that does not exceed three months.*
>
> *(2) A decision to appoint a person referred to in subsection (1)(a)(i) or (ii), and any contract concluded between the municipal council and that person in consequence of the decision, is null and void if-*
>
> *(a) the person appointed does not have the prescribed skills, expertise, competencies or qualifications; or*
>
> *(b) the appointment was otherwise made in contravention of this Act,*

unless the Minister, in terms of subsection (6), has waived any of the requirements listed in subsection (1)(b).

(3) If a post referred to in subsection (1)(a)(i) becomes vacant, the municipal council must-

(a) advertise the post nationally to attract a pool of candidates nationwide; and

(b) select from the pool of candidates a suitable person who complies with the prescribed requirements for appointment to the post.

(4) The municipal council must re-advertise the post if there is no suitable candidate who complies with the prescribed requirements.

(5)(a) The municipal council must, within 14 days of the date of appointment, inform the MEC for local government of the appointment process and outcome, as may be prescribed.

(b) The MEC for local government must, within 14 days of receipt of the information referred to in paragraph(a), submit a copy thereof to the Minister.

(6) If a person is appointed to a post referred to in subsection (1)(a) in contravention of this Act, the MEC for local government must, within 14 days of becoming aware of such appointment, take appropriate steps to enforce compliance by the municipal council with this Act, which steps may include an application to a court for a declaratory order on the validity of the appointment or any other legal action against the municipal council.

(7) A municipal council may, in special circumstances and on good cause shown, apply in writing to the Minister to waive any of the requirements listed in subsection (1)(b) if it is unable to attract suitable candidates.

(8) A person appointed in a permanent capacity as a manager directly accountable to the municipal manager when this section takes effect, must be regarded as having been appointed in accordance with this section.

(9) A person appointed as an acting manager directly accountable to the municipal manager when this section takes effect, must be regarded as having been appointed in accordance with this section only for the period of the acting appointment.

(10) Any pending legal or disciplinary action in connection with an appointment made before this section took effect, will not be affected by this section after it took effect.

[34] The approach to be adopted to interpretation is set out in *Natal Joint Municipal Pension Fund v Endumeni Municipality*[7]. The starting point to interpreting section 56 would be the plain words thereof, giving them their ordinary meaning, while cognizant of the fact that statutory provisions must always be interpreted purposively, be properly contextualized and must be interpreted consistently with the Constitution. In ascertaining the meaning of section 56, regard may be had to sections and/or chapters thereof in which the key word, provision, or expression to be interpreted is located.[8]

[35] The MEC interprets section 56(1)(c) to mean that a person appointed in accordance with section 56(1)(a)(ii) may only be appointed for a single period of three months. This single period of three months may be extended on a single occasion for a limited period of three months. This extension may only occur after the Council, in special circumstances and on good cause shown, applied in writing to the MEC for such extension.

[7] 2012 (4) SA 593 (SCA)
[8] *Amabhungane Centre for Investigative Journalism NPC v President of the Republic of South Africa* 2023 (2) SA 1 (CC)

[36] The Municipality interprets section 56(1)(c) to mean that a person appointed in terms of section 56(1)(a)(ii) may be appointed and re-appointed without any limitation or restriction as long as each such appointment is for a period of three months or less. It is only when an acting appointment exceeds three months, that it is required to apply in writing to the MEC for an extension.

[37] Therefore, the Municipality argues, as both Loliwe and Sotshede were appointed in three month tranches, there was no need to apply in writing for an extension to the MEC.

[38] The Municipality argues that its interpretation is constitutionally compliant as it enables compliance with section 160(1)(d) of the Constitution.[9] However, in its view, a limitation of a three-month period would not impede on a Municipality's authority to employ personnel which are necessary for the effective performance of its functions, nor would it undermine sections 41, 160(1)(d), 154(1) and 156(5) of the Constitution. It would simply limit the period of such appointment. No cogent argument has been presented to show that by limiting the appointment in terms of section 56(1)(c) to a minimum three month period (or a maximum of six months), the Municipality's ability to appoint personnel necessary for the effective performance of its functions are impeded.

[39] Furthermore, the Municipality argued that on the MEC's interpretation, the vacant posts for senior managers had to be filled within a three to six month period. This could not have been the intention if regard is had to the lengthy appointment procedures prescribed by the Appointment Regulations.

[40] Regulation 7 of the Appointment Regulations provides that as soon as the municipal manager received official notification that the post of senior manager

[9] A Municipal Council may employ personnel that are necessary for the effective performance of its functions.

has become vacant, he/ she must obtain approval from the municipal council to fill that post at its next meeting or as soon as possible.

[41] Regulation 10(1) of the Appointment Regulations obliges the municipal manager to, within 14 days of receipt of the notification that the post of senior manager has become vacant, to ensure that the vacant post is advertised. Regulation 10(5) further obliges the municipal manager to provide the executive committee with monthly progress reports on the filling of the vacant senior manager post.

[42] In *Notyawa v Makana Municipality*, the following was stated:

> *'[11] … The entire scheme of section 54A is predicated on having suitably qualified persons appointed as municipal managers. And having those appointments made within a short span of time because municipal managers are vital to the proper administrative functioning of municipalities.'*

[43] The appointment of senior managers is similarly vital to the proper administrative functioning of municipalities.

[44] A reading of sections 56 and 54A of the Systems Act indicates that the two sections very closely resemble each other.

[45] Therefore, having regard to Regulations 7 and 10(1) of the Appointment Regulations, the above quoted excerpt of *Notyawa v Makana Municipality* and the similarity between sections 56 and 54A of the Systems Act, I am of the view that the appointment of senior managers, similarly to that of municipal managers, has to be made within a short span of time.

[46] In any event, the Appointment Regulations should not contextualise the interpretation of the Systems Act, rather the Systems Act should contextualise the interpretation of the Appointment Regulations.[10]

[47] In support of its interpretation of section 56(1)(a)(c), the Municipality argues that section 56(1)(a)(ii) provides that an acting appointment is under such circumstances and for the period as prescribed. The definitions section of the Systems Act defines *'prescribe'* as *'by regulation or guidelines in terms of section 120'*. Therefore, the Municipality argues, the limits permissible for a continuing acting appointment must be dealt with in terms of section 120 of the Systems Act as it would create an impossible situation if section 56(1)(c) was interpreted to grant the very same power to the MEC as what is granted to the Minister in terms of section 120 of the Systems Act. In my view, this argument fails to consider the interpretation section fully which explicitly states that *'In this Act, unless inconsistent with the context*[11]*...'*. For the sake of completeness I set out the full definition of *'prescribe.'*

'1. Definitions

In this Act, unless inconsistent with the context-

"prescribe' *means prescribe by regulation or guidelines in terms of section 120, and "**prescribed**"has a corresponding meaning'*.

[48] Therefore, if the definition of *prescribe* is inconsistent with the context of section 56(1)(c), it should not be sustained, and the provisions of section 56(1)(c) should prevail.

[10] *National Commissioner of Police and Another v Gun Owners South Africa* 2020 (6) SA 69 (SCA)
[11] Own reference

[49] On the Municipality's interpretation, section 56(1)(c) would serve no purpose and its application could be avoided by simply limiting each acting appointment to a period of three months or less. To adopt and apply such an approach would, in my view, lead to an insensible result as it would render section 56(1)(c) superfluous. As was stated in *Wellworths Bazaars Ltd v Chandler's Ltd and Another,*[12]a Court should be slow to come to the conclusion that words are tautologous or superfluous and as was quoted by the Privy Council in *Dither v Denison* (11 Moore P.C. 325, at p.357):

> *'It is a good general rule in jurisprudence that one who reads a legal document whether public or private, should not be prompt to ascribe – should not, without necessity or some sound reason, impute- to its language tautology or superfluity, and should rather at the outset be inclined to suppose every word intended to have some effect or be some use.'*

[50] It is clear from section 56(5)(a) of the Systems Act that the Municipal Council has a statutory duty to inform the MEC of the appointment process and outcome in respect of an appointment in terms of section 56(1)(a). The MEC is in turn statutorily obliged to inform the Minster in accordance with the provisions of section 56(5)(b). This accords with the monitoring role accorded to the MEC.

[51] Section 56(6) statutorily obliges the MEC to take appropriate steps to enforce compliance with the Systems Act upon learning that a permanent appointment in terms of section 56(1)(a) was made in contravention of the Systems Act.

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[12] 1947 (2) SA 37 (AD); See also *Case and Another v Minister of Safety and Security and others; Curtis v Minister of Safety and Security and Others* 1996 (3) SA 617 (CC) and *Florence vs Government of The Republic of South Africa* 2014 (6) SA 456 (CC)

[52] Therefore, in terms of sections 56(5) and 56(6), the MEC has a supervisory and enforcement role in respect of permanent appointments made in terms of section 156(1)(a) and is not a passive observer to the appointment process.

[53] On the Municipality's interpretation and application of section 56(1)(c), the MEC has no supervisory and enforcement role in respect of acting appointments made in terms of section 56(1)(a)(ii). However, the MEC's interpretation of section 56(1)(c) affords him a similar role to what he has in respect of permanent appointments in respect of acting appointments as he would determine whether or not the period of an acting appointment should be extended beyond a three month period.

[54] This supervisory and enforcement role aligns with the purpose of the Systems Act to establish a framework for monitoring and standard setting by other spheres of government to build an efficient, effective, accountable and transparent local public administration.

[55] The MEC's interpretation of section 56(1)(c) of the Systems Act is also consistent with the objective of the Systems Act to give effect to the principle of co-operative government, with the objective of achieving an accountable public administration with employment and personnel management practices based on *inter alia* ability and fairness and is consistent with the provisions of section 3 and 7 of the Systems Act

[56] Section 3 of the Systems Act provides as:

'(1) Municipalities must exercise their executive and legislative authority within the constitutional system of co-operative government envisaged in section 41 of the Constitution.

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(2) The national and provincial spheres of government must, within the constitutional system of co-operative government envisaged in section 41 of the Constitution, exercise their executive and legislative authority in a manner that does not compromise or impede a municipality's ability or right to exercise its executive and legislative authority.'

[57] Section 7 of the Systems Act explicitly provides that the rights and duties of the municipal councils are subject to the Constitution. Section 50 provides that:

'(1) Local public administration is governed by the democratic values and principles embodied in section 195 (1) of the Constitution[13]*.*

(2) In administering its affairs, a municipality must strive to achieve the objects of local government set out in section 152 (1)[14] *of the Constitution, and comply with the duties set out in sections 4 (2) and 6.'*

[58] This supervisory and enforcement role of the MEC does not undermine the ability of the Municipality to regulate its own affairs, which includes the appointment of

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[13] Section 195(1) of the Constitution provides that:
'Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) A high standard of professional ethics must be promoted and maintained.
(b) Efficient, economic and effective use of resources must be promoted.
(c) Public administration must be development-oriented.
(d) Services must be provided impartially, fairly, equitably and without bias.
(e) People's needs must be responded to, and the public must be encouraged to participate in policy-making.
(f) Public administration must be accountable.
(g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
(h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.
(i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.'

[14] Section 152(1) of the Constitution provides that:
'The objects of local government are –

(a) to provide democratic and accountable government for local communities;
(b) to ensure the provisions of service to communities in a sustainable manner;
(c) to promote social and economic development;
(d) to promote a safe and healthy environment; and
(e) to encourage the involvement of communities and community organizations in the matter of local government.

its staff.[15] On the contrary, it is consistent with the provisions of section 151(3) of the Constitution, which provides that:

'A municipality has the right to govern, on its own initiative the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.'

[59] In *Notyawa v Makana Municipality and Others* the Constitutional Court addressed the interpretation of section 54A. The following are important excerpts from *Notyawa v Makana Municipality and Others* which are relevant to the matter at hand:

'A municipal manager is the head of the administration of each council.'[16]
'...section lays emphasis on the appointment of suitably qualified municipal managers owing to the position they hold in the administration of a municipality. The role played by the managers is crucial to the delivery of services to local communities. The section envisages that candidates who are best qualified for the job must be recruited.'[17]
'The MEC must satisfy herself that the appointment complies with the Systems Act. If she is not satisfied that the Act was followed, the MEC is empowered to take appropriate steps to enforce compliance by the municipal council.'[18]
'It is quite apparent that Parliament has entrusted the MEC to monitor compliance with the Systems Act.'[19]
'Section 54A...prescribes short periods within which certain steps are to be taken in the process of filling in a vacancy for the post of a municipal manager. This is the position even in the case of a stop-gap. The section precludes the

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[15] *Notyawa v Makana Municipality and Others* (CCT115/2019) ZACC 43
[16] Paragraph 2
[17] Paragraph 4
[18] Paragraph 6
[19] Paragraph 8

appointment of acting municipal managers for a period in excess of three months. And where an extension is granted by the MEC, it may not exceed a further three months. This indicated that the section envisages that the appointment of permanent municipal manager must be done within six months.'[20] *'Where it is not possible, the section affords two options. The first is to solicit a secondment of a suitably qualified official from the MEC.'*[21]

'The entire scheme of section 54A is predicated on having suitably qualified persons appointed as municipal managers. And having those appointments made within a short span of time because municipal managers are vital to the proper administrative functioning of municipalities.'[22]

[60] As seen from the above excerpts, the Constitutional Court determined that section 54A(2A)(a) and (b) prescribes that a person may be appointed for one three month period, which may be extended on a single occasion, upon written application to the MEC in special circumstances and on good cause shown.[23]

[61] Section 56 speaks to the appointment of managers and acting managers directly accountable to municipal managers and section 54A speaks to the appointment of municipal managers and acting municipal managers. The two sections are worded almost identically. A notable exception is section 54A(6) which provides that the Municipal Council may request the MEC to second a suitable person, on such circumstances as prescribed, to act in the advertised position until such time as a suitable candidate is appointed. Section 56 does not have a similar provision.

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[20] Paragraph 9
[21] Paragraph 10
[22] Paragraph 11
[23] Section 54A(2A)(a) and (b) provides that:
'(a) A person appointed in terms of subsection (1)(b) may not be appointed to act for a period that exceeds three months.
(b) A municipal council may, in special circumstances and on good cause shown, apply in writing to the MEC for local government to extend the period of appointment contemplated in paragraph (a), for a further period that does not exceed three months.'

[62] As a result of the similarity of the wording between section 56 and section 54A, the MEC argues that it follows that the interpretation attributed to section 54A(2A) should similarly be attributed to section 56(1)(c). The Municipality argues that section 56(1)(c) cannot have the same interpretation as section 54A(2A). This follows from the fact that section 54A allows for the municipal council to request that the MEC second a suitable person to the position. This provision acts as a pressure release mechanism which is absent in section 56.

[63] As provided for in section 55 of the Systems Act, a municipal manager is the head of the administration and the accounting officer of the municipality. Therefore, in my view, if the vacancy pertaining to the position of municipal manager is not filled within 6 months, a municipality would be without a head of administration and without accounting officer with no-one responsible and accountable for all municipal income and expenditure, all municipal assets and liabilities. These factors would necessitate the need for pressure release system provided for in section 54A(2A).

[64] In *Amabhugane Centre for Investigative Journalism NPC v President of the Republic of South Africa*[24]the Constitutional Court stated that when engaged in an interpretative exercise, statutory provisions should always be interpreted purposively and properly contextualised. The context may be determined by considering other subsections, sections or chapter in which the key word, provision or expression interpreted is located.

[65] Both section 54A and section 56 are located in chapter 7 of the Systems Act which is headed *'Local Public Administration and Human Resources'*. Further,

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[24] 2023 (2) SA 1 (CC)

both section 54A and section 56 are located in part 2 of chapter 7, which is headed *'political structures, political office bearers and roles'*.

[66] Therefore, given the similarity of the wording of section 56 and section 54A together with the fact that both provisions are located within the same part of the same chapter of the Systems Act, it can be accepted that the same considerations applicable to the interpretation of section 54A would be applicable to section 56. Consequently, the Constitutional Court's interpretation of section 54A(2A) provides support for the interpretation of section 56(1)(c) advanced by the MEC.

[67] If section 54A(2A) and section 56(1)(c), which are worded in almost identical terms, were construed differently it would offend against the legal principle which provides that every part of a statute should be so construed as to be consistent with every other part of the statute.[25]

[68] After applying the approach to interpretation as set out in *Natal Joint Municipal Pension Fund v Endumeni Municipality* and having regard to the the ordinary meaning of section 56(1)(c), I am in agreement with the interpretation advanced by the MEC.

[69] Therefore, in my view, acting appointments made in terms of section 56(1)(a)(ii) is limited to a single three month period which may, by application in writing to the MEC and in special circumstances and on good cause shown be extended for a further once off period of three months. This interpretation affords the wording of section 56(1)(c) its ordinary meaning, allows for a purposive

[25] *Chotabhai v Union Government (Minister of Justice) and Registrar of Asiatics* 1911 AD 13 at [24] and cited in *National Commissioner of Correctional Services and Another v Democratic Alliance and Others* 2023 (2) SA 530 (SCA)

interpretation thereof, properly contextualises it, and is consistent with the Constitution.

[70] In the circumstances:

(i) the decision of the Council on 14 February 2023 to appoint Sotshede as the acting CFO contravened section 56(1)(c) of the Systems Act; and

(ii) the decision of the Council on 15 March 2023 to appoint Loliwe as the acting DCS contravened section 56(1)(c) of the Systems Act.

The Constitutional Challenge

[71] In its counter-applications the Municipality sought an order *inter alia* declaring section 56(1)(c) of the Systems Act unconstitutional, unlawful and invalid.

[72] The Municipality alleges that the MEC's interpretation of section 56(1)(c) improperly purports to grant to him the power to dictate to the Municipality how it may exercise its exclusive functional competence to appoint members of its administrative staff.

[73] Implicit in the Municipality challenge to the MEC's interpretation of section 56(1)(c) is that it is not constitutionally compliant and that it does not respect the principles of co-operative governance, intergovernmental relations and the constitutional autonomy of local government to regulate its own affairs, including its staff. The Municipality argues that its appointment of members of staff establishments is an exclusive functional competence which is Constitutionally granted to municipalities.

[74] Therefore, the MEC does not have, and cannot be statutorily granted the powers to interfere in the Municipality's function to appoint members of its staff

establishment, including senior managers whether it be in an acting or permanent capacity.

[75] The MEC's interpretation of section 56(1)(c), the Municipality argues, effectively usurps its power to appoint an acting director of corporate services as it sees fit. On the MEC's interpretation, the Systems Act is effectively given a power to override the municipality's own determination, which amounts to a usurpation of the municipality's function to appoint its own acting senior managers for the period it deems fit. This would be a contravention of section 160(1)(d) of the Constitution.[26]

[76] Therefore, it is argued that section 56(1)(c) is unlawful to the extent that it curtails the ability of the municipality to appoint an acting director of corporate services for more than two to three month periods.

[77] As the Constitutional Court found in *Notyawa v Makana Municipality and Others*[27], Parliament entrusted the MEC to monitor compliance with the Systems Act. This monitoring power is a necessary component of the relationship between local government and other levels of government and is an acknowledgment that higher levels of government have a duty to intervene when local government functions in a defective or deficient manner which compromises its autonomy and integrity.[28]

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[26] Section 160(1)(d) reads as: '*A Municipal Council may employ personnel that are necessary for the effective performance of its functions.*'
[27] (CCT115/18) [2019] ZACC 43; 2020(2) BCLR 136 (CC)
[28] *Ex Parte Chairperson of The Constitutional Assembly: In Re Certification of the Constitution of the Republic of South Africa, 1996* 1996(4) SA 744 (CC) at para 373

[78] Although municipal councils have original legislative and executive authority, such authority has to be exercised subject to the national and provincial legislation as provided for in the Constitution.[29]

[79] Section 139(1) of the Constitution provides that if a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking appropriate steps to ensure the discharge of that obligation.

[80] Sections 155(6)(b) and 155(7) of the Constitution authorises and mandates the provincial government to promote the development of local government capacity to perform their functions and to manager its own affairs and to ensure the effective performance by municipalities of their functions by regulating the exercise by municipalities of their executive authority.

[81] It is undeniable that there is an alarming increase in the instances of maladministration within municipalities. The Local Government: Municipal Systems Amendment Act, Act 7 of 2011, which included section 56(1)(c), was introduced to address this situation and to ensure that the appointment of municipal managers and managers directly accountable to municipal managers be governed by professional qualifications, experience and competence and not by political party affiliation.[30]

[82] The MEC is not prescribing requirements or criteria for the appointment of acting senior managers. Furthermore, the MEC is not limiting or restricting the Municipality's power to identify, shortlist and interview candidates for the acting appointment of senior managers. The MEC is simply discharging his monitoring

[29] Section 151(3) of the Constitution. See also *City of Cape Town and Another v Robertson and Another* 2005 (2) SA 323 (CC) at para 59.
[30] *SAMWU v Minister of Co-Operative Governance & Traditional Affairs and Others* (CCT 54/16) [2017] ZACC 7; 2017 (5) BCLR 641 (CC) (9 March 2017) at para [4]

role by ensuring that persons appointed as acting senior managers do not act for a longer period than prescribed by section 56(1)(c) and that permanent appointments are promptly and efficiently made. This would further the achievement of the Municipality's objects set out in section 152(1)(a) to (c) of the Constitution.[31]

[83] The discharge of the MEC's monitoring role to ensure compliance with the provisions of section 56(1)(c) does not amount to an encroachment on the Municipality's sphere of influence and is consistent with its Constitutional duties owed to local government and the principles of co-operative governance and intergovernmental relations.

[84] Therefore, the Municipality's constitutional challenge to section 56(1)(c) must fail.

The Appointment Regulations of 2014

[85] Competence-based appointments are necessary to enhance the quality of appointment decisions and ensure that municipalities perform and discharge their functions responsibly, competently, and effectively. The commitment to competence based appointments is encapsulated in regulation 6 of the Appointment Regulations which affirms that that one of the principles of recruitment, selection and appointment is that *'selection must be competence-based to enhance the quality of appointment decisions and to ensure the effective performance by municipalities of their functions.'*

[86] In accordance with the provisions of section 56(1)(b) of the Systems Act, a person appointed in terms of section 56(1)(a)(ii) must have the prescribed skills,

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[31] Section 152(1) of the Constitution provides that: *'The objects of local government are-*
(a) to provide democratic and accountable government for local communities;
(b) to ensure the provision of services to communities in a sustainable manner;
(c) to promote social and economic development.'

expertise, competencies and qualifications. As shown above, prescribe means prescribed by regulation or guidelines in terms of section 120 of the Systems Act, unless inconsistent with the context. The Local Government: Regulations on Appointments and Conditions of Employment of Senior Managers, 2014 were made in terms of section 120 of the Systems Act ***('The 2014 Appointment Regulations')***. Regulation 9(2) of the 2014 Appointment Regulations provides that (a) a person appointed as a senior manager in terms of the regulations must have the competencies set out in annexure A and (b) must comply with the minimum requirements for higher education qualification, work experience and knowledge set out in annexure B.

[87] Item 5 of annexure B, states that a person appointed as a CFO must have the higher education qualification, work-related experience and other requirements as prescribed under the Local Government: Municipal Regulations on Minimum Competency Levels, 2007 **('the Competency Regulations')**. In terms hereof a person appointed as the CFO must have at a post graduate degree or qualification in the fields of accounting, finance or economics registered on the national qualifications framework at NQF level 8 with a minimum of 120 credits or chartered accountant. The Municipality does not dispute that Sotshede does not have these requirements.

[88] Item 7 of annexure B provides that the DCS must have a bachelor degree in Public Administration/Management Sciences/Law; or equivalent and must have 5 years' experience at middle management level and have proven management experience in administration.

[89] The Municipality contends that the Local Government: Municipal Systems Amendment Act 7 of 2011 came into force on 5 July 2011 ***('the Amendment***

Act'). Section 11 hereof sought to introduce section 72(1)(gB) into the Systems Act and that the Appointment Regulations were promulgated in accordance with section 72(1)(gB) and 120(1)(a) of the Systems Act. On 9 March 2017, the Constitutional Court confirmed the declaration of invalidity of the Amendment Act by the Gauteng High Court Division (sitting at Pretoria).[32] This declaration of invalidity was suspended for 24 months. On 9 March 2019, the Amendment Act was not valid, and the provisions it inserted into the Systems Act, including section 72(1)(gB) fell away. The Municipality argues that as the Appointment Regulations were dependent on the validity of section 72(1)(gB) read with section 120(1)(a), it too fell away on 9 March 2019 and could not be relied thereon anytime thereafter.

[90] In *Member of the Executive Council Local Government Environmental Affairs and Development Planning, Western Cape v Prince Albert Municipality and Another*[33]***('MEC v Prince Albert')***, a full bench of this Division found that:

'[33] After applying the approach set out in Natal Joint Municipal Pension Fund v Endumeni Municipality and Cool Ideas v Hubbard by objectively considering the ordinary grammatical meaning of section 72 read together with section 120 of the Systems Act, it is clear that the Minister was clothed with the authority to make the appointment regulations independent of the Systems Amendment Act and therefore, that the validity of the Appointment Regulations remained intact notwithstanding the declaration of invalidity of the Systems Amendment Act.'

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[32] *SAMWU v Minister of Co-Operative Governance and Traditional Affairs* 2017 (5) BCLR 641 (CC); [2017] ZACC 7 (9 March 2017)
[33] WCC: A231/2020. The matter was heard on 23 July 2021 and judgment was handed down on 21 September 2021.

[91] As can be seen from the above paragraph, a Full Bench determined that the invalidity of the Amendment Act did not affect the validity of the appointment regulations.

[92] In addressing the decision of the court in *MEC v Prince Albert*, the Municipality argues that that Full Bench was not asked to perform an audit of the Regulations *in toto* and that the statements in paragraph 33 of the judgment (quoted above) cannot be taken as judicial imprimatur that all other provisions in the Regulations are also valid.

[93] There is no merit in this argument. A proper reading of the judgment in *MEC v Prince Albert* indicates that the court determined whether or not the appointment regulations remained valid after the declaration of constitutional invalidity of the Amendment Act. This is the same argument presented by the Municipality in this case, namely that the appointment regulations did not survive the declaration of invalidity of the Systems Amendment Act. The decision of in *MEC v Prince Albert* is dispositive of this argument.

[94] As *MEC v Prince Albert* was a decision of the Full Bench, it is binding on this court.[34]

The condonation application: the challenge to the appointment regulations

[95] The Municipality submits that the promulgation of the Appointment Regulations was not merely the detailing of practical issues but was in fact an exercise of executive power by the Minister. Consequently, PAJA would not be applicable in respect of the Municipality's challenge to the Appointment Regulations. The Municipality relies on the principle of legality to challenge the Appointment Regulations.

[34] *Turnbull-Jackson v Hibiscus Court Municipality and Others* 2014 (6) SA 592 (CC)

[96] In the event that PAJA does apply to its challenge, the Municipality acting with an abundance of caution, sought condonation in terms of section 9(1) of PAJA.

[97] In accordance with PAJA, the challenge to the Appointment Regulations had to have been brought within a reasonable time and no later than 180 days after the Municipality became aware of the promulgation of the Appointment Regulations and the reasons therefor or after it might reasonably have been expected to have become aware thereof and the reasons.

[98] As the Municipality argues that the Appointment Regulations were invalidated since 9 March 2019, it should have instituted its challenge 180 days after 9 March 2019. It is common cause that it did not do so and that the counter-application was instituted during April 2023.

[99] In support of its condonation application, the Municipality states that the MEC has not previously relied upon the Appointment Regulations to question or to challenge the acting appointment of senior managers since 9 March 2019. The MEC relied upon the 2014 Regulations for the first time in the Sotshede application.

[100] Consequently, the Municipality states that in the circumstances, it could not have reasonably have been expected to bring a challenge to the Appointment Regulations at a previous time as such a challenge would have been entirely abstract and would not have related to any live dispute.

[101] The Municipality also argues that if it is not permitted to bring a challenge to the Appointment Regulations, it would result in the Appointment Regulations being insulated from judicial scrutiny and that this would not be in the interests of

justice. Furthermore, it would be contrary to the principle that unlawful action must be set aside when the source of that unlawfulness is clear.

[102] The Minister does not oppose the Municipality's condonation application.

[103] The MEC disputes that these proceedings provided the Municipality with the earliest occasion to challenge the Appointment Regulations. In support of this opposition the MEC states that the validity of the Appointment Regulations was the very issue which had to be determined in *MEC v Prince Albert.* However, the MEC's reliance on *Prince Albert* is misplaced as the Municipality was not involved in that case.

[104] The MEC alleges that the Municipality was afforded an opportunity to challenge the validity of the Appointment Regulations when its efforts to introduce a Scarce Skills and Retention Policy was resisted and culminated in litigation in 2019 with the Council passing a resolution not to oppose such litigation in February 2020. However, this decision to abide arose from concerns that the underlying resolution pertaining to the Scarce Skills and Retention Policy was defective.

[105] It cannot be disputed that the challenge to the Appointment Regulations raises issues of public importance and could have wide-ranging consequences. The issues surrounding this challenge have been fully ventilated.

[106] The MEC does not allege any particular prejudice should the condonation application be granted.

[107] In the circumstances, I am of the view that it would be in the interests of justice to grant the condonation application for the late challenge to the validity of the Appointment Regulations.

[108] In its affidavit[35] addressing the relief sought in the counter-application pertaining to the Appointment Regulations, the Municipality stated that it sought the declaratory relief as a collateral, or defensive, challenge to the MEC's attempt to exercise coercive powers relying on the Appointment Regulations.

[109] The basis on which it sought the relief was that the Appointment Regulations became unlawful as the empowering provision (section 72(1)(gB)) fell away. Consequently, the Appointment Regulations became untethered to any provision in the Systems Act and are ultra vires.

[110] As shown above, a Full Bench of this Division found that the Appointment Regulations remained valid after the Systems Amendment Act was declared invalid. Furthermore, the Full Bench determined that the Appointment Regulations were validly made in terms of section 72 read with section 120 of the Systems Act. This is dispositive of the declaratory relief sought by the Municipality in its counter-application.

Does the Regulations apply to acting appointments?

[111] The Municipality argues that the Appointment Regulations do not apply to acting appointments and that it only applies to permanent appointments.

[112] In support of its argument, the Municipality argues that the Appointment Regulations (which references and renders the Competency Regulations applicable) are not applicable to acting appointments. If it were, then the provisions of chapter 3 of the Appointment Regulations would have to apply to acting appointments and this cannot as it would entail that an acting appointment could only be made after the procedure prescribed in chapter 3 of the

[35] The affidavit served as the answering affidavit in the main application as the founding affidavit in the counter-application.

Appointment Regulations have been complied with. Included in this procedure is the advertising of the post in a national and provincial newspaper, the compilation of a selection committee and an interview process. It could not have been intended for this detailed procedure to be applicable to stop gap acting appointments.

[113] Furthermore, the Municipality references the Municipal Finance Management Act ***('MFMA')***. In the MFMA, it is only the position of an *accounting officer* which is expressly defined to include an acting appointment. No other designation or position includes an acting appointment as in the case of an accounting officer. Therefore, the Municipality argues that the Competency Regulations do not apply to acting appointments, other than to that of an accounting officer.

[114] The Appointment Regulations define *'senior manager'* as *'a municipal manager or acting manager appointed in terms of section 54A of the Act, and includes a manager directly accountable to a municipal manager appointed in terms of section 56 of the Act.'*

[115] Section 56(1) pertains to the appointment of (i) managers directly accountable to the municipal manager or (ii) an acting manager who is directly accountable to the municipal manager.

[116] Regulation 2 of the Appointment Regulations, which is headed *'scope of application'* states that it applies to municipalities, municipal entities and senior managers. Regulation 2(2) states that the Appointment Regulations must be read in conjunction with any regulations or guidelines issued in terms of section 120 of the Act concerning matters listed in section(s) 54A,56, 57A and 72. Further, the Appointment Regulations must also be read in conjunction with the Competency Regulations.

[117] Regulations 6 of the Appointment Regulations which set out the principles for recruitment provides that the recruitment, selection and appointment of senior managers must take place in accordance with the procedures provided for in section 67 of the Systems Act and must be consistent with sections 54A, 56, 57A and 72 of the Act.

[118] Therefore, in light of:

(i) the definition of *senior managers* contained in the Appointment Regulations;

(ii) the directive that the Appointment Regulations must be read in conjunction with the Competency Regulations;

(iii) the appointment principles set out in regulation 6 that the recruitment, selection and appointment of senior managers must take place in accordance with the procedures provided for in section 67 of the Systems Act and must be consistent with sections 54A, 56, 57A and 72 of the Act; and

(iv) the direct incorporation of the Competency Regulations in respect of the position of CFO,

I am of the view that the Appointment Regulations, which includes reference to and incorporation of the Competency Regulations, are applicable to the position of acting senior managers appointed in terms of section 56 of the Systems Act.

[119] Paragraph 5 of annexure B of the Appointment Regulations directly incorporates the Competency Regulations in respect of the position of a CFO by providing that: *'The higher education qualification, work-related experience and other requirements for the position of chief financial officer are as prescribed under the Local Government: Municipal Regulations on Minimum Competency Levels,*

2007, issued in terms of the Municipal Finance Management Act, as published under Government Notice 493 in Government Gazette 29967 of 15 June 2007.'

[120] Therefore, Sotshede had to have had the higher education qualification and work-related experience prescribed by the Competency Regulations in order to lawfully have been appointed as the acting CFO. As Sotshede does not have the prescribed minimum higher education qualification, her appointment as the acting CFO contravenes section 56(1)(b) of the Systems Act.

[121] The MEC invoked regulation 7 of the Competency Regulations to challenge the acting appointment of Loliwe. However, regulation 7 of the Competency Regulations do not set out the prescribed minimum competencies applicable to Loliwe. The applicable regulation is regulation 9 of the Appointment Regulations read with item 7 of annexure B, which sets out the prescribed minimum higher education qualification and work-related experience required for an appointment as the acting DCS.

[122] As the MEC has failed to show that Loliwe does not meet these prescribed minimum competency requirements, it cannot be found that Loliwe's appointment contravenes section 56(1)(b) of the Systems Act.

Does The MEC Have Standing To Enforce The MFMA Competency Regulations?

[123] The Municipality argues that the MEC lacks standing to rely on the MFMA for the relief sought as he expressly brought the application by relying on *inter alia* sections 56(6) and 105 of the Systems Act.

[124] Section 105 provides for the provincial monitoring of municipalities.

[125] As seen from section 56(6), the MEC is obliged to take appropriate steps to enforce compliance with the Systems Act. He has no discretion in this regard. This much is clear from the use of the word *'must'* in section 56(6).

[126] As set out above, the Competency Regulations are applicable to the appointment of acting CFOs in terms of section 56 of the Systems Act. Therefore, if the appointment of an acting CFO in terms of section 56 does not comply with the provisions of the Systems Act by virtue of its non-compliance with the Competency Regulations, the MEC is statutorily obligated to take steps to enforce compliance with the Systems Act, and this may include approaching the courts for declaratory orders.

[127] Section 139(1) of the Constitution provides that:

'When a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation...'

[128] Section 139(1) of the Constitution clothes the MEC with the standing to take **any** appropriate steps to ensure compliance with its Constitutional duties and legislative obligations such as complying with the Systems Act.

[129] Therefore, I am of the view that the MEC does have standing to enforce the competency regulations insofar as it is necessary to enforce compliance with the Systems Act.

The applications to amend

[130] Amendments are governed by Rule 28 of the Uniform Rules of Court. Rule 28(10) provides that the court may, notwithstanding anything to the contrary in Rule 28, at any stage before judgement grant leave to amend.

[131] In *Affordable Medicines Trust and Others v Minister of Health and Others*[36] the Constitutional Court held that amendments to pleadings and notices of motion will generally be allowed if to do so would be in the interests of justice. It held that amendments will always be allowed unless the amendment is brought in bad faith or unless the amendment will result in an injustice to the other side which cannot be cured by an appropriate cost's order, or unless the parties cannot be put back for the purposes of justice in same position as they were when the pleading it sought to amend was filed.[37]

[132] The MEC has brought three applications seeking leave to amend the relief sought pertaining to Sotshede. In the first application the MEC seeks leave to include an alternative ground on which to have Sotshede's acting appointment declared invalid and unlawful. In terms of this alternative ground, the MEC seeks to have the appointment set aside for contravening the competency regulations.

[133] This application is opposed by the Municipality, which argues that the application to amend was brought in an effort to *'relieve the pinch of the shoe'*. The MEC argues that the first application to amend was necessitated by the relief sought in counter-application brought by the Municipality.

[134] In opposing the first application for leave to amend, the Municipality has made a general averment that it would be prejudiced if the amendment was granted. However, it has not set out nor identified any specific prejudice which it would suffer and which could not be cured by an appropriate costs order if the application was to be granted.

[36] 2006 (3) SA 247 (CC)
[37] At para [9].

[135] The applicability and impact of regulation 5 of the Competency Regulations on Sotshede's appointment as acting CFO have been fully canvassed by the parties and no prejudice would result from this amendment.

[136] Further, as the papers filed on record addressed the issue of regulation 5 of the Competency Regulations, it cannot be said the application to amend was brought in bad faith.

[137] The second application to amend was brought after the hearing on 5 May 2023. In this application the MEC seeks to amend its Notice of Motion by inserting new paragraphs 2A an 2B which provide that:

> '2A *It is declared that section56(1)(c) of the Local Government: Municipal Systems Act 32 of 2000 precludes a municipal council from –*
>
> *2A.1 appointing a person as an acting manager directly accountable to the municipal manager for a period that exceed three months; and*
>
> *2a. re-appointing a person as an acting manager directly accountable to the municipal manager when that person has acted in the relevant position for three months, save where the MEC for local government has extended the appointment for a further period that does not exceed three months on written application by the municipal council, on the basis of special circumstances and good cause.*
>
> *2B It is declared that a person appointed as the acting chief financial officer of a municipality must comply with the minimum competency levels prescribed by regulation 5 of the Municipal Regulations on Minimum Competency Levels, 2007, published under GN R493 in GG 29967 of*

15 June 2007, as amended by GN 1146 in GG 41996 of 26 October 2018.'

[138] At the conclusion of the hearing on 5 May 2023, the MEC's legal representative requested that judgment be handed down by the 15 May 2023. However, the parties were advised that judgement would be reserved and that it could not be guaranteed that judgment would be handed down by 15 May 2023.

[139] This resulted in the MEC bringing the second amendment application as the impugned acting appointment of Sotshede was due to come to an end on 15 May 2023. In light hereof, the second amendment application was brought to address the contingency that the relief sought may have become moot and therefore not capable of determination at the time the court delivered its judgment.

[140] The MEC avers that the amended relief it seeks will not prejudice the respondents as it is sought on the same basis on which the current relief was sought and it was fully canvassed on the papers. As Sotshede has been appointed for a further term, the Municipality argues that there is no longer a basis on which to seek the second amendment.

[141] In the third application to amend, the MEC seeks leave to broaden the relief sought in paragraph 2 of its notice of motion to include the resolution taken on 11 May 2023.

[142] The proposed amended relief would read as:

'that the resolution taken by the Council of Knysna Municipality on 14 February 2023 ***and /or 11 May 2023*** *to appoint the fourth respondent as as the acting chief financial officer of the first respondent is*[38]*:*

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[38] The proposed amendment sought in the third amendment application is in bold.

(b)(i) declared to be unlawful, ultra vires, and null and void by virtue of its contravention of section 56(1)(c) of Local Government Municipal Systems Act, Act 32 of 2000 ***('the Systems Act')****;*

(b)(ii) declared to be unlawful, ultra vires, and null and void by virtue of it contravention of section 56(1)(b) of the Systems Act, [alternatively (b) their contravention of Regulation 5 of the Municipal Regulations on Minimum Competency Levels, 2007, published under GN r493 in GG 29967 of 15 June 2007, as amended by GN 1146 in GG 41996 of 26 October 2018][39]*; and*

(b)(iii) reviewed and set aside...'

[143] The Municipality argues that the third amendment application renders the second amendment application superfluous.

[144] A study of the amendment sought in the second amendment application will show that no new issues are raised thereby. On the contrary, the relief sought flow from the interpretation of section 56(1)(c) and from a finding that the Competency Regulations are applicable to the appointment of an acting CFO. These issues were fully ventilated and canvassed by the parties.

[145] Furthermore, it is not alleged that the second amendment application is brought in bad faith or that it would cause an injustice to the Municipality which cannot be cured by a costs order.

[146] Therefore, the second amendment application is granted.

[147] The third amendment application is not opposed by the Municipality who argued that it made the second amendment application superfluous. The third

[39] The alternative relief in [ ] is the proposed amended relief sought in the first amendment application.

application to amend seeks to include the resolution taken by the Council to appoint Sotshede on 11 May 2023 as the acting CFO in the declaratory relief it seeks. It does not give effect to the consequences which flow from the interpretation of section 56(1)(c) and from the finding that the Competency Regulations are applicable to the acting appointments of senior managers made in terms of section 56 of the Systems Act.

[148] The Municipality argues that the proposed third amendment renders the second amendment application superfluous.

[149] This is not so. The third amendment pertains specifically to the resolution taken by the Council on a specific date to re-appoint Sotshede, whereas the second amendment pertains to consequences from the interpretation of section 56(1)(c) and from the finding that the Competency Regulations are applicable to the appointment of an acting CFO. There may be an overlap between the effect of the second and third amendment applications but it cannot be said that the third amendment application renders the second amendment application superfluous.

[150] As it cannot be said that the third amendment application runs afoul of the legal principles applicable to amendments, and as it is unopposed, there is no reason not to grant same.

[151] Both the main and counter-applications were brought as urgent applications. When the matter was argued on 5 May 2023 none of the parties took issue with characterising the applications as urgent.

[152] Furthermore, in accordance with the provisions of section 56(6) of the Systems Act, the MEC is statutorily obliged to take appropriate steps to challenge an acting appointment made in contravention of the Systems Act within 14 days

after becoming aware thereof. This speaks to the inherent urgency of such applications which was recognised in *Western Cape Provincial Minister of Local Government, Environmental Affairs and Development Planning v Central Karoo District Municipality and Others.*[40]

[153] Therefore, it is accepted that the bringing of both the main and counter-applications were urgent.

[154] In the circumstances, I make the following order:

(i) the applications instituted under WCHC: 3488/2023 and WCHC: 4884/2023 are consolidated;

(ii) the non-compliance with the forms and services provided for in Uniform Rules of Court are condoned in respect of the main and counter-applications instituted under WCHC: 3488/2023 and WCHC: 4884/2023;

(iii) that the resolution taken by the Council of Knysna Municipality on 14 February 2023 and on 11 May 2023 to appoint Londiwe Sotshede as the acting chief financial officer of the Knysna Municipality is:

(iii)(a) declared to be unlawful, *ultra vires,* and null and void by virtue of its contravention of section 56(1)(c) of Local Government Municipal Systems Act, Act 32 of 2000;

(iii)(b) declared to be unlawful, *ultra vires*, and null and void by virtue of it contravention of section 56(1)(b) of the Systems Act;

[40] (4835/2023)[2023] ZAWCHC 66 (3 April 2023) at para [1]

(iii)(c) declared to be unlawful, *ultra vires*, and null and void by virtue of its contravention of Regulation 5 of the Municipal Regulations on Minimum Competency Levels, 2007, published under GN R493 in GG 29967 of 15 June 2007, as amended by GN 1146 in GG41996 of 26 October 2018;

is reviewed and set aside;

(iv) it is declared that section 56(1)(c) of the Local Government: Municipal Systems Act 32 of 2000 precludes a municipal council from –

(a) appointing a person as an acting manager directly accountable to the municipal manager for a period that exceeds three months; and

(b) re-appointing a person as an acting manager directly accountable to the municipal manager when that person has acted in the relevant position for three months, save where the MEC for local government has extended the appointment for a further period that does not exceed three months on written application by the municipal council, on the basis of special circumstances and good cause;

(v) It is declared that a person appointed as the acting chief financial officer of a municipality must comply with the minimum competency levels prescribed by regulation 5 of the Municipal Regulations on Minimum Competency Levels, 2007, published under GN R493 in GG 29967 of 15 June 2007, as amended by GN 1146 in GG 41996 of 26 October 2018;

(vi) the Knysna Municipality is directed to pay the costs of the main application instituted under WCHC: 3488/2023 , which costs are to include the costs of two counsel;

(vii) the MEC's application to amend paragraph 2.2 of his notice of motion in WCHC: 3488/2023 to include the alternative relief of contravening regulation 5 of the Competency Regulations is granted;

(viii) the MEC shall pay the costs occasioned by the amendment application set out in paragraph (vii) above;

(ix) the MEC's application to amend his notice of motion in WCHC: 3488/2023 by adding paragraphs 2A and 2B is granted;

(x) the MEC shall pay the costs occasioned by the amendment application set out in paragraph (ix) above;

(xi) the MEC's application to amend his notice of motion in WCHC: 3488/2023 by adding the date of 11 May 2023 to paragraph 2 thereof is granted;

(xii) the MEC shall pay the costs occasioned by the amendment application set out in paragraph (xi) above[41];

(xiii) in the counterclaim instituted under WCHC: 3488/2023 condonation is granted for the late bringing of the challenge to the Appointment Regulations;

(xiv) the counterclaim is dismissed with costs;

(xv) the resolution taken by taken by the Council of Knysna Municipality on 15 March 2023 to appoint Luvuyo Loliwe as the acting director: corporate services of the Knysna Municipality is declared to be

[41] A copy of the amended notice of motion is attached hereto as "A".

unlawful, *ultra vires,* and null and void by virtue of its contravention of section 56(1)(c) of Local Government Municipal Systems Act, Act 32 of 2000 and is reviewed and set aside;

(xvi) the Knysna Municipality is directed to pay the costs of the main application instituted under WCHC: 4884/2023 , which costs are to include the costs of two counsel where so employed; and

(xvii) the counterclaim instituted under WCHC: 4884/2023 is dismissed with costs.

Slingers J

7 June 2023

REPORT ON IRREGULAR EXPENDITURE: SCARCE SKILLS ALLOWANCE

REPORT FROM THE DIRECTOR FINANCIAL SERVICES

PURPOSE OF THE REPORT

The purpose of this report is to submit to MPAC a report on irregular expenditure: Scarce Skills Allowance for Council to condone the Irregular Expenditure.

BACKGROUND

The report was submitted to Finance and Governance section 80 committee; however the section 80 committee referred the item to the MPAC committee.

In terms of section 32(4) of the MFMA, the accounting officer must promptly inform the mayor, the MEC for local government in the province and the Auditor-General, in writing, of

(a) any unauthorized, irregular, or fruitless and wasteful expenditure incurred by the municipality.

(b) Whether any person is responsible or under investigation for such unauthorized, irregular, or fruitless and wasteful expenditure; and

(c) The steps that has been taken :
   a. To recover or rectify such expenditure; and
   b. To prevent a recurrence of such expenditure

Definition of irregular expenditure

- Expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of this Act, and which has not been condoned in terms of section 170;
- Expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act;
- Expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998); or
- Expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality's by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law,
- Excludes expenditure by a municipality which falls within the definition of "unauthorized expenditure"

DISCUSSION

During the 2023/2024 audit, Auditor General raised a finding with regards to the scarce skills allowance. The audit finding indicated that the Municipality did not implement the scarcity allowance in line with the Scarce Skills and Retention Policy. The appointment letters were not consistently implemented, as some employee's appointment letters indicated basic salary or annual salary and others indicated in line with the policy. In terms of the audit finding, the policy provides for scarce skills to be implemented on the first notch of the T level salary scale irrespective of what level the employee is currently on. The scarce skills allowance, however, was implemented on the basic salary.

Paragraph 4 of section 7.1 of the policy indicates that " A (non-pensionable) scarcity allowance calculated at the following % of an employee's annual basic salary, may be payable:" Hence the scarcity allowance was paid on basic salary.

> A (non-pensionable) scarcity allowance calculated at the following % of an employee's annual basic salary, may be payable:

Auditor General findings however concluded that paragraph 3 of section 7.2 of the policy which reads that "The scarcity allowance will be implemented on the first notch of the T level salary scale irrespective of what level the employee is current on.", supersedes paragraph 4 of section 7.1, since the section indicates **"may be payable"** whereas paragraph 3 of section 7.2 **"will be implemented"**

Motivation

The scarce skills allowance effects the three crucial sections in terms of scarce skills, which is Electricity, Town planning and Building control. The Electrical section is already under staff and the implementation of Auditor General findings might trigger more employee's in the section to leave the municipality. The Municipality have been struggling to retain employee's in these sections due to the fact that the municipality cannot compete due to lower salary scales and could not provide counter offers in comparison to neighboring municipalities. The Municipality already lost a few employees to neighboring municipalities as a result of this.

FINANCIAL IMPLICATIONS

The municipality is currently implementing the scarce skills allowance on basic salary and has been since the policy was reviewed and implementation in 2019. Therefore, no additional financial implications. The irregular expenditure from 2019 to date amounts to R380,918.44.

RELEVANT LEGISLATION

In terms of section 32(4) of the MFMA.

DELEGATION

Delegated to Finance and Governance Committee to resolve (F.2.1)

RECOMMENDATION OF THE MUNICIPAL MANAGER

1. That MPAC note the report.
2. That MPAC recommend to Council that irregular expenditure be condoned and written off, for scarcity allowance paid on basic salary.

3. That MPAC recommend to Council that the status quo for current employees on the implementation on basic salary remains as is, as this effects critical departments, and that the policy be implemented for new employees going forward.

APPENDIX / ADDENDUM

No Annexures

File Number: 4/1/2/3

Execution: Municipal Manager

Director Financial Services

Manager Expenditure