KNYSNA
Municipality
Munisipaliteit
uMasipala

Notice is hereby given
of a meeting of the

MUNICIPAL PUBLIC ACCOUNTS COMMITTEE

to be held on

MONDAY, 09 MARCH 2026

at

14:00

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

MUNICIPAL OFFICES
KNYSNA

DR. R MARTIN
ACTING MUNICIPAL MANAGER

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

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	2.7 Members of the Public Present	
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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**

   NONE

KNYSNA
Municipality
Munisipaliteit
uMasipala

MINUTES

of

the

MUNICIPAL PUBLIC ACCOUNTS COMMITTEE MEETING

held on

Thursday, 12 February 2026

10h00

IN ATTENDANCE

MEMBERS:

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

MEMBERS ABSENT WITH LEAVE

MEMBERS ABSENT WITHOUT LEAVE

OTHER COUNCILLORS PRESENT

Cllr J White
Cllr R Kakora
Cllr N Louw

OFFICIALS

R Martin	Acting Municipal Manager
E Campher	MPAC Coordinator
M Mato	Manager SCM
M Michaels	Manager Expenditure
C Julies	CFO

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**

   The Chairperson, Cllr S Campbell indicated that the Minutes are not entirely correct and that the Administration must make the recording and transcripts of the previous meetings available.

6. NEW ITEMS

6.1 REPORT ON THE FRUITLESS AND WASTEFUL EXPENDITURE

The Manager Expenditure indicated that the expenditure in question (R53, 217.00) relates to the cancellation of a contract with Gilbarco for vehicle rental. Due to the fact that the expenditure was incurred during the 2015/2016 financial year, the claim has prescribed, and that the expenditure is irrecoverable. After deliberation by the Committee, the Committee resolved to recommend to Council that the expenditure be written off as irrecoverable.

The other matter relates to expenditure (R29,964.00) incurred for a year-end function for the Directorate Infrastructure Services. The invoice was authorized by the erstwhile Director Infrastructure Services, Mr P Hariparsad. After the Committee deliberated, the Committee resolved to recommend to Council that the irregular expenditure written off as irrecoverable since any claim against Mr Hariparsad has prescribed as the irregular expenditure was incurred in the 2019/2020 financial year.

The last matter relates to penalties levied due to late payment of invoices for accommodation (R32,340.00). The Committee was of the opinion that considering that the expenditure relates to the 2020/2021 financial year it will be impossible to recover the expenditure from the official who incurred same. Therefore, the Committee decided to recommend to Council that the expenditure in question be written off as irrecoverable.

RESOLUTION

1. The Committee recommends to Council that the amount of R 53,217.00 in respect of the cancellation of a contract for vehicle rental be written off as irrecoverable.
2. The Committee recommends to Council that the amount of R29,964.00 in respect of irregular expenditure for a year-end function be written off as irrecoverable.
3. The Committee recommends to Council that the amount of R32,340.00 in respect of penalties levied due to late payments be written off as irrecoverable.

6.2 REPORT ON THE FRUITLESS AND WASTEFUL EXPENDITURE INCURRED IN RESPECT OF LEGAL FEES

The Manager Expenditure introduced the item, whereafter the Committee instructed the Administration to provide the Committee with the information in order for the Committee to determine who authorized and or incurred the expenditure.

RESOLUTION

1. The Committee requests the Administration to submit information to the next MPAC Meeting in order for the Committee to determine who authorized or incurred the fruitless and wasteful expenditure.

6.3. REPORT ON IRREGULAR EXPENDITURE: SCARCE SKILLS ALLOWANCES

The Manager Expenditure introduced the item and explained the origin of the irregular expenditure. During the 2023/2024 audit, the AG raised a finding with regards to the scarce skills allowance. The finding indicated that the Municipality did not implement the scarcity allowance in terms of the Scarce Skills and Retention Policy. The Committee deliberated the item, and the Chairperson indicated that there is a contradiction in the Scarce Skills and Retention Policy and that Council will have to review the policy. The Chairperson stated that no official acted intentionally or negligently. After deliberation, the Committee resolved as follows:

RESOLUTION

1. The Committee recommends to the Council that irregular expenditure in the amount of R380,918.44 in respect of the Scarce Skills allowances be condoned and written off.

The Chairperson thanked everyone at the meeting for their contributions and the meeting adjourned at 12:30.

Approved	

....
Chairperson: Cllr S Campbell

....
Date

-oOo-

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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. MPAC at its meeting held on 12 February 2026 indcated that it would need all the relevant information in order to determine who is responsible for incurring and authorizing the expenditure in question.

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*

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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

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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.

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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"

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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.

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		

21

Name:
Position:
Date:

Auditor's conclusion

Good day Ezintle,

Kindly find attached the following information for MEC // L Sotshede matter CASE 3488/23:

- Notice of Motion;
- Attorneys withdrawal letter – Nandi Bulabula;
- Confirmatory Notice;
- Filing Notice;
- Judgment;
- Vacate Office letter to L Sotshede;
- Municipality's heads of argument 3488/23

Should you require any additional information, please do not hesitate to contact me.

Thank you.

Kind regards / Vriendelike groete,

Zita Stevens - Senior Clerk: Legal Services
P O Box 21. Knysna. 6570. Western Cape. South Africa
Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6576 (direct)

From: Ezintle Tweyi <EzintleT@agsa.co.za>
Sent: Tuesday, October 31, 2023 11:51 AM
To: Zita Stevens <zstevens@knysna.gov.za>
Cc: Marilyn Botha <mbotha@knysna.gov.za>
Subject: RE: Information regarding Elphash Trading

Hello

Thank you Zita.

Kind regards

Ezintle Tweyi CA(SA)

Assistant Audit Manager • Western Cape • Auditor-General of South Africa
Tel: +27(0)21 528 4100 • Fax: +27(0)21 528 4200 • Mobile: +2(0)73 358 6896 • Email: ezintlet@agsa.co.za

Auditing to build public confidence

From: Zita Stevens <zstevens@knysna.gov.za>
Sent: Tuesday, 31 October 2023 11:47
To: Ezintle Tweyi <EzintleT@agsa.co.za>
Cc: Marilyn Botha <mbotha@knysna.gov.za>
Subject: RE: Information regarding Elphash Trading

Hi Ezintle,

Attached kindly find the information on CASE 2286/2023.

Kind regards / Vriendelike groete,

Zita Stevens - Senior Clerk: Legal Services
P O Box 21. Knysna. 6570. Western Cape. South Africa
Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6576 (direct)

From: Ezintle Tweyi <EzintleT@agsa.co.za>
Sent: Tuesday, October 31, 2023 10:49 AM
To: Zita Stevens <zstevens@knysna.gov.za>
Cc: Marilyn Botha <mbotha@knysna.gov.za>
Subject: RE: Information regarding Elphash Trading

Hello Zita

I trust that you are doing well.
I'm kindly following up on the request below.

Kind regards

Ezintle Tweyi CA(SA)

Assistant Audit Manager • Western Cape • Auditor-General of South Africa
Tel: +27(0)21 528 4100 • Fax: +27(0)21 528 4200 • Mobile: +2(0)73 358 6896 • Email: ezintlet@agsa.co.za

Auditing to build public confidence

From: Zita Stevens <zstevens@knysna.gov.za>
Sent: Friday, 27 October 2023 10:14
To: Ezintle Tweyi <EzintleT@agsa.co.za>
Cc: Marilyn Botha <mbotha@knysna.gov.za>
Subject: RE: Information regarding Elphash Trading

Good morning Ezintle,

Thank you.

We will surely forward you all the below information on Monday,30 October 2023.

Travel safely.

Kind regards / Vriendelike groete,

Zita Stevens - Senior Clerk: Legal Services
P O Box 21. Knysna. 6570. Western Cape. South Africa
Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6576 (direct)

From: Ezintle Tweyi <EzintleT@agsa.co.za>
Sent: Friday, October 27, 2023 9:47 AM
To: Zita Stevens <zstevens@knysna.gov.za>
Cc: Marilyn Botha <mbotha@knysna.gov.za>
Subject: RE: Information regarding Elphash Trading

Good morning

Thank you Zita.
Could you kindly please share the information available in softcopy for the following items, you may exclude the emails:

- Case 2286/23
- SAPS taxi rank case
- Case 3488/2023
- Case 4884/23

Kind regards

Ezintle Tweyi CA(SA)

Assistant Audit Manager • Western Cape • Auditor-General of South Africa
Tel: +27(0)21 528 4100 • Fax: +27(0)21 528 4200 • Mobile: +2(0)73 358 6896 • Email: ezintlet@agsa.co.za

Auditing to build public confidence

From: Zita Stevens <zstevens@knysna.gov.za>
Sent: Friday, 27 October 2023 08:34
To: Ezintle Tweyi <EzintleT@agsa.co.za>

Cc: Marilyn Botha <mbotha@knysna.gov.za>
Subject: Information regarding Elphash Trading

Good morning,

Kindly find attached the information as per your request yesterday.

Thank you.

Kind regards / Vriendelike groete,

Zita Stevens - Senior Clerk: Legal Services
P O Box 21. Knysna. 6570. Western Cape. South Africa
Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6576 (direct)

inclusive
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inspired
Knysna
Municipality || Munisipaliteit || uMasipala

inclusive
innovative
inspired
Knysna
Municipality || Munisipaliteit || uMasipala

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inclusive
innovative
inspired

Knysna
Municipality || Munisipaliteit || uMasipala

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Important Notice: This email is subject to very important restrictions, qualifications and disclaimers ("The Disclaimer") which must be accessed and read by visiting our webpage at the following address: http://www.agsa.co.za/About/EmailDisclaimer.aspx. The Disclaimer is deemed to form part of the content of this email in terms of Section 11 of the Electronic Communications and Transactions Act, 25 of 2002. If you cannot access the Disclaimer, please request a copy thereof by sending an email to disclaimer@agsa.co.za

KNYSNA
Municipality Munisipaliteit uMasipala

Acknowledgement of receipt
Office of the MM
Date: 13/03/2023
11:15

MEMORANDUM

TO	**Municipal Manager**
FROM	**Acting Chief Financial Officer : L Sotshede**
Cc	**Legal Advisor: M Botha** **Executive Mayor : A Tsengwa** **Speaker : M Skosana**
DATE	**01 March 2023**
COLLAB. REF.	1453098
FILE REF.	**Sp. L Sothede**
REGARDING	**Application for Legal Representation for MEC // Municipal Manager // Londiwe Sotshede– CASE 3488/23**
DELEGATION	**N/A**

Purpose:

BACKGROUND:

i) Full particulars of the employee/ councillor and their designation within Council

Londiwe Sotshede
Acting Chief Financial Officer

ii) Whether the employee was acting within the scope of his/her employment

Yes

iii) A description of the nature of the legal representation and the urgency thereof

To response to court case number 3488/23

iv) **A brief outline of the facts and circumstances giving rise to the request**

Refer to court case document.

v) **Attach all relevant documentation**

Case 3488/23

vi) **List all previous applications for legal representation**

Case 2286/23

vii) **Indicate whether any other matter/s are the subject of litigation that are linked to this matter**

Case 2286/23

CONCLUSION:

MOTIVATION:

Mandatory appearance in court is crucial

FINANCIAL OR LEGAL IMPLICATIONS:

Legal cost estimate not known

RECOMMENDATION:

a) That my request for legal representation be approved.

LZ Sotshede

NAME & SIGNATURE OF APPLICANT

Description of Document	Application for Legal Representation – MEC // Municipal Manager // Londiwe Sotshede– CASE 3488/23

COMMENTS BY MANAGER: LEGAL SERVICES/DIRECTOR CORPORATE SERVICES	SIGNATURE OF MANAGER: LEGAL SERVICES/DIRECTOR CORPORATE SERVICES
MM- Application for legal representation submitted by ACFO. Policy on legal representation is attached.	Mbetna. DATE: 13/03/2023.

APPROVAL:

COMMENTS BY ~~ACTING~~ MUNICIPAL MANAGER	SIGNATURE OF ~~ACTING~~ MUNICIPAL MANAGER
	16/03/23 DATE:

Req: 115039

NANDI BULABULA
INCORPORATED
ATTORNEYS | NOTARIES | CONVEYANCERS

PLETTENBERG BAY OFFICE
Suite 17c, Upper Mall,
Florina Place. Main street,
Plettenberg Bay, 6600
+27 - 044 533 6721 (T)
+27 - 044 533 5587 (F)

PRETORIA OFFICE
1000 Arcadia street,
Between Hill & Festival str
Arcadia. Pretoria 0007
+27 - 012 342 6456 (T)
+27 - 012 342 1465 (T)
+27 - 012 342 8966 (F)

GEORGE OFFICE
Suite 24 C.
Courtenay Street
George. 6529
+27 044 011 0311 (T)
+27 (012) 343 9319 / 086 249 6352 (F)

Company Reg Number
2010/024049/21
VAT
4350302834

P.O Box 14242 | Hatfield | 0028 enquiries@nandibulabulainc.co.za www.nandibulabulainc.co.za

OUR REF: BULABULA/KNYSNA014/2021

YOUR REF: M. Botha

21 JUNE 2023

KNYSNA MUNICIPALITY
05 Clyde Street
Knysna
6571

Per Email:mbotha@knysna.gov.za

Invoice: L001/2023
VAT No:4350302834

RE: MEC // KNYSNA MUNICIPALITY// LONDIWE SOTSHEDE AND OTHERS
CASE NO: 3488/2023

Attorney	Date	Description	Unit/Hour	Fees	DISB	Fees incl. VAT
1. Ms Bulabula	06/03/23 – 29/03/23	Our all inclusive fee for provision of Legal Services which fee includes the attendance below:	R3000.00	R 89 000.00	R0.00	R102,350.00
2. //	06/03/23	Received & Perused Instructions & Urgent Application papers	6 hrs	R18 000.00		
3. //	07/03/23	Several phone calls exchanged with Mr Loliwe re: instructions	1 hr	R 3000.00		
4. //	//	Several phone calls exchanged with Adv Tsele re: instructions	1 hr	R 3000.00		
5. //	//	Travelled to and from Knysna	1 hr	R 3000.00		
6. //	//	Consultation with Mr Loliwe	1 hr	R 3000.00		
7. //	//	Correspondence to Correspondents	30 min	R 1500.00		
8. //	08/03/23	Attend to draw, serve & file Notice of Intention to Oppose	1 hr	R 3000.00		
9. //	//	Prepared and sent brief to Counsel	2 hrs	R 6000.00		

10. //	13/03/23	Paginating & Indexing our file & documents	1 hr	R 3000.00		
11. //	//	Conduct research on Case Law & Legislation on Urgent Applications	4 hrs	R 12 000.00		
12. //	//	Receipt, perusal and consideration of Part B of the initial application by the MEC	3 hrs	R 9 000.00		
13. //	//	Attend to send documents to Counsel	1 hr	R 3000.00		
14.	//	Drew several correspondence to State Attorney	1 hr	R3 000.00		
15. //	14/03/23	Received and perused Opinion from Webber Wentzel	2 hrs	R 6000.00		
16. //	//	Consultation with Adv Tsele re: matter similar to Part B and advice that we must withdraw	1 hr	R 3000.00		
17. //	15/03/23	Travelled to and from Knysna to attend a meeting re: termination of mandate	R 2 hrs	R 6000.00		
18. //	28/03/23	Attend to draw Notice of Withdrawal as Attorneys of Record	30 min	R 1500.00		
19. //	28/03/23	Attend to serve Notice of Withdrawal as Attorneys of Record	30 min	R 1500.00		
20. //	29/03/23	Received & perused letter terminating mandate	10 min	R500.00		
		TOTAL FEES excl. vat	**R89,000.00**			
		TOTAL FEES Incl. vat	**R102,350.00**			
		VAT @ 15%	**R13,350.00**			
		DISBURSEMENTS				
		TOTAL DUE TO US	**R102,350.00**			

BANKING DETAILS:

ACCOUNT HOLDER	:	NANDI BULABULA INC.
BANK	:	STANDARD BANK
ACCOUNT NUMBER	:	282 048 715
TYPE OF ACCOUNT	:	BUSINESS CHEQUE
BRANCH	:	PLETTENBERG BAY
BRANCH CODE	:	051001

3488123

SCM Form 001- Application for Deviation

Knysna Municipality • Munisipaliteit • uMasipala INCLUSIVE. INNOVATIVE. INSPIRED.	Acknowledgement of receipt Office of the MM Date: 07/03/2... 14:2... **CORPORATE SERVICES DIRECTORATE** Acknowledgement of recei... Office of the MM Date: 7/3/2... 16...
	DATE: 6 March 2023

APPLICATION FOR DEVIATION IN TERMS OF SECTION 36 OF THE SCM POLICY

In terms of Section 36(1)(a) of the Knysna Supply Chain Management Policy, The Accounting Officer may dispense with the official procurement processes established by the Policy to procure any required goods or services through any convenient process, which may include direct negotiations, but only in the following circumstances: (Mark with X where applicable)

(i)	**Emergency** **A situation which is considered an unforeseeable** and **sudden** event with materially harmful or potentially materially harmful consequences for the municipality which requires urgent action to address.	
(ii)	**Sole supplier** Where it can be demonstrated that goods or services are produced or available from a single provider only, substantiated by a letter not older than 12 months from the supplier and signed by the supplier.	
(iii)	**Acquisition of special works of art or historical objects** where specifications are difficult to compile.	
(iv)	**Acquisition of animals** for zoos and/or nature and game reserves.	
(v)	**Exceptional case** and it is impractical or impossible to follow the official procurement processes.	X
(vi)	**"Single source"** refers to when competition exist in the market, but from a selected few suppliers due to technical capabilities and abilities comply with the requirements of the municipality.	

1. Background (Explain the current situation):

On 01 March 2023, the Knysna Municipality, the MM and the ACFO were served with a Notice of Motion under Case 3488/23, on an urgent basis by the MEC for Local Government, Environmental Affairs & Development Planning in the Western Cape. In terms of the Notice of Motion, which is enclosed hereto as **Annexure "A"**, the applicants is applying to Court to have the matter heard on an urgent basis on 22 March 2023.

A consultation was held with all stakeholders in terms of Council's System of Delegations on 06 March 2023. In terms of the Notice of Motion, we have to deliver notice to the applicant's attorneys by 7 March 2023, as to whether we intend to oppose the matter. The municipality is thus required to act urgently and the MM decided, in terms of his delegations, that the matter be opposed and that Bula Bula Attorneys be appointed to represent the respondents in this matter. The firm is currently only on Council's panel of attorneys for Conveyancing and Personal Injury & Public Liability Law. Due to the urgency of the matter, it is thus an exceptional case and it is impossible to follow an official procurement process.

33

It is therefore proposed that the Accounting Officer dispense with the official procurement processes established by the SCM Policy, to procure any required goods or services through any convenient process, which may include direct negotiations as provided for in Regulation 36 of the Supply Chain Management Regulations, 2005.

The firm previously represented the Knysna Municipality and the political office bearers in other matters and as such, the municipality is familiar with the firm.

At this point in time the administration cannot add an exact value to the amount for the deviation as same will depend on *inter alia*, the appointment of counsel, the complexity of the matter, amount of hours spend on the matter and amount of High Court appearances.

2. Furnish and motivate reasons for required deviation:	
Due to the urgent nature of this matter the deviation from the official procurement process can be motivated as this constitutes an exceptional case and it is impractical or impossible to follow the official procurement processes. This can also be motivated by the strict time frames as outlined in the Notice of motion.	
3. Corrective Action to Prevent Re-occurrence:	
None at this moment.	
4. Recommended price (Please calculate the total value for the services rendered or the goods to be procured):	Estimate of between R 300 000, 00 – R 800 000, 00.
5. Delivery / Date of completion:	Until such date that this litigation matter is finalised.
DEPARTMENT:	COMMUNITY SERVICES
NAME: REQUESTING OFFICIAL	SANDILE NGQELE
SIGNATURE: REQUESTING OFFICIAL	Ngqele
NAME: MANAGER of REQUESTING OFFICIAL	
SIGNATURE: MANAGER of REQUESTING OFFICIAL	
DATE:	7/3/2023
SIGNATURE: DIRECTOR COMMUNITY SERVICES	Ngqele
COMMENT: DIRECTOR COMMUNITY SERVICES	
DATE:	
6. Budget section to confirm that funds are available on the indicated vote:	Yes ✓ / No
7. Signature: Budget section	PP: [signature] 7/3/23
8. Vote number:	3235650187364 (9/211-002-2)
9. SIGNATURE DELEGATED AUTHORITY	SCM / ACFO / AMM

Legal Services tender may be used. It consists of panels for various legal matters.
1/3/2023
Previous matter from NEC was under Labour Law panel since there are 2 panels [illegible]. I cannot advise on such [illegible] and correct [illegible]

34

It is therefore proposed that the Accounting Officer dispense with the official procurement processes established by the SCM Policy, to procure any required goods or services through any convenient process, which may include direct negotiations as provided for in Regulation 36 of the Supply Chain Management Regulations, 2005.

The firm previously represented the Knysna Municipality and the political office bearers in other matters and as such, the municipality is familiar with the firm.

At this point in time the administration cannot add an exact value to the amount for the deviation as same will depend on *inter alia*, the appointment of counsel, the complexity of the matter, amount of hours spend on the matter and amount of High Court appearances.

2. Furnish and motivate reasons for required deviation:

Due to the urgent nature of this matter the deviation from the official procurement process can be motivated as this constitutes an exceptional case and it is impractical or impossible to follow the official procurement processes. This can also be motivated by the strict time frames as outlined in the Notice of motion.

3. Corrective Action to Prevent Re-occurrence:

None at this moment.

4. Recommended price (Please calculate the total value for the services rendered or the goods to be procured):	Estimate of between R 300 000, 00 – R 800 000, 00.
5. Delivery / Date of completion:	Until such date that this litigation matter is finalised.
DEPARTMENT:	~~CORPORATE SERVICES~~ COMMUNITY SERVICE
NAME: REQUESTING OFFICIAL	SANDILE NGQELE
SIGNATURE: REQUESTING OFFICIAL	[signature]
NAME: MANAGER of REQUESTING OFFICIAL	
SIGNATURE: MANAGER of REQUESTING OFFICIAL	
DATE:	
SIGNATURE: ACTING DIRECTOR CORPORATE SERVICES	
COMMENT: ACTING DIRECTOR CORPORATE SERVICES	
DATE:	
6. Budget section to confirm that funds are available on the indicated vote:	Yes ☐ No ☐
7. Signature: Budget section	
8. Vote number:	3235650187364 (9/211-00-2)
9. SIGNATURE DELEGATED AUTHORITY	SCM / ACFO / AMM

35

10. DATE:			
11. COMMENT DELEGATED AUTHORITY:	SCM		
	ACFO		
	AMM		

KNYSNA MUNICIPALITY - PROJECTS / COSTING - mSCOA Ledger Full Enquiry (vc012c.p)vc012c.p Ver 4.5 (User Code bs)

Year: 2022 Lookup: 9/ Account Account Number [illegible]

Legal Services

Mun run cost: Legal Services - 323650187364

Legal Services Advice Litigation

323650187364 [illegible]

	2022/2023 AMOUNT	2022/2023 BUDGET	2021/2022 AMOUNT	2021/2022 BUDGET	2020/2021 AMOUNT	2020/2021 BUDGET
JUL	657317.52	657318	190222.86	190223	114340.22	114340
AUG	267180.50	267181	417695.62	417696	346886.33	346886
SEP	378745.67	378746	592786.31	592786	411884.07	
OCT	192435.00	192435	348310.97	348311	883878.67	883879
NOV	700941.06	700941	288753.68	288754	689620.88	689621
DEC	599133.46	599133	754376.40	754376	345657.85	345658
JAN	24978.35	24978	33403.63	33404	127478.55-	127479-
FEB	124392.50	124393	574095.89	574100	536056.69	536867
MAR	0.00	326830	416201.37-	132796	547304.41	547304
APR	0.00	336351	70.00	160753	703065.86	260808
MAY	0.00	329152	1072109.26	188710	330131.08	450600
JUN	0.00	1063542	614620.30	788402	156189.65	476332
Commitments:	0.00					
TOTAL:	2946124.06	5000000	4470247.52	4470311	4936577.16	4936600
AVAILABLE BUDGET:		2054875.94				

Enquiry Options: A - Transactions Enquire

Close

Enter data or press ESC to end.

KNYSNA
Municipality Munisipaliteit uMasipala

MEMORANDUM

TO	**Acting CFO** **Manager: Budget Office** **Municipal Manager – Mr Sebola**
FROM	**Acting Manager: Legal Services**
cc	**Acting Director: Corporate Services**
DATE	**06 July 2023**
COLLAB. REF.	
FILE REF.	**13/5**
REGARDING	**Request for Override Authorisation – Legal Services Vote**

1. PURPOSE:

To request the office of the MM to authorize an override of the Legal Services Vote, MSCOA vote 9/211 – 002-2 / 323650187364.

2. BACKGROUND:

Legal Services budget allocation for the 2022/23 financial year amounted to approximately R 5 million rand. During the approved budget, an allocation of R 3 million was done and this was subsequently adjusted with another R 2 million rand during the Adjustment Budget.

We do not only pay for litigation, legal opinions and advise but also for certain cost orders and settlements against Council.

As at the end of June 2023, we were left with an estimate of R 25 000 left in the vote and upon request of a Virement of R53 0000 in mid-June 2023, we were advised that the Virement cannot be considered as the administration had to identify savings to pay for overtime. As such, we could not top up the vote.

On 06 July 2023, we received the enclosed correspondence from the ACFO advising that the MM requested payments to be made to Bula Bula Attorneys.

On date of this report, we had invoices for the month of June 2023 for Bula Bula Attorneys as follows:

- Invoice L001/2023 - R 102 350 dated 21 June 2023;
- Invoice L002/2023 – R 611 065 dated 21 June 2023.

Webber Wentzel:

- Invoice 4544 – R 370 300 dated 8 June 2023.

I was also advised that payment be made to Harker Attorneys and on date of this report, we had two outstanding invoices due for payment:

- Invoice 1495 – R 106 204. 83 dated 19 May 2023 ; and
- Invoice 1501 – R 256 208.00 dated 7 June 2023.

Hereunder it must be noted that upon receipt of these invoices, we did not have sufficient funds to process same and the municipality also experienced cash flow challenges. I had a discussion with the then ACFO, Mr Michaels who advised that he will not be approving overrides/ authorizations and we should not inform service providers that we are experiencing cash flow problems.

In order to meet our obligations towards our service providers and to ensure that these payments are done during the 2022/23 financial year, we herewith request an override on the Legal Services vote.

The amount for the override request will be as follows:

Total: R 1. 446 127.83
(611 065; 102 350; 370 300; 106 204. 83; 256 208.00)

Conclusion:

To request the ACFO and MM to approve an override on the Legal Services vote for R 1.446 127.83.

3. MOTIVATION:

As per above-mentioned report.

4. FINANCIAL OR LEGAL IMPLICATIONS:

R 1.446 127.83.

5. RECOMMENDATION:

Recommended for Approval:

M Botha 7/7/2023.
....
M Botha
Acting Manager: Legal Services

6. APPROVALS:

As per Routing Form **attached** hereto

Comments by ACFO AS PER REQUEST FROM MM **Approved** ☐ **Not Approved** ☐	**Signature of ACFO** **Date:** 07/07/2023
Comments by Municipal Manager **Approved** ☒ **Not Approved** ☐	**Signature of Municipal Manager** **Date:**

40

Knysna
Municipality Munisipaliteit uMasipala
inclusive · innovative · inspired

Collab. Ref.: 1109388.
File Ref.: 13/2.

202 –02-09

Webber Wentzel
15th Floor, Convention Tower
Heerengracht, Foreshore
Cape Town
8001

Via email: sabrina.defeitas@webberwentzel.com
lionel.egypt@webberwentzel.com

Dear Lionel,

URGENT INSTRUCTION: CASE 2286/23 – MEC FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING, WESTERN CAPE // KNYSNA MUNICIPAL COUNCIL

The above matter refers.

Herewith urgent instruction to represent the respondents in this matter. As per Council's System of Delegations, it was decided by our Municipal Manager that the matter be opposed.

Due to the complexity and urgency of the matter, it was also decided that should you require the appointment of counsel herein, you may proceed accordingly

We trust you find above in order.

Yours faithfully,

MR OMBALI SEBOLA
MUNICIPAL MANAGER

Acknowledgement of receipt
Office of the MM
Date:
08/03/2023
14:25
g

KNYSNA
Municipality Munisipaliteit uMasipala

MEMORANDUM

TO	**Municipal Manager**
FROM	**Acting Director Corporate Services: L Loliwe**
Cc	**Legal Advisor: M Botha** **Executive Mayor** **Speaker**
DATE	**24 February 2023**
COLLAB. REF.	
FILE REF.	**Sp. L Loliwe**
REGARDING	**Application for Legal Representation for MEC // Executive Mayor // Speaker // Municipal Manager // Londiwe Sotshede // Luvuyo Loliwe – CASE 2286/23**
DELEGATION	**N/A**

Purpose:

BACKGROUND:

i) Full particulars of the employee/ councillor and their designation within Council

Luvuyo LoliwE

ii) Whether the employee was acting within the scope of his/her employment

YES

iii) A description of the nature of the legal representation and the urgency thereof

The matter is at the semi urgent roll. Application to review and set aside my appointment as acting director corporate services I need services of an attorney and counsel.

iv) **A brief outline of the facts and circumstances giving rise to the request**

Council resolved to appoint me as the acting director at Knysna municipality.

v) **Attach all relevant documentation**

Attached

vi) **List all previous applications for legal representation**

Non

vii) **Indicate whether any other matter/s are the subject of litigation that are linked to this matter**

it was struck of the roll.

CONCLUSION:

MOTIVATION:

I was acting in my capacity as director therefore I must be granted legal representation

FINANCIAL OR LEGAL IMPLICATIONS:

300 000

RECOMMENDATION:

a) That my request for legal representation be approved.

2/3/2023

NAME & SIGNATURE OF APPLICANT

Description of Document	Application for Legal Representation – MEC // Executive Mayor // Speaker // Municipal Manager // Londiwe Sotshede // Luvuyo Loliwe – CASE 2286/23

COMMENTS BY MANAGER: LEGAL SERVICES/DIRECTOR CORPORATE SERVICES	SIGNATURE OF MANAGER: LEGAL SERVICES/DIRECTOR CORPORATE SERVICES
MM - Application for legal representation is submitted to you in terms of Council's policy	MBotha. DATE: 8/3/2023

APPROVAL:

COMMENTS BY ~~ACTING~~ MUNICIPAL MANAGER	SIGNATURE OF ~~ACTING~~ MUNICIPAL MANAGER
	9/03/23 DATE:

KNYSNA
Municipality Munisipaliteit uMasipala

Acknowledgement of receipt
Office of the MM
Date: 09/8/2023
15:43
g

MEMORANDUM

TO	**Speaker : M Skosana**
FROM	**Executive Mayor : Aubrey Tsengwa**
Cc	**Legal Advisor: M Botha** **Municipal Manager**
DATE	**24 February 2023**
COLLAB. REF.	1453100
FILE REF.	**Sp. A Tsengwa**
REGARDING	**Application for Legal Representation for MEC // Executive Mayor // Speaker // Municipal Manager // Londiwe Sotshede // Luvuyo Loliwe – CASE 2286/23**
DELEGATION	**N/A**

Purpose:

To request legal representation

BACKGROUND:

See enclosed notice of motion

i) **Full particulars of the employee/ councillor and their designation within Council**

Ndoda Aubrey Tsengwa

ii) **Whether the employee was acting within the scope of his/her employment**

Yes , He was

iii) **A description of the nature of the legal representation and the urgency thereof**

iv) **A brief outline of the facts and circumstances giving rise to the request**

Case 2286/23 is about the appointment of two senior managers. See enclosed

v) **Attach all relevant documentation**

See enclosed

vi) **List all previous applications for legal representation**

- Accountability group – Case 1234/2021
- DA // Lopes // KM – Case 19928/2021
- DA // Lopes // KM – Case 17727/2021

vii) **Indicate whether any other matter/s are the subject of litigation that are linked to this matter**

NO

CONCLUSION:

MOTIVATION:

FINANCIAL OR LEGAL IMPLICATIONS:

RECOMMENDATION:

a) That my request for legal representation be approved.

Mdodak M

NAME & SIGNATURE OF APPLICANT

Description of Document	Application for Legal Representation – MEC // Executive Mayor // Speaker // Municipal Manager // Londiwe Sotshede // Luvuyo Loliwe – CASE 2286/23

COMMENTS BY MANAGER: LEGAL SERVICES/DIRECTOR CORPORATE SERVICES	SIGNATURE OF MANAGER: LEGAL SERVICES/DIRECTOR CORPORATE SERVICES
For consideration by Speaker in terms of Council's Policy.	MBotha. 07/03/23. DATE:

COMMENTS BY ~~MUNICIPAL MANAGER~~ Speaker: M Skosana	SIGNATURE OF ~~MUNICIPAL MANAGER~~ Speaker: M Skosana
	DATE:

APPROVAL:

COMMENTS BY ~~SPEAKER : M SKOSANA~~ Municipal manager	SIGNATURE OF ~~SPEAKER : M SKOSANA~~ Municipal manager
	DATE: 9/03/23

KNYSNA
Municipality Munisipaliteit uMasipala

Acknowledgement of receipt
Office of the MM
Date:
13/03/2023
11:15

MEMORANDUM

TO	**Municipal Manager**
FROM	**Acting Chief Financial Officer : L Sotshede**
Cc	**Legal Advisor: M Botha** **Executive Mayor : A Tsengwa** **Speaker : M Skosana**
DATE	**24 February 2023**
COLLAB. REF.	1453095
FILE REF.	**Sp. L Sothede**
REGARDING	**Application for Legal Representation for MEC // Executive Mayor // Speaker // Municipal Manager // Londiwe Sotshede // Luvuyo Loliwe – CASE 2286/23**
DELEGATION	**N/A**

Purpose:

BACKGROUND:

i) Full particulars of the employee/ councillor and their designation within Council

Londiwe Sotshede
Acting Chief Financial Officer

ii) Whether the employee was acting within the scope of his/her employment

Yes

iii) A description of the nature of the legal representation and the urgency thereof

To respond to court appearance on case 2286/23.

iv) **A brief outline of the facts and circumstances giving rise to the request**

Reference to be made to court papers of above mentioned court case.

v) **Attach all relevant documentation**

Case 2286/23

vi) **List all previous applications for legal representation**

none.

vii) **Indicate whether any other matter/s are the subject of litigation that are linked to this matter**

none.

CONCLUSION:

MOTIVATION:

FINANCIAL OR LEGAL IMPLICATIONS:

RECOMMENDATION:

a) That my request for legal representation be approved.

L Z Sotshede

NAME & SIGNATURE OF APPLICANT

Description of Document	Application for Legal Representation – MEC // Executive Mayor // Speaker // Municipal Manager // Londiwe Sotshede // Luvuyo Loliwe – CASE 2286/23

COMMENTS BY MANAGER: LEGAL SERVICES/DIRECTOR CORPORATE SERVICES	SIGNATURE OF MANAGER: LEGAL SERVICES/DIRECTOR CORPORATE SERVICES DATE:

APPROVAL:

COMMENTS BY ~~ACTING~~ MUNICIPAL MANAGER	SIGNATURE OF ~~ACTING~~ MUNICIPAL MANAGER 16/03/23 DATE:

KNYSNA
Municipality Munisipaliteit uMasipala

Acknowledgement of receipt
Office of the MM
Date: 10/03/2023
08:50
g.

MEMORANDUM

TO	**Executive Mayor : Aubrey Tsengwa**
FROM	**Speaker : M Skosana**
Cc	**Legal Advisor: M Botha** **Municipal Manager**
DATE	**24 February 2023**
COLLAB. REF.	
FILE REF.	**Sp. M Skosana**
REGARDING	**Application for Legal Representation for MEC // Executive Mayor // Speaker // Municipal Manager // Londiwe Sotshede // Luvuyo Loliwe – CASE 2286/23**
DELEGATION	**N/A**

Purpose:

To request legal representation

BACKGROUND:

See enclosed notice of motion

i) Full particulars of the employee/ councillor and their designation within Council

Mncedisi David Skosana

ii) Whether the employee was acting within the scope of his/her employment

Yes,

iii) A description of the nature of the legal representation and the urgency thereof

As per enclose notice of motion

iv) **A brief outline of the facts and circumstances giving rise to the request**

Case 2286/23 is about the appointment of two Senior Managers, See enclose

v) **Attach all relevant documentation**

See enclose

vi) **List all previous applications for legal representation**

- Accountability Group Case – 1234/21
- DA // Lopes // KM Case – 19928/21
- DA // Lopes // KM Case – 17727/21

vii) **Indicate whether any other matter/s are the subject of litigation that are linked to this matter**

No

CONCLUSION:

MOTIVATION:

FINANCIAL OR LEGAL IMPLICATIONS:

RECOMMENDATION:

a) That my request for legal representation be approved.

MNCEDISI David Skosana

NAME & SIGNATURE OF APPLICANT

Description of Document	Application for Legal Representation – MEC // Executive Mayor // Speaker // Municipal Manager // Londiwe Sotshede // Luvuyo Loliwe – CASE 2286/23

COMMENTS BY MANAGER: LEGAL SERVICES/DIRECTOR CORPORATE SERVICES	SIGNATURE OF MANAGER: LEGAL SERVICES/DIRECTOR CORPORATE SERVICES
For consideration by Mayor in terms of the Policy.	Mbatha 07/03/2023. DATE:

COMMENTS BY MUNICIPAL MANAGER	SIGNATURE OF MUNICIPAL MANAGER
	DATE: 13/03/23

APPROVAL:

COMMENTS BY EXECUTIVE MAYOR: A TSENGWA	SIGNATURE OF EXECUTIVE MAYOR : A TSENGWA
	N DATE: 08 03 23

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

CASE NO: 2286/23

In the matter between:

MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, WESTERN CAPE	Applicant
and	
KNYSNA MUNICIPALITY	First Respondent
COUNCIL OF KNYSNA MUNICIPALITY	Second Respondent
EXECUTIVE MAYOR OF KNYSNA MUNICIPALITY	Third Respondent
AUBREY TSENGWA	Fourth Respondent
SPEAKER OF KNYSNA MUNICIPALITY	Fifth Respondent
MNCEDISI SKOSANA	Sixth Respondent
MUNICIPAL MANAGER OF KNYSNA MUNICIPALITY	Seventh Respondent
OMBALI SEBOLA	Eighth Respondent
LONDIWE SOTSHEDE	Ninth Respondent
LUVUYO LOLIWE	Tenth Respondent

NOTICE OF INTENTION TO OPPOSE

PLEASE TAKE NOTICE THAT the respondents intend opposing the relief sought in the Notice of Motion in respect of the application and have appointed Webber Wentzel as its attorneys of record.

Ref. Lionel Egypt/Sabrina de Freitas
Webber Wentzel
021 431 7355
lionel.egypt@webberwentzel.com

The respondents will accept service of any further documents in this matter at the address of its attorneys of record set out below.

Dated at **CAPE TOWN** on 9TH day of **FEBRUARY 2023**.

WEBBER WENTZEL
Attorneys for the Respondents
15th Floor Convention Tower
Heerengracht
Foreshore
CAPE TOWN
Tel: (021) 431 7335
(Ref: L Egypt / Sabrina De Freitas)
Email: lionel.egypt@webberwentzel.com
sabrina.defreitas@webberwentzel.com

To: **THE REGISTRAR** **BY HAND**
High Court of South Africa, Western Cape Division
CAPE TOWN

And To: **THE STATE ATTORNEY** **BY EMAIL**
Attorneys for the Applicant
Per: P Melapi
Fourth Floor
Liberty Centre
22 Long Street
CAPE TOWN
(Ref: 5206/22/P13)
Tel: 021 441 9200
Email: pmelapi@justice.gov.za / eabsolom@justice.gov.za

c/o **KETTER ATTORNEYS**
11 York Street
KNYSNA
(Ref: Mr A Van Niekerk)

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

CASE NO: 2286/23

In the matter between:

MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING, WESTERN CAPE	Applicant
and	
KNYSNA MUNICIPALITY	First Respondent
COUNCIL OF KNYSNA MUNICIPALITY	Second Respondent
EXECUTIVE MAYOR OF KNYSNA MUNICIPALITY	Third Respondent
AUBREY TSENGWA	Fourth Respondent
SPEAKER OF KNYSNA MUNICIPALITY	Fifth Respondent
MNCEDISI SKOSANA	Sixth Respondent
MUNICIPAL MANAGER OF KNYSNA MUNICIPALITY	Seventh Respondent
OMBALI SEBOLA	Eighth Respondent
LONDIWE SOTSHEDE	Ninth Respondent
LUVUYO LOLIWE	Tenth Respondent

RESPONDENTS' NOTICE IN TERMS OF RULE 35(12) AND (14)

BE PLEASED TO TAKE NOTICE that the respondents require the applicant to produce for their inspection and copying, and for the purposes of the Respondents' answering affidavit in respect of Part B, the following documents:

Ref: Lionel Egypt/Sabrina de Freitas
Webber Wentzel
021 431 7355
lionel.egypt@webberwentzel.com

1. The "*assessment*" by the Department referred to in paragraph 25 of the founding affidavit; and

2. The following documents referred to in paragraph 31 of the founding affidavit:

2.1 The correspondence of 10 January 2023 from the Department requesting confirmation of the designated attorney;

2.2 The correspondence of 11 January 2023 from the Department to Legal Services to request a deviation from the procurement process to appoint senior counsel;

2.3 The further enquiries made by the Department regarding appointment of counsel; and

2.4 the State Attorney's correspondence to the Department indicating that the attorney allocated to the matter was on leave until 20 January 2023.

Dated at **CAPE TOWN** on **10TH** day of **FEBRUARY 2023**.

WEBBER WENTZEL
Attorneys for the Respondents
15th Floor Convention Tower
Heerengracht
Foreshore
CAPE TOWN
Tel: (021) 431 7335
(Ref: L Egypt / Sabrina De Freitas)
Email: lionel.egypt@webberwentzel.com
sabrina.defreitas@webberwentzel.com

To: **THE STATE ATTORNEY** **BY EMAIL**

Attorneys for the Applicant
Per: P Melapi
Fourth Floor
Liberty Centre
22 Long Street
CAPE TOWN
(Ref: 5206/22/P13)
Tel: 021 441 9200
Email: pmelapi@justice.gov.za / eabsolom@justice.gov.za

c/o **KETTER ATTORNEYS**
11 York Street
KNYSNA
(Ref: Mr A Van Niekerk)

S8

RE: MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality & 9 Others - Case No: 2286/23

Marilyn Botha <mbotha@knysna.gov.za>
13/02/2023 at 08:51:50

From: **Marilyn Botha** <mbotha@knysna.gov.za>
Sent: 13/02/2023 at 08:51:50
To: **Sabrina De Freitas** <Sabrina.DeFreitas@webberwentzel.com>, **Lionel Egypt** <Lionel.Egypt@webberwentzel.com>, **Luline Phillips** <lphillips@knysna.gov.za>
Cc:

Good morning Sabrina,

Luline and myself are still waiting on the CFO to inform us accordingly.

Kind regards / Vriendelike groete,

Marilyn Botha - Legal Advisor

P O Box 21. Knysna. 6570. Western Cape. South Africa

Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6230 (direct)

From: Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>
Sent: Friday, 10 February 2023 14:49
To: Marilyn Botha <mbotha@knysna.gov.za>; Lionel Egypt <Lionel.Egypt@webberwentzel.com>
Subject: RE: MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality & 9 Others - Case No: 2286/23

Dear Marilyn

I see that her CV has her accounting degree attached as well as a further certificate.

Instead, it would be helpful if she could explain the entry in her CV relating to her current studies in respect of an NQF 8 qualification.

Kind regards,

Sabrina

59

60

RE: MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality & 9 Others - Case No: 2286/23

CFO <cfo@knysna.gov.za>
13/02/2023 at 09:29:08

From: **CFO** <cfo@knysna.gov.za>
Sent: 13/02/2023 at 09:29:08
To: **Luline Phillips** <lphillips@knysna.gov.za>
Cc: **Marilyn Botha** <mbotha@knysna.gov.za>, **Jenny Visagie** <jvisagie@knysna.gov.za>

Hi Luline,

I am trying to get something more formal

4

62

From: Luline Phillips
Sent: Monday, 13 February 2023 08:56
To: CFO <cfo@knysna.gov.za>
Cc: Marilyn Botha <mbotha@knysna.gov.za>; Jenny Visagie <jvisagie@knysna.gov.za>
Subject: FW: MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality & 9 Others - Case No: 2286/23

Hi

Can you please urgently provide us with the proof of further studies which you stated on Friday.

It is urgently needed for the Court proceedings.

Regards

63

Re: MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality & 9 Others

Lionel Egypt <Lionel.Egypt@webberwentzel.com>
13/02/2023 at 12:11:37

From: **Lionel Egypt** <Lionel.Egypt@webberwentzel.com>
Sent: 13/02/2023 at 12:11:37
To: **Marilyn Botha** <mbotha@knysna.gov.za>
Cc: **Sabrina De Freitas** <Sabrina.DeFreitas@webberwentzel.com>

1 Attachment(s) Total 585.3 KB View ^

SKM_550i23021311551.pdf (585.3 KB)

Dear Marilyn

I trust that you are well.

Please find herewith a letter received from the State Attorney.

In our view, the meeting should not go ahead. I'm afraid the Court might agree with the Applicants that the calling of the meeting is constructive contempt.

Please provide us with your urgent instructions.

Best

Lionel

Lionel Egypt | Partner | Webber Wentzel
T: +27214317166 | lionel.egypt@webberwentzel.com | **www.webberwentzel.com**

From: Absolom Edwina <EAbsolom@justice.gov.za>
Sent: 13 February 2023 12:02
To: Lionel Egypt <Lionel.Egypt@webberwentzel.com>; Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>
Cc: Melapi Pamella <PMelapi@justice.gov.za>; Mgada Busisiwe <BMgada@justice.gov.za>
Subject: Re: MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality & 9 Others
Importance: High

Dear Sir/Madam

64

Kindly find attached our letter dated 13 February 2023 for your urgent attention.

Please acknowledge receipt hereof.

Kind regards,

Edwina Absolom

(Secretary for Ms C Bailey & Ms P Melapi)

The State Attorney, Cape Town

22 Long Street, Cape Town

Tel: (021) 441 9213

Fax: (021) 421 9364 or 0865070255

Email: eabsolom@justice.gov.za

65

RE: MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality & 9 Others - Case No: 2286/23

Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>
10/02/2023 at 12:38:21

From: **Sabrina De Freitas** <Sabrina.DeFreitas@webberwentzel.com>
Sent: 10/02/2023 at 12:38:21
To: **Marilyn Botha** <mbotha@knysna.gov.za>
Cc: **Lionel Egypt** <Lionel.Egypt@webberwentzel.com>

1 Attachment(s) Total 161.3 KB View ^

RE: 5206/22/P13.eml (161.3 KB) View

Dear Marilyn

We have served the rule 35(12) notice as discussed in the consultation.

Kind regards,

Sabrina

From: Sabrina De Freitas
Sent: 10 February 2023 12:07
To: 'Marilyn Botha' <mbotha@knysna.gov.za>
Cc: Lionel Egypt <Lionel.Egypt@webberwentzel.com>
Subject: RE: MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality & 9 Others - Case No: 2286/23

Hi Marilyn

In addition to electronic service which was confirmed by the State Attorney, the opposition has also been served and filed by hand as per the attached for your records.

Kind regards,

Sabrina

LL

From: Sabrina De Freitas
Sent: 10 February 2023 12:06
To: Marilyn Botha <mbotha@knysna.gov.za>
Cc: Lionel Egypt <Lionel.Egypt@webberwentzel.com>
Subject: RE: MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality & 9 Others - Case No: 2286/23

Hi Marilyn

Thank you for meeting with us.

Could you kindly provide us with instructions regarding the merits:

1. Factual comments on paragraph 21 to 39 and 51 to 55 and 73;
2. Could HR confirm that the Acting Director: Corporate Services' experience does not meet the experience requirement, specifically whether Manager Legal Services since 2018 does not qualify as 2 years of senior management experience?
3. Could HR confirm that the Acting CFO is currently still in the process of pursuing an NQF?
4. Confirmation that Knysna Municipality has an annual budget of a value equal to or above R1 billion?

Kind regards,

Sabrina

From: Sabrina De Freitas
Sent: 10 February 2023 09:38
To: Marilyn Botha <mbotha@knysna.gov.za>; Lionel Egypt <Lionel.Egypt@webberwentzel.com>
Subject: RE: MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality & 9 Others - Case No: 2286/23

Hi Marilyn

We will meet with you at 11h00 today.

Kind regards,

Sabrina

67

From: Marilyn Botha <mbotha@knysna.gov.za>
Sent: 09 February 2023 17:28
To: Lionel Egypt <Lionel.Egypt@webberwentzel.com>
Cc: Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>
Subject: Re: MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality & 9 Others - Case No: 2286/23

Apologies, misunderstood your email.

Will however let you know tomorrow morning.

Get Outlook for Android

From: mbotha@knysna.gov.za <mbotha@knysna.gov.za>
Sent: Thursday, February 9, 2023 5:25:55 PM
To: Lionel Egypt <Lionel.Egypt@webberwentzel.com>
c: Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>
Subject: Re: MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality & 9 Others - Case No: 2286/23

Hi Lionel,

Fine with me, will speak to him tomorrow morning. Perhaps we can do a 10:30?

Will let you know.

Get Outlook for Android

rom: Lionel Egypt <Lionel.Egypt@webberwentzel.com>
Sent: Thursday, February 9, 2023 5:22:52 PM
To: Marilyn Botha <mbotha@knysna.gov.za>
Cc: Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>
Subject: RE: MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality & 9 Others - Case No: 2286/23

Hi Marilyn

Can I propose that we initially meet with only you and the MM tomorrow? I think the consultations will be far more productive if we have a smaller group.

Please let me know.

Best

68

Lionel

Lionel Egypt | Partner | Webber Wentzel
T: +27214317166 | lionel.egypt@webberwentzel.com | **www.webberwentzel.com**

From: Marilyn Botha <mbotha@knysna.gov.za>
Sent: 09 February 2023 16:50
To: Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>; Lionel Egypt <Lionel.Egypt@webberwentzel.com>
Cc: Ombali Phineas Sebola <mm@knysna.gov.za>; Anita Strydom <astrydom@knysna.gov.za>; Aubrey Tsengwa <atsengwa@knysna.gov.za>; Mncedisi Skosana <mskosana@knysna.gov.za>; Director Corporate <directorcorporate@knysna.gov.za>; CFO <cfo@knysna.gov.za>; Veronique Klein <vklein@knysna.gov.za>
Subject: RE: MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality & 9 Others - Case No: 2286/23

Dear Sabrina,

Our telecommunication regarding above instruction refers.

As per the confirmation by your office to represent the respondents in this matter, we herewith enclose signed instruction letter.

Thank you.

Kind regards / Vriendelike groete,

Marilyn Botha - Legal Advisor

P O Box 21. Knysna. 6570. Western Cape. South Africa

Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6230 (direct)

From: Marilyn Botha
Sent: Thursday, 09 February 2023 15:18
To: 'Sabrina De Freitas' <Sabrina.DeFreitas@webberwentzel.com>; Lionel Egypt <Lionel.Egypt@webberwentzel.com>
Cc: Ombali Phineas Sebola <mm@knysna.gov.za>; Anita Strydom <astrydom@knysna.gov.za>; Aubrey Tsengwa <atsengwa@knysna.gov.za>; Mncedisi Skosana <mskosana@knysna.gov.za>; Director Corporate <directorcorporate@knysna.gov.za>; CFO <cfo@knysna.gov.za>; Veronique Klein <vklein@knysna.gov.za>
Subject: FW: MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality & 9 Others - Case No: 2286/23
Importance: High

Good day Sabrina,

Our brief discussion refers.

69

The attached Notice of Motion was served earlier today.

We require your urgent assistance in this matter. As per our Municipal Manager, those cited intend to oppose the matter. Are you able to take instruction and to file said notice to oppose by 17:00 today?

Please let me know. If in order, the respondents would also like a consultation tomorrow morning.

I await your urgent advises.

Kind regards / Vriendelike groete,

Marilyn Botha - Legal Advisor

P O Box 21. Knysna. 6570. Western Cape. South Africa

Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6230 (direct)

From: Anita Strydom <astrydom@knysna.gov.za>
Sent: Thursday, 09 February 2023 15:04
To: Marilyn Botha <mbotha@knysna.gov.za>
Subject: FW: MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality & 9 Others - Case No: 2286/23
Importance: High

As per your discussion with the MM

From: Absolom Edwina <EAbsolom@justice.gov.za>
Sent: Thursday, 09 February 2023 10:14
To: Knysna Municipality <knysna@knysna.gov.za>; Ombali Phineas Sebola <mm@knysna.gov.za>; Mncedisi Skosana <mskosana@knysna.gov.za>; Aubrey Tsengwa <atsengwa@knysna.gov.za>; Buziwe Mjamba <bmjamba@knysna.gov.za>; Anita Strydom <astrydom@knysna.gov.za>; Luline Phillips <lphillips@knysna.gov.za>; CFO <cfo@knysna.gov.za>; directorcoporate@knysna.gov.za
Cc: Melapi Pamella <PMelapi@justice.gov.za>; Mgada Busisiwe <BMgada@justice.gov.za>
Subject: Re: MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality & 9 Others - Case No: 2286/23
Importance: High

Dear Sir/Madam

Kindly find attached Applicant's Notice of Motion for your attention.

Please acknowledge receipt hereof.

Kind regards,

70

Edwina Absolom

Secretary for Ms C Bailey & Ms P Melapi)

The State Attorney, Cape Town

22 Long Street, Cape Town

Tel: (021) 441 9213

Fax: (021) 421 9364 or 0865070255

Email: eabsolom@justice.gov.za

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OFFICE OF THE CHIEF JUSTICE
PRIVATE BAG X9020
CAPE TOWN 8000
2024 -09- 30
TAXATION
WESTERN CAPE HIGH COURT

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

CASE NO: 2286/2023
PH BOX 154

In the matter between:

MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DECELOPMENT PLANNING, WESTERN CAPE	**APPLICANT**

and

KNYSNA MUNICIPALITY	**FIRST RESPONDENT**
COUNCIL OF KNYSNA MUNICIPALITY	**SECOND RESPONDENT**
EXECUTIVE MAYOR OF KNYSNA MUNICIPALITY	**THIRD RESPONDENT**
AUBREY TSENGWA	**FOURTH RESPONDENT**
SPEAKER OF KNYSNA MUNICIPALITY	**FIFTH RESPONDENT**
MNCEDISI SKOSANA	**SIXTH RESPONDENT**
MUNICIPAL MANAGER OF KNYSNA MUNICIPALITY	**SEVENTH RESPONDENT**
OMBALI SEBOLA	**EIGHTH RESPONDENT**
LONDIWE SOTSHEDE	**NINTH RESPONDENT**
LUVUYO LOLIWE	**TENTH RESPONDENT**

NOTICE OF TAXATION

BE PLEASED TO TAKE NOTICE THAT:

1. The Respondents' Notice of Intention to Tax the Bill of Costs was served on the Applicant on 26 August 2024.

2. No Notice of Intention to Oppose the Taxation was served on our offices by the Applicant.

3. The Respondents hereby apply for a taxation date on an unopposed basis.

Webber Wentzel
Ref: L Egypt
Email: lionel.egypt@webberwentel.com
Tel: (021) 431 7166

BE PLEASED TO TAKE NOTICE THEREFORE that the taxation in the above matter, which is set down for taxation before the Taxing Master of the above Honourable Court on ______________________ the 13 day of Aug 2025 at 12h00 will proceed on an unopposed basis.

Dated at CAPE TOWN on this the 26th day of SEPTEMBER 2024.

WEBBER WENTZEL
Respondents' Attorneys
15th Floor, Convention Tower
Heerengracht, Foreshore
Cape Town
(Ref: L Egypt/3059868)
Tel: 021 431 7166
Email: lionel.egypt@webberwentzel.com

OFFICE OF THE CHIEF REGISTRAR
PRIVATE BAG X9020
CAPE TOWN 8000
2024 -09- 30
TAXATION
WESTERN CAPE HIGH COURT

TO : **THE TAXING MASTER**
High Court of South Africa
Western Cape Division
CAPE TOWN

AND TO: **OFFICE OF THE STATE ATTORNEY**
Applicants' Attorneys
Per: Trevor Shabane
4th Floor
22 Long Street
Cape Town
Tel: 021 441 9200
Email: TShabane@justice.gov.za/ OMatu@justice.gov.za/ EAbsolom@justice.gov.za

STAATSPROKUREUR: KAAPSTAD
2024 -10- 02
STATE ATTORNEY

FORM 26

NOTICE OF INTENTION TO TAX BILL OF COSTS

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

CASE NO: 2286/2023
PH NO 154

In the matter between:

MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DECELOPMENT PLANNING, WESTERN CAPE	**APPLICANT**
and	
KNYSNA MUNICIPALITY	**FIRST RESPONDENT**
COUNCIL OF KNYSNA MUNICIPALITY	**SECOND RESPONDENT**
EXECUTIVE MAYOR OF KNYSNA MUNICIPALITY	**THIRD RESPONDENT**
AUBREY TSENGWA	**FOURTH RESPONDENT**
SPEAKER OF KNYSNA MUNICIPALITY	**FIFTH RESPONDENT**
MNCEDISI SKOSANA	**SIXTH RESPONDENT**
MUNICIPAL MANAGER OF KNYSNA MUNICIPALITY	**SEVENTH RESPONDENT**
OMBALI SEBOLA	**EIGHTH RESPONDENT**
LONDIWE SOTSHEDE	**NINTH RESPONDENT**
LUVUYO LOLIWE	**TENTH RESPONDENT**

TAKE NOTICE THAT THE RESPONDENTS intend submitting the attached bill of costs to the taxing master for taxation.

You may inspect the documents or notes pertaining to any item on the bill of costs at **WEBBER WENTZEL** between the hours of **09:00** and **16:30** for a period of ten (10) days after receipt of this notice.

You may furthermore serve a notice of intention to oppose the taxation within twenty (20) days after receipt of this notice.

In your notice of intention to oppose you shall list all the items on the bill of costs to which you object, and a brief summary of the reason for your objection.

Should you fail to serve your notice of intention to oppose within the time specified, the bill of costs will be submitted to the taxing master for taxation without further notice to you.

If you do give notice of intention to oppose within the specified time, you may at the taxation object to the items specified in your notice of opposition.

DATED at CAPE TOWN on this the 26TH day of AUGUST 2024.

WEBBER WENTZEL

TO: OFFICE OF THE STATE ATTORNEY

Applicants' Attorneys
Per: Leon Manuel
4th Floor
22 Long Street
Cape Town
Tel: 021 441 9200
Ref: lmanuel@justice.gov.za

STAATSPROKUREUR: KAAPSTAD
2024 -08- 26
STATE ATTORNEY: CAPE TOWN

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

CASE NO: 2286/2023

In the matter between:

MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DECELOPMENT PLANNING, WESTERN CAPE	**APPLICANT**
and	
KNYSNA MUNICIPALITY	**FIRST RESPONDENT**
COUNCIL OF KNYSNA MUNICIPALITY	**SECOND RESPONDENT**
EXECUTIVE MAYOR OF KNYSNA MUNICIPALITY	**THIRD RESPONDENT**
AUBREY TSENGWA	**FOURTH RESPONDENT**
SPEAKER OF KNYSNA MUNICIPALITY	**FIFTH RESPONDENT**
MNCEDISI SKOSANA	**SIXTH RESPONDENT**
MUNICIPAL MANAGER OF KNYSNA MUNICIPALITY	**SEVENTH RESPONDENT**
OMBALI SEBOLA	**EIGHTH RESPONDENT**
LONDIWE SOTSHEDE	**NINTH RESPONDENT**
LUVUYO LOLIWE	**TENTH RESPONDENT**

**FEES AND DISBURSEMENTS OF WEBBER WENTZEL,
ATTORNEYS FOR THE RESPONDENTS
DUE AND PAYABLE BY THE APPLICANT
- TAXED AND ALLOWED ON THE HIGH COURT TARIFF -
AS BETWEEN PARTY AND PARTY IN TERMS OF ORDER DATED 14 FEBRUARY 2023 [DATE STAMPTED: 5 MARCH 2024]**

F.L.

*Note: All entries relate to **Part A** of the application only, unless it is stipulated as being apportioned*

09.02.23	1.	Attend at consultation with client re the matter, discuss part A of the application and take instructions to oppose same	15 min	388.00
	2.	Attending on receipt, perusal and considering of email from client re the matter with application attached		78.00
	3.	Attending on receipt, perusal and considering of **Notice of Motion**	2 ff	156.00
	4.	Attending on receipt, perusal and considering of **Founding Affidavit - AW Bredell** *[Paragraphs 1 – 16, 18, 64 – 79, 80]*	7 pp	546.00
	5.	Attending on receipt, perusal and considering of **Annexure "AB15"** to Founding Affidavit		78.00
	6.	Make copies thereof for office file	15 pp	90.00
	7.	Attending on receipt, perusal and considering of **Notice of Opposition to Mediation in terms of Rule 41A**		78.00
	8.	Make a copy thereof for office file	5 pp	30.00
	9.	Draw **Notice of Intention to Oppose**		156.50
	10.	Make a copy thereof for office file	2 pp	12.00
	11.	Draw email to opposing party re the matter with notice of intention to oppose attached		156.50
	12.	Telephone call to counsel re the matter enquiring re his availability to assist	5 min	130.00
	13.	Draw **instructions** to counsel		388.00

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	14.	Draw email to counsel re the matter with instructions and application attached		156.50
	15.	Draw email to opposing party re the matter requesting the contact details of the state attorney appointed to the matter		156.50
10.02.23	16.	Telephone call to client re the matter and arrange consultation	5 min	130.00
	17.	Attend at consultation with client re the matter, discuss urgent application and receive information and instructions	2 hours	3104.00
	18.	Attending on receipt, perusal and considering of email from opposing party re the matter acknowledging receipt of above		78.00
	19.	Draw **Respondent's Notice in terms of Rule 35(12) and (14)**		156.50
	20.	Make a copy thereof for office file	3 pp	18.00
	21.	Draw email to opposing party re the matter with above notice attached		156.50
	22.	Attending on receipt, perusal and considering of email from opposing party re the matter acknowledging receipt of above		78.00
	23.	Attending on receipt, perusal and considering of email from opposing party re the matter with the contact details of the state attorney dealing with the matter		78.00
13.02.23	24.	Attending on receipt, perusal and considering of email from opposing party re the matter with applicant's response attached		78.00
	25.	Attending on receipt, perusal and considering of **Applicant's Response to Respondents' Notice in terms of Rule 35(12) and (14)**		78.00
	26.	Make a copy thereof for office file	2 pp	12.00

	27.	Attending on receipt, perusal and considering of email from counsel re the matter with respondent's answering affidavit attached		78.00
	28.	Attending on receipt, perusal and considering of **Respondent's Answering Affidavit – O Sebola** *[Paragraphs 1 – 7, 10 – 13.1, 14 – 14.4.1, 14.7 – 21.1, 21.4 – 21.5, 21.7, 70 – 75, 78 – 97, 101 – 102, 112 – 118]*	13 ff	1014.00
	29.	Draw email to client re the matter with above attached and advise re the signing and commissioning thereof		156.50
	30.	Attending on receipt, perusal and considering of email from opposing party re the matter with index attached		78.00
	31.	Attending on receipt, perusal and considering of **Index**		78.00
	32.	Make a copy thereof for office file	4 pp	24.00
	33.	Attend to sort and paginate office file (101pp) (candidate attorney)	30 min	241.00
	34.	Attending on receipt, perusal and considering of email from client re the matter with signed and commissioned answering affidavit attached		78.00
	35.	Attending on receipt, perusal and considering of **signed and commissioned Answering Affidavit** (identification fee)		78.00
	36.	Make a copy thereof for office file	13 pp	78.00
	37.	Make a copy thereof for court file	13 pp	78.00
	38.	Draw email to opposing party re the matter with client's answering affidavit attached		156.50
14.02.23	39.	Draw email to the registrar re the matter with signed and commissioned answering affidavit		156.50

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	attached, and confirm a hard copy will be delivered at court this morning		
40.	Attending on receipt, perusal and considering of email from the registrar re the matter, acknowledge receipt of above and confirm no electronic documents will be accepted		78.00
41.	Draw email to the registrar re the matter confirming a hard copy has been placed in the court file		156.50
42.	Attending on receipt, perusal and considering of email from counsel re the matter with respondents' heads of argument attached		78.00
43.	Attending on receipt, perusal and considering of **Respondents' Heads of Argument**	18 ff	1404.00
44.	Make a copy thereof for office file	22 pp	132.00
45.	Attending on receipt, perusal and considering of email from tenth respondent re the matter with his provisional answering affidavit attached		78.00
46.	Attending on receipt, perusal and considering of **Provisional Answering Affidavit to the Tenth Respondent**	10 ff	780.00
47.	Make a copy thereof for office file	13 pp	78.00
48.	Draw email to counsel re the matter with above attached		156.50
49.	Attending on receipt, perusal and considering of email from opposing party re the matter with replying affidavit attached		78.00
50.	Attending on receipt, perusal and considering of **Replying Affidavit**	2 ff	156.00
51.	Make a copy thereof for office file	2 pp	12.00

	52.	Attending on receipt, perusal and considering of email from opposing party re the matter with updated index attached		78.00	
	53.	Attending on receipt, perusal and considering of **updated Index**		78.00	
	54.	Make a copy thereof for office file	5 pp	30.00	
	55.	Attend to sort and paginate office file and counsel`s brief (candidate attorney)	30 min	241.00	
	56.	Attend at court when Part A heard	3 hours	4656.00	
	57.	Draw email to client re the matter confirming Part A of the application was struck from the roll		156.50	
27.02.23	58.	Attending on receipt, perusal and considering of **Invoice – Adv. Borgström**		78.00	
	59.	Attend to pay Adv. Borgström (excl. VAT)		78.00	160000.00
05.03.24	60.	Attending on receipt, perusal and considering of **amended Court Order** *[It is ordered that the matter is struck from the urgent roll due to lack of urgency with costs.]*		78.00	
	61.	Draw email to client re the matter with court order attached		156.50	
		TOTAL		**17678.50**	**160000.00**

CASE NO: 2286/2023

FEES AND DISBURSEMENTS OF WEBBER WENTZEL

Total	**17678.50**	**160000.00**
Min Amount Taxed Off		
Sub Total		
Plus 11% Drawing fee		
Sub Total		
Plus, Disbursements		
Sub Total		
Plus, Attendance fee		
Sub Total		
Plus 15% VAT		
TOTAL		

TAXED AND ALLOWED IN THE AMOUNT OF R ____________________
ON THE _____ DAY OF ________________________ AT _______________.

TAXING MASTER

Maryna van Staden Costs Consultants.
WWENTZ 02-24 (Amend 2)
22 AUGUST 2024

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ADVOCATE DAVID BORGSTRÖM SC

Advocate of the High Court and Member of the Cape Bar

Sixth Floor
Keerom Street Chambers
56 Keerom Street
Cape Town, 8000

Tel: +27 21 422 3320
Fax +27 21 423 6693
Cell 083 233 2340
Email borgstrom@law co za

Webber Wentzel
15th floor
Convention Tower Heerengraght
Foreshore
Cape Town
(VAT No 4300103589)

Inv No: 202249
quote on payment

Date: 27 February 2023

Attention: Mr Lionel Egypt / Ms Sabrina De Freitas
Email: lionel.egypt@webberwentzel.com/ sabrina.defreitas@webberwentzel.com

TAX INVOICE

(VAT Registration Number: **4270206529**)

KNYSNA MUNICIPALITY: Case 2286/23 MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality and others

DATE		TIME	FEE (R4000.00p/h) (R40 000.00p/d)
10.02 2023	Discussions with instructing attorney and junior counsel; receive application	2.00	R 8 000,00
11/02/2023-12.02.2023	Peruse application, consider issues and law discussions with instructing attorney and junior counsel, draft answering papers	18.00	R 72 000.00
13.02.2023	Complete answering papers heads of argument	10,00	R 40 000.00
14.02.2023	Discussions with opposing counsel, meet with instructing attorney and junior counsel, consider 10th respondent's affidavit and MEC's replying papers, supplement heads of argument, appear before Fortuin J	1 day	R 40 000,00

TOTAL	**R 160 000,00**
VAT thereon	R 24 000,00
TOTAL D	**R 184 000.00**

Acc Name	D P Borgström
Bank	Standard Bank
Branch	Braamfontein
Code	00 48 05
Acc No.	002310856

AMENDED

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

Case No. 2286/2023

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)
CAPE TOWN: Tuesday 14 February 2023

BEFORE THE HONOURABLE MS JUSTICE FORTUIN

In the matter between:

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

And

KNYSNA MUNICIPALITY	First Respondent
COUNCIL OF KNYSNA MUNICIPALITY	Second Respondent
EXECUTIVE MAYOR OF KNYSNA MUNICIPALITY	Third Respondent
AUBREY TSENGWA	Fourth Respondent
SPEAKER OF KNYSNA MUNICIPALITY	Fifth Respondent
MNCEDISI SKOSANA	Sixth Respondent
MUNICIPAL MANAGER OF KNYSNA MUNICIPALITY	Seventh Respondent
OMBALI SEBOLA	Eighth Respondent
LONDIWE SOTSHEDE	Ninth Respondent
LUVUYO LOLIWE	Tenth Respondent

Having heard the Legal Representative for the Applicant and having read the documents filed of record;

IT IS ORDERED:

That the matter is struck from the urgent roll due to lack of urgency with costs.

BY ORDER OF THE COURT

Private Bag X9020 Cape Town 8000

2024 -03- 05

WCD-009

COURT REGISTRAR

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

CASE NO: 2286/2023

In the matter between:

MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DECELOPMENT PLANNING, WESTERN CAPE	**APPLICANT**
and	
KNYSNA MUNICIPALITY	**FIRST RESPONDENT**
COUNCIL OF KNYSNA MUNICIPALITY	**SECOND RESPONDENT**
EXECUTIVE MAYOR OF KNYSNA MUNICIPALITY	**THIRD RESPONDENT**
AUBREY TSENGWA	**FOURTH RESPONDENT**
SPEAKER OF KNYSNA MUNICIPALITY	**FIFTH RESPONDENT**
MNCEDISI SKOSANA	**SIXTH RESPONDENT**
MUNICIPAL MANAGER OF KNYSNA MUNICIPALITY	**SEVENTH RESPONDENT**
OMBALI SEBOLA	**EIGHTH RESPONDENT**
LONDIWE SOTSHEDE	**NINTH RESPONDENT**
LUVUYO LOLIWE	**TENTH RESPONDENT**

CERTIFICATE IN TERMS OF RULE 70 [SECTION E(3)]

Respondents' attorney certifies that:-

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1. This Bill of Cost, has thoroughly been perused by him/her, and found to be correct; and

2. Every item, which relates to work done, time spent and amounts in this Bill of Cost, is in accordance with what was necessary in order for the work to be done.

Signed at CAPE TOWN **on this the** 26TH **day of** AUGUST 20 24.

Respondents' Attorney:
WEBBER WENTZEL

RE: MEC // KNYSNA MUNICIPALITY CASE 2286/23 [WW-WS_JHB.FID2393898]

Lionel Egypt <Lionel.Egypt@webberwentzel.com>
15/02/2023 at 15:11:10

From: **Lionel Egypt** <Lionel.Egypt@webberwentzel.com>
Sent: 15/02/2023 at 15:11:10
To: **Marilyn Botha** <mbotha@knysna.gov.za>
Cc: **Sabrina De Freitas** <Sabrina.DeFreitas@webberwentzel.com>, **Claudette Louw** <Claudette.Louw@webberwentzel.com>

Dear Marilyn

I trust that you are well.

iven that Part A of the application was struck off the roll with costs yesterday, based on the lack of urgency, we now need to focus on Part B of the application.

As you are aware, in Part B of the application the Applicant *inter alia* seeks to set aside various council decisions as well as declaratory relief.

The matter seems to turn on a rather narrow legal and factual enquiry. The challenge is based on two propositions: firstly, the appointees not meeting the minimum competency requirements; and secondly, the Municipal Council not having received the necessary authorisation from the MEC for the "further extension".

On the level of the 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 the 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 provision of section 56(1)(c) or not? If yes, then there is merit in the challenge. If not, then this leg of the challenge must fail.

There are other considerations including an alternative argument to section 56(1)(c) and whether the MEC is not perhaps time-barred in terms of section 56(6).

Please note that the answering papers in Part B are due on **2 March 2023.** We will of course advise you of the prospects of success before we file the answering papers. However, in order to provide you with our opinion regarding prospects of success and to draft the answering affidavit, we require copies of all the relevant documents including, but not limited to, the relevant supporting documents in Council packs pertaining to the relevant dates, as all correspondence exchanged with the MEC regarding these appointments, and all the relevant supporting documents to both the ACFO and ADCS curriculum vitaes We would appreciate it if you can provide us with these documents as a matter of urgency.

We will revert to you once we have had an opportunity to consider the documents whereafter we can arrange the necessary consultations. The consultations will have to be held during the course of next week.

We therefore await your instructions.

Best

Lionel

Lionel Egypt | Partner | Webber Wentzel
T: +27214317166 | lionel.egypt@webberwentzel.com | **www.webberwentzel.com**

From: Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>
Sent: 15 February 2023 10:14
To: Marilyn Botha <mbotha@knysna.gov.za>; Lionel Egypt <Lionel.Egypt@webberwentzel.com>
Cc: Iman Bassier <Iman.Bassier@webberwentzel.com>; Director Corporate <directorcorporate@knysna.gov.za>; Veronique Klein <vklein@knysna.gov.za>
Subject: RE: MEC // KNYSNA MUNICIPALITY CASE 2286/23 [WW-WS_JHB.FID2393898]

Hi Marilyn

The judgment was made ex tempore. However, once the order becomes available, we will provide you with a copy of same.

We will also require the order for purposes of the cost order.

Kind regards,

Sabrina

From: Marilyn Botha <mbotha@knysna.gov.za>
Sent: 15 February 2023 09:04
To: Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>; Lionel Egypt <Lionel.Egypt@webberwentzel.com>
Cc: Iman Bassier <Iman.Bassier@webberwentzel.com>; Director Corporate <directorcorporate@knysna.gov.za>; Veronique Klein <vklein@knysna.gov.za>
Subject: MEC // KNYSNA MUNICIPALITY CASE 2286/23

Dear Sabrina,

SE

Thank you.

We would appreciate a copy of the judgment once received by your offices.

Thank you.

Kind regards / Vriendelike groete,

Marilyn Botha - Legal Advisor

P O Box 21. Knysna. 6570. Western Cape. South Africa

Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6230 (direct)

From: Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>
Sent: Tuesday, 14 February 2023 16:04
To: Lionel Egypt <Lionel.Egypt@webberwentzel.com>; Marilyn Botha <mbotha@knysna.gov.za>
Cc: Iman Bassier <Iman.Bassier@webberwentzel.com>
Subject: RE: AA - [DB 1] FINAL [WW-WS_JHB.FID2588866]

Dear Marilyn

We are pleased to advise that part A of notice of motion was struck off the roll for a lack of urgency, with costs on a party-party scale.

Kind regards,

Sabrina de Freitas

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FW: MEC // KNYSNA MUNICIPALITY CASE 2286/23 [WW-WS_JHB.FID2393898]

Marilyn Botha <mbotha@knysna.gov.za>
16/02/2023 at 10:24:52

From: **Marilyn Botha** <mbotha@knysna.gov.za>
Sent: 16/02/2023 at 10:24:52
To: **Lionel Egypt** <Lionel.Egypt@webberwentzel.com>, **Sabrina De Freitas** <Sabrina.DeFreitas@webberwentzel.com>
Cc:

1 Attachment(s) Total 1.2 MB View ^

ACFO Addendum and Employment Contract.pdf (1.2 MB)

Hi Lionel,

From the attached, I only noted now that when the addendum for the second acting appointment was done, the principle employment contract already lapsed.

They should thus have done a new employment contract, as there was nothing to extend. From the internal routing form, you will note that it was not even submitted to Legal for comment.

Thank you.

Kind regards / Vriendelike groete,

Marilyn Botha - Legal Advisor

P O Box 21. Knysna. 6570. Western Cape. South Africa

Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6230 (direct)

From: Marilyn Botha
Sent: Thursday, 16 February 2023 10:20
To: 'Lionel Egypt' <Lionel.Egypt@webberwentzel.com>
Cc: Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>; Claudette Louw <Claudette.Louw@webberwentzel.com>; Luline Phillips <lphillips@knysna.gov.za>; Jill Lakay <jlakay@knysna.gov.za>
Subject: RE: MEC // KNYSNA MUNICIPALITY CASE 2286/23 [WW-WS_JHB.FID2393898]

Dear Lionel,

Your email below refers.

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I think that all the annexures the MEC used in his founding affidavit is what we have on record as well. I forwarded the council items, resolutions and annexures already.

Luline/Jill, can you please send everything you might have? Jill, please also send the item and resolution for the further appointment done on Tuesday.

Luline, copies of the signed employment contracts / addendums we will need to submit as well.

Lionel, I just spoke to the MM, he is asking whether an in person consultation can be done perhaps? Early next week. Perhaps yourself and Sabrina to come down to Knysna?

Please let me know soonest.

Attached kindly find the addendum for the ACFO's second acting appointment together with the initial employment contract.

Thank you.

Kind regards / Vriendelike groete,

Marilyn Botha - Legal Advisor

P O Box 21. Knysna. 6570. Western Cape. South Africa

Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6230 (direct)

From: Lionel Egypt <Lionel.Egypt@webberwentzel.com>
Sent: Wednesday, 15 February 2023 15:11
To: Marilyn Botha <mbotha@knysna.gov.za>
Cc: Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>; Claudette Louw <Claudette.Louw@webberwentzel.com>
Subject: RE: MEC // KNYSNA MUNICIPALITY CASE 2286/23 [WW-WS_JHB.FID2393898]

Dear Marilyn

I trust that you are well.

Given that Part A of the application was struck off the roll with costs yesterday, based on the lack of urgency, we now need to focus on Part B of the application.

As you are aware, in Part B of the application the Applicant *inter alia* seeks to set aside various council decisions as well as declaratory relief.

91

The matter seems to turn on a rather narrow legal and factual enquiry. The challenge is based on two propositions: firstly, the appointees not meeting the minimum competency requirements; and secondly, the Municipal Council not having received the necessary authorisation from the MEC for the "further extension".

On the level of the 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 the 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 provision of section 56(1)(c) or not? If yes, then there is merit in the challenge. If not, then this leg of the challenge must fail.

There are other considerations including an alternative argument to section 56(1)(c) and whether the MEC is not perhaps time-barred in terms of section 56(6).

Please note that the answering papers in Part B are due on **2 March 2023.** We will of course advise you of the prospects of success before we file the answering papers. However, in order to provide you with our opinion regarding prospects of success and to draft the answering affidavit, we require copies of all the relevant documents including, but not limited to, the relevant supporting documents in Council packs pertaining to the relevant dates, as all correspondence exchanged with the MEC regarding these appointments, and all the relevant supporting documents to both the ACFO and ADCS curriculum vitaes We would appreciate it if you can provide us with these documents as a matter of urgency.

We will revert to you once we have had an opportunity to consider the documents whereafter we can arrange the necessary consultations. The consultations will have to be held during the course of next week.

We therefore await your instructions.

Best

Lionel

Lionel Egypt | Partner | Webber Wentzel
T: +27214317166 | lionel.egypt@webberwentzel.com | **www.webberwentzel.com**

From: Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>
Sent: 15 February 2023 10:14
To: Marilyn Botha <mbotha@knysna.gov.za>; Lionel Egypt <Lionel.Egypt@webberwentzel.com>
Cc: Iman Bassier <Iman.Bassier@webberwentzel.com>; Director Corporate <directorcorporate@knysna.gov.za>; Veronique Klein <vklein@knysna.gov.za>
Subject: RE: MEC // KNYSNA MUNICIPALITY CASE 2286/23 [WW-WS_JHB.FID2393898]

Hi Marilyn

92

The judgment was made ex tempore. However, once the order becomes available, we will provide you with a copy of same.

We will also require the order for purposes of the cost order.

Kind regards,

Sabrina

From: Marilyn Botha <mbotha@knysna.gov.za>
Sent: 15 February 2023 09:04
To: Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>; Lionel Egypt <Lionel.Egypt@webberwentzel.com>
Cc: Iman Bassier <Iman.Bassier@webberwentzel.com>; Director Corporate <directorcorporate@knysna.gov.za>; Veronique Klein <vklein@knysna.gov.za>
Subject: MEC // KNYSNA MUNICIPALITY CASE 2286/23

Dear Sabrina,

Thank you.

We would appreciate a copy of the judgment once received by your offices.

Thank you.

Kind regards / Vriendelike groete,

Marilyn Botha - Legal Advisor

P O Box 21. Knysna. 6570. Western Cape. South Africa

Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6230 (direct)

From: Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>
Sent: Tuesday, 14 February 2023 16:04
To: Lionel Egypt <Lionel.Egypt@webberwentzel.com>; Marilyn Botha <mbotha@knysna.gov.za>
Cc: Iman Bassier <Iman.Bassier@webberwentzel.com>
Subject: RE: AA - [DB 1] FINAL [WW-WS_JHB.FID2588866]

Dear Marilyn

We are pleased to advise that part A of notice of motion was struck off the roll for a lack of urgency, with costs on a party-party scale.

93

Kind regards,

Sabrina de Freitas

94

Req: 125668

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90 Rivonia Road, Sandton, Johannesburg
South Africa, 2196
P O Box 61771, Marshalltown, South Africa, 2107
Docex 26 Johannesburg
T +27 11 530 5000
www.webberwentzel.com

SENT TO:
Knysna Municipality
5 Clyde Street
Knysna
6570
South Africa

Invoice Number	: INV-000038476
Our VAT Reg No	: 4300103589
Our Ref	: Lionel Egypt
File a/c no	: 3059868
Your Reference	: Marilyn Botha
Your VAT Reg No	: 4360193876
Date	2024-09-30

TAX INVOICE

Knysna Municipality: Urgent application instituted by DEADP re appointments (case no 2263/23)

DESCRIPTION OF SERVICES	CHARGED AMOUNT ZAR	VAT %	VAT AMOUNT ZAR
To our fees for professional services rendered for the period 22 August 2024 to 26 September 2024	6 205,00	15	930,75
TOTAL AMOUNT	6 205,00		930,75
TOTAL VAT	930,75		

TOTAL AMOUNT Incl. VAT
ZAR 7 135,75

BANKING DETAILS

Branch

Account number 000432695 The SWIFT address is SB747AU

quoted with your payment.

TERMS & CONDITIONS

are payable within 14 days Payment ZAR can be made by direct deposit or SWIFT transfer into Bank account

MBotha 17/10/2024

95

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South Africa, 2196
P O Box 61771, Marshalltown, South Africa, 2107
Docex 26 Johannesburg
T +27 11 530 5000
www.webberwentzel.com

Client Name : Knysna Municipality
Joint Group # : C049626
Matter Number : 3059868
Matter Name : Knysna Municipality: Urgent application instituted by DEADP re appointments (case no 2263/23)
Billing attorney : Lionel Egypt
VAT Invoice : INV-000038476 dd 01.10.2024

Invoice Proposal: MIP-00074582

Matter Number	Matter Description	Billing Fee Earner
3059868	Knysna Municipality: Urgent application instituted by DEADP re appointments (case no 2263/23)	Lionel Egypt

Matter	Date	Description of Service Rendered	Timekeeper	Hours	Billable Fees
3059868	22/08/2024	Attending on matter; attending on email correspondence to the cost consultant re revisions to the draft bill of costs; attending on receipt of same.	Sabrina De Freitas	0.50	1,575.00
3059868	26/08/2024	Attending on matter; attending on considering taxation bundle for service; attending on email correspondence with the state attorney.	Sabrina De Freitas	0.70	2,205.00
3059868	26/09/2024	Attending on matter; attending on notice of taxation and preparing bundle to obtain a taxation date.	Sabrina De Freitas	0.50	1,575.00

3059868	26/09/2024	Attending on matter; attending on taxation bundle email.	Lionel Egypt	0.20	850.00

Timekeeper Summary

Timekeeper	Rate	Hours	Amounts
Lionel Egypt	4,250.00	0.20	850.00
Sabrina De Freitas	3,150.00	1.70	5,355.00
Total Costs		**1.90**	**6,205.00**

Nbatha. 17/10/2024.

Req: 122778

WEBBER WENTZEL

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90 Rivonia Road, Sandton, Johannesburg
South Africa, 2196
P O Box 61771, Marshalltown, South Africa, 2107
Docex 26 Johannesburg
T +27 11 530 5000
www.webberwentzel.com

PLEASE NOTE: Cybercrimes (such as business email compromise and impersonation fraud) targeting businesses and individuals with an intention to misappropriate money, have become more prevalent and are a growing risk when doing business. Prior to making any payment to us, please take reasonable steps including telephonically verifying with your known Webber Wentzel contact that the banking details received electronically are our banking details. Our banking details have not changed, and we have no intention of changing them in the near future. Should you receive a notification suggesting otherwise, please contact your known Webber Wentzel contact as soon as possible.

SENT TO:
Knysna Municipality
5 Clyde Street
Knysna
6570
South Africa

Invoice Number	: INV-000029031
Our VAT Reg No	: 4300103589
Our Ref	: Lionel Egypt
File a/c no	: 3059868
Your Reference	: Marilyn Botha
Your VAT Reg No	: 4360193876
Date	: 2024-05-28

TAX INVOICE

Knysna Municipality: Urgent application instituted by DEADP re appointments (case no 2263/23)

DESCRIPTION OF SERVICES	CHARGED AMOUNT ZAR	VAT %	VAT AMOUNT ZAR
Maryna Van Staden Cost Consultants cc:4/8/2024:INV2896	1 944,63	15	291,69
TOTAL AMOUNT	1 944,63		291,69
TOTAL VAT	291,69		
	TOTAL AMOUNT Incl. VAT		
	ZAR 2 236,32		

BANKING DETAILS
The Standard Bank of South Africa Limited, Johannesburg Branch Code 00-02-05
Account number 000432695 The SWIFT address is SBZAZAJJ.
Please ensure that our File a/c no. is quoted with your payment.

TERMS & CONDITIONS
Our invoices are payable within 14 days of presentation. Payment in ZAR can be made by direct deposit or SWIFT transfer into our bank account.

M Botha
03/06/2024.

MARYNA VAN STADEN

COST CONSULTANT / KOSTE KONSULTANT CC

Reg No: 2001/083988/23

VAT NR: 456 022 9868

Invoice To :

WEBBER WENTZEL, CPT
P O BOX 61771
MARSHALLTOWN
2107

Vat No: 43-00-10-35-89

Deliver To :

WWENTZ 01-24

April 8, 2024

TAX INVOICE

Account :
WEB011

Document :
INV2896

Ref / U Verw :
S DE FREITAS

REF:	DEADP/ KNYSNA MUN	
001	Drawing bill of cost	
		1 944.63
	Subtotal :	1 944.63
	15% VAT	291.69
	Total Amount Due :	2 236.32

ACCOUNT HOLDER: MARYNA VAN STADEN COST CONSULTANT CC
BANK: FIRST NATIONAL BANK
TYPE OF ACCOUNT: CHEQUE
BRANCH CODE: 21-01-14
ACCOUNT NUMBER: 620-558-753-83

Let asb daarop dat hierdie besigheid op 'n kontant basis funksioneer, en dit opreg waardeer sal word as u, u rekening so spoedig moontlik sal vereffen. Please note that this business is run on a cash basis, promt payment of accounts will be much appreciated.

5 VAN BROEKHUIZEN STREET, GROENVLEI , PAARL, 7646
Tel: + 27 82 890 9748 FAX: +27 0865061011
E-mail: **m.v.staden@mvsconsultants.co.za / t.gunter@mvsconsultants.co.za**

MEMBER: ADV MARYNA VAN STADEN BA HONOURS LLB
COST CONSULTANT: TANJA NIGRINI LLB

Req: 120431

WEBBER WENTZEL

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90 Rivonia Road, Sandton, Johannesburg
South Africa, 2196
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Docex 26 Johannesburg
T +27 11 530 5000
www.webberwentzel.com

PLEASE NOTE: Cybercrimes (such as business email compromise and impersonation fraud) targeting businesses and individuals with an intention to misappropriate money, have become more prevalent and are a growing risk when doing business. Prior to making any payment to us, please take reasonable steps including telephonically verifying with your known Webber Wentzel contact that the banking details received electronically are our banking details. Our banking details have not changed, and we have no intention of changing them in the near future. Should you receive a notification suggesting otherwise, please contact your known Webber Wentzel contact as soon as possible.

SENT TO:
Knysna Municipality
5 Clyde Street
Knysna
6570
South Africa

Invoice Number	: INV-000020538
Our VAT Reg No	: 4300103589
Our Ref	: Lionel Egypt
File a/c no	: 3059868
Your Reference	: Marilyn Botha
Your VAT Reg No	: 4360193876
Date	: 2024-01-30

TAX INVOICE

Knysna Municipality: Urgent application instituted by DEADP re appointments (case no 2263/23)

DESCRIPTION OF SERVICES	CHARGED AMOUNT ZAR	VAT %	VAT AMOUNT ZAR
To our fees for professional services rendered in this matter up to and including 31 January 2024	15 250,00	15	2 287,50
TOTAL AMOUNT	15 250,00		2 287,50
TOTAL VAT	2 287,50		

TOTAL AMOUNT Incl. VAT
ZAR 17 537,50

M Botha
09/02/2024

BANKING DETAILS
The Standard Bank of South Africa Limited, Johannesburg Branch Code 00-02-05
Account number 000432695 The SWIFT address is SBZAZAJJ.
Please ensure that our File a/c no. is quoted with your payment.

TERMS & CONDITIONS
Our invoices are payable within 14 days of presentation. Payment in ZAR can be made by direct deposit or SWIFT transfer into our bank account.

100

WEBBER WENTZEL

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90 Rivonia Road, Sandton, Johannesburg
South Africa, 2196
P O Box 61771, Marshalltown, South Africa, 2107
Docex 26 Johannesburg
T +27 11 530 5000
www.webberwentzel.com

Client Name	: Knysna Municipality
Joint Group #	: C049626
Matter Number	: 3059868
Matter Name	: Knysna Municipality: Urgent application instituted by DEADP re appointments (case no 2263/23)
Billing attorney	: Lionel Egypt
VAT Invoice	: VAT INV-000020538 dd 30.01.2024

Invoice Proposal: **MIP-00042947**

Sub Matter Numbers	**Matter Description**	**Billing Fee Earner**
3059868	Knysna Municipality: Urgent application instituted by DEADP re appointments (case no 2263/23)	Lionel Egypt

Matter	Date	Description of Service Rendered	Fee Earner	Hours	Billable Fees
3059868	17/11/2023	Attending on matter; attending on considering court order; attending on issue in respect of costs; attending on draft correspondence to the state attorney.	Sabrina De Freitas	1.00	2,900.00
3059868	20/11/2023	Attending on matter; attending on e-mail from the state attorney.	Lionel Egypt	1.20	5,100
3059868	20/11/2023	Attending on response received from Ms Melapi; attending on draft email correspondence to the cost consultant; attending on draft instructions; attending on collating information and documentation.	Sabrina De Freitas	1.60	4,640.00
3059868	20/11/2023	Attending on draft correspondence to Judge Fortuin and email correspondence re same.	Sabrina De Freitas	0.70	2,030.00

3059868	04/12/2023	Attending on email correspondence to Fortuin J's registrar.	Sabrina De Freitas	0.20	580.00

Timekeeper Summary

Timekeeper	Rate	Hours	Amounts
Lionel Egypt	4,250.00	1.20	5,100.00
Sabrina De Freitas	2,900.00	3.50	10,150.00
Total Costs		**4.80**	**15,250.00**

M Botha.
09/02/2024.

112279
Req: [redacted]

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in alliance with > Linklaters

90 Rivonia Road, Sandton, Johannesburg
South Africa, 2196
P O Box 61771, Marshalltown, South Africa, 2107
Docex 26 Johannesburg
T +27 11 530 5000
www.webberwentzel.com

PLEASE NOTE: Some of our clients have been the target of attempted invoice frauds. We have seen incidents where parties are contacted with fraudulent information about "new" Webber Wentzel banking details and a request that outstanding invoices be paid into the "new" Webber Wentzel account. Our banking details have not changed and we have no intention of changing them in the near future. Should you receive a notification suggesting otherwise, please contact the partner who you usually deal with as soon as possible.

Knysna Municipality
5 Clyde Street
Knysna
6570

Invoice Number	:	608503
Our VAT Reg No	:	4300103589
Our Ref		L Egypt
File a/c no		3059868
Your Reference	:	Marilyn Botha
Your VAT Reg No	:	4360193876
Date	:	28 February 2023

TAX INVOICE

Knysna Municipality: Urgent application instituted by DEADP re appointments (case no 2263/23)

DESCRIPTION	AMOUNT ZAR	VAT %	VAT ZAR
To our fees for professional services rendered as per the attached fee narrative	364,755.00	15.00	54,713.25
DP Borgstrom - 202249 - 27/02/2023	160,000.00	15.00	24,000.00
TOTAL AMOUNT	**524,755.00**		**78,713.25**
TOTAL VAT	**78,713.25**		
TOTAL DUE THIS INVOICE	**ZAR 603,468.25**		

MBotha.
13/03/2023.

PLEASE NOTE: Our invoices are payable within 14 days of date of invoice. If agreed payment terms differ from those stated, please settle the invoice as per the agreement. Payment in ZAR can be made by direct deposit or SWIFT transfer into account number 000432695 at The Standard Bank of South Africa Limited, Johannesburg Branch (Branch Code 00-02-05). The SWIFT address is SBZAZAJJ. Please ensure that our File a/c no. is quoted with your payment.

Knysna Municipality
5 Clyde Street
Knysna
6570

Matter Number: 3059868

Knysna Municipality: Urgent application instituted by DEADP re appointments (case no 2263/23)

Period From : 09/02/2023

Period To :27/02/2023

Date	Name	Title	Hours	Amount	Narrative
09/02/2023	Lionel Egypt	Equity Partner	5.00	21,250.00	Attending on matter; Attending on email from client re new instruction; Attending on perusal and consideration of the notice of motion, founding affidavit and annexures (81 pgs); Attending on further email from client re instruction letter; Attending on notice of opposition; Attending on email from client; Attending on email re notice of opposition; Attending on email to client; Attending on email from client; Attending on considering legal issues raised.
09/02/2023	Sabrina De Freitas	Senior Associate	5.30	15,370.00	Attending on telephone call from client re instruction; attending on briefly considering the notice of motion and attempting to contact the State Attorney; attending on formal instructions from client; attending on considering matter; attending on telephone call to client to confirm instruction subject to conflict check; attending on notice of opposition and electronic service of same; attending on further email correspondence to the State Attorney; attending on considering the papers, including the interdict and urgency; attending on correspondence re consultation; attending on briefly considering the merits of the challenge and potential defences thereto.
10/02/2023	Lionel Egypt	Equity Partner	5.00	21,250.00	Attending on matter; Attending on email to client; Attending on email to counsel team; Attending on further email to client; Attending on email from State Attorney; Attending on drafting rule 35(12) and (14) notice; Attending on email from client; Attending on considering documentation (24 pgs); Attending on email to client (SDF); Attending to Applicant's Attorneys; Attending on email from client; Attending on further email from client (11 pgs); Attending on various emails; Attending on various telecons to obtain counsel; Attending on telecon with Adv Borgström SC; Attending on telecon with Adv Nacerodien; Attending on consultation with client.
10/02/2023	Sabrina De Freitas	Senior Associate	5.00	14,500.00	Attending on matter; attending on email correspondence to client; attending on discussing the matter and applicable sections; attending on consulting with client; attending on draft rule 35(12) notice; attending on further amendments; attending on electronic service; attending on email to client re consultation; attending on further email to client re electronic service of rule 35(12); attending on email correspondence from the State Attorney; attending on email acknowledging service;

					attending on email correspondence with client re instructions; attending on service of revised rule 35(12) notice; attending on receipt of further documents from client and considering same; attending on instructions to counsel and provision of electronic brief; attending on receipt of filed opposition; attending on further response from the State Attorney.
12/02/2023	Sabrina De Freitas	Senior Associate	0.70	2,030.00	Attending on matter; attending on email correspondence from junior and senior counsel; attending on further correspondence with counsel
13/02/2023	Lionel Egypt	Equity Partner	12.00	51,000.00	11/02- Attending on matter; Attending on telecon with senior counsel re affidavit and legal issues that arise; 13/02 - Attending on matter; Attending on email from Respondent's attorneys; Attending on Applicant's reply to Rule 35(12) notices; Attending on various telecons; Attending on perusing and considering various emails from client; Attending on counsel's chambers re draft affidavit; Attending on letter from Applicant's attorneys re undertaking; Attending on telecon with MM and MB and others [13h00-14h00]; Attending on considering draft answering affidavit; Attending on making various amendments; Attending on considering legal points to be taken; Attending on various telecons with counsel (6); Attending on various telecons with client; Attending on telecons with Applicant's attorneys; Attending on various emails to client [08h00-21h00].
13/02/2023	Sabrina De Freitas	Senior Associate	9.50	27,550.00	Attending on matter; attending on receipt of response to rule 35(12) notice; attending on various email correspondence instructions from client; attending on correspondence from the state attorney re undertaking; attending on index received from the state attorney; attending on receipt of draft answering papers; attending on considering the draft papers and making various amendments and additions thereto; attending on meeting with junior counsel; attending on various further correspondence with counsel; attending on sending draft and annexures to client; attending on receipt of deposed affidavit; attending on electronic service of the answering papers; attending on sending same to counsel; attending on preparing a revised index and sending same to the State Attorney; attending on paginating bundle for counsel; attending on preparing counsel's bundles; attending on further email correspondence from counsel and client.
14/02/2023	Sabrina De Freitas	Senior Associate	8.00	23,200.00	Attending on matter; attending on preparing answering papers for filing; attending on electronic filing with the Judge's registrar; attending on email correspondence from junior counsel and response thereto; attending at court to see Fortuin J; attending on email correspondence from the registrar; attending on discussions with the State Attorney and the 10th respondent's correspondent attorney; attending on receipt of service of the replying papers; attending on considering the replying papers and the 10th respondent's supplementary affidavit; attending on email correspondence to the registrar; attending on sending affidavits to client; attending on email correspondence from the

					State Attorney re index; attending at the court hearing; attending on telephone call with client; attending on email correspondence to client re outcome of part A.
14/02/2023	Lionel Egypt	Equity Partner	8.00	34,000.00	Attending on matter; Attending on preparing for hearing; Attending at Senior Counsel's chambers; Attending on discussion with counsel team; Attending on discussion with counsel team; Attending on telecons with WB; Attending on telecon with 10th Respondent; Attending on conversing with 10th Respondent re position adopted; Attending on returning to the office; Attending on considering Applicant's replying affidavit; Attending on considering heads of argument; Attending on returning to Court; Attending on discussions with counsel team; Attending on Court hearing of the matter; Attending on meeting with counsel team; Attending on reporting to client [07h30-13h00] [13h30 - 16h00].
14/02/2023	Iman Bassier	Candidate Attorney	3.50	0.00	Attending on filing of court documents; attending on court hearing (no charge).
15/02/2023	Sabrina De Freitas	Senior Associate	1.50	4,350.00	Attending on matter; attending on email correspondence from client; attending on response thereto; attending on discussing advice to client and input on draft.
15/02/2023	Lionel Egypt	Equity Partner	2.00	8,500.00	Attending on matter; attending on correspondence with client (SDF); attending on written advice discussion; attending on email from client.
16/02/2023	Lionel Egypt	Equity Partner	2.00	8,500.00	Attending on matter; Attending on email from client; Attending on considering documentation ; Attending on further email re further contracts; Attending on further email from Jill Lakay; Attending on report; Attending on the resolution; Attending on email from Marilyn Botha re addendum; Attending on considering the addendum; Attending on telecon with counsel re approach
16/02/2023	Sabrina De Freitas	Senior Associate	1.00	2,900.00	Attending on receipt of various email correspondence and documents from client and considering same.
17/02/2023	Sabrina De Freitas	Senior Associate	1.50	4,350.00	Attending on matter; attending on logistics; attending on email correspondence from client; attending on further email correspondence from client; attending on response thereto.
17/02/2023	Lionel Egypt	Equity Partner	2.00	8,500.00	Attending on matter; attending on email from client; attending on various arrangements; attending on further email from client; attending on email to client (SDF).
19/02/2023	Sabrina De Freitas	Senior Associate	0.10	290.00	Attending on email correspondence from client.
20/02/2023	Lionel Egypt	Equity Partner	1.30	5,525.00	Attending on matter; attending on email from client; attending on further arrangements.
20/02/2023	Sabrina De Freitas	Senior Associate	0.60	1,740.00	Attending on matter; attending on logistics re consultation and preparing therefor; attending on email from client.
21/02/2023	Sabrina De Freitas	Senior Associate	4.50	13,050.00	Attending on travelling to Knysna; attending on matter; attending on preparing for consultation with client.
21/02/2023	Lionel Egypt	Equity Partner	6.00	25,500.00	Attending on matter; attending on travelling to Knysna; attending on preparation

21/02/2023	Iman Bassier	Candidate Attorney	2.00	0.00	Attending on meeting preparation for consult (no charge).
22/02/2023	Lionel Egypt	Equity Partner	6.00	25,500.00	Attending on matter; attending on travelling back to Cape Town; attending on preparation.
22/02/2023	Sabrina De Freitas	Senior Associate	2.50	15,950.00	Attending on matter; attending on travelling to Cape Town Attending on matter; attending on preparing for consultation with client; attending on consultation with client.
22/02/2023	Iman Bassier	Candidate Attorney	6.50	0.00	Attending on consultation with Knysna Municipality (no charge).
24/02/2023	Sabrina De Freitas	Senior Associate	3.00	8,700.00	Attending on matter; attending on draft note.
24/02/2023	Iman Bassier	Candidate Attorney	0.50	0.00	Attending on research regarding the Municipal Systems Act in order to draft response (no charge).
27/02/2023	Lionel Egypt	Equity Partner	5.00	21,250.00	Attending on considering of consultation notes; attending on considering relevant case law; attending on draft re note for clients re prospects of success. Attending on various emails, telephone calls, documentation and correspondence with clients and counsel team as otherwise unaccounted for
			120.00	364,755.00	

Name	Rate	Hours	Amount
Iman Bassier	0.00	19.50	0.00
Lionel Egypt	4,250.00	54.30	230,775.00
Sabrina De Freitas	2,900.00	46.20	133,980.00
Grand Total		120.00	364,755.00

M Botha
13/03/2023.

ADVOCATE DAVID BORGSTRÖM SC

Advocate of the High Court and Member of the Cape Bar

Sixth Floor
Keerom Street Chambers
56 Keerom Street
Cape Town, 8000

Tel: +27 21 422 3320
Fax: +27 21 423 6693
Cell: 083 233 2340
Email: borgström@law.co.za

Webber Wentzel
15th floor
Convention Tower Heerengraght
Foreshore
Cape Town
(VAT No: 4300103589)

Inv No: 202249
quote on payment

Date: 27 February 2023

Attention: Mr Lionel Egypt / Ms Sabrina De Freitas
Email: lionel.egypt@webberwentzel.com/ sabrina.defreitas@webberwentzel.com

TAX INVOICE

(VAT Registration Number: **4270206529**)

KNYSNA MUNICIPALITY: Case 2286/23 MEC for Local Government, Environmental Affairs and Development Planning, Western Cape / Knysna Municipality and others

DATE		TIME	FEE (R4000.00p/h) (R40 000.00p/d)
10.02.2023	Discussions with instructing attorney and junior counsel; receive application	2,00	R 8 000,00
11/02/2023-12.02.2023	Peruse application, consider issues and law, discussions with instructing attorney and junior counsel, draft answering papers	18,00	R 72 000,00
13.02.2023	Complete answering papers, heads of argument	10,00	R 40 000,00
14.02.2023	Discussions with opposing counsel, meet with instructing attorney and junior counsel, consider 10th respondent's affidavit and MEC's replying papers, supplement heads of argument, appear before Fortuin J	1 day	R 40 000,00

TOTAL	**R 160 000,00**
VAT thereon	R 24 000,00
TOTAL D	**R 184 000,00**

Acc Name	D P Borgström
Bank	Standard Bank
Branch	Braamfontein
Code	00 48 05
Acc No:	002310856

WEBBER WENTZEL

in alliance with > Linklaters

THE KNYSNA MUNICIPALITY

BRIEF NOTE REGARDING THE MERITS OF MEC // KNYSNA MUNCIPALITY AND OTHERS (CASE NO.: 17306/2023)

ADVISORY NOTE

Prepared by:

Webber Wentzel
15th Floor, Convention Tower
Heerengracht Street, Foreshore
Cape Town
Ref: L Egypt / S de Freitas

15 November 2023

1. INTRODUCTION

1.1 The consultant is the Knysna Municipality.

1.2 The Western Cape Provincial Minister of Local Government, Environmental Affairs and Development Planning (the "**Minister**") launched an application against the Knysna Municipality (the First Respondent), the Speaker of the Knysna Municipal Council (the Second Respondent), the Director: Corporate Services of the Knysna Municipality (the Third Respondent) and Advocate Luvuyo Loliwe ("**Advocate Loliwe**") (the Fourth Respondent) on 9 October 2023 under case number 17306/2023 (the "**Application**"). In the Application, the Minister sought declaratory relief that the decision of the Knysna Municipal Council to appoint Advocate Loliwe as the Director: Corporate Services is null and void.

1.3 Accordingly, we were instructed to file a notice of opposition in respect of the First, Second and Third Respondent, and to advise on the prospects of success of the Application. As previously confirmed, we have filed a notice of opposition in respect of the First, Second and Third Respondent. On 25 October 2023, we dispatched a letter to the Knysna Municipality setting out our cursory views on the merits of the matter.

1.4 In this advisory note, we have provided a more detailed opinion on the prospects of success in opposing this Application. This note must be read with our letter that we dispatched on 25 October 2023 and our advisory note that we dispatched on 28 June 2023.

1.5 Before addressing the issue referred to hereinabove, it is important to set out the relevant factual context. It is to this aspect that we turn to hereinbelow.

2. QUALIFICATIONS, LIMITATIONS AND ASSUMPTIONS

2.1 This advisory note is based on information and instructions provided to us. If relevant facts have been incorrectly recorded or omitted from consideration, we request that you inform us. We shall then review the advice contained herein and update our note accordingly.

2.2 For the sake of brevity, we have not quoted all the relevant sections of the relevant documents herein. However, this opinion must be read together therewith. We have also not set out a complete excursus of the relevant law.

2.3 The views, opinions and findings expressed herein are subject to the following qualifications:

2.3.1 We have examined the laws of South Africa as they exist on the date hereof.

2.3.2 We are qualified to practise law in South Africa and do not express any opinions concerning any laws other than the current law of South Africa.

2.3.3 This opinion is strictly limited to the matters set out herein in respect of which our advice has been sought and does not extend, by implication or otherwise, to any other matters in connection with the matters so set out.

2.4 Unless the contrary appears from the context, we have assumed that the documents with which we have been provided –

2.4.1 are valid;

2.4.2 have been duly formulated and executed; and

2.4.3 are complete, conform to the original documentation and have not been amended, varied, supplemented or terminated.

2.5 The opinions expressed herein are given solely in connection with our mandate as set out in paragraph 1.3 above, and solely for the benefit and information of the Knysna Municipality.

2.6 The views, opinions and other matters referred to herein may not be –

2.6.1 transmitted, disclosed to, used or relied upon by any other person or entity whatsoever, or for any other purpose whatsoever; or

2.6.2 disclosed or referred to or made public or filed with any third party for any purpose whatsoever, without our prior written consent.

2.7 The aggregate liability of Webber Wentzel's partners and employees (whether in contract, delict or otherwise) arising from or in connection with this advice is limited to the proceeds of any professional indemnity cover we actually receive or that our insurers pay to you. If there is no professional indemnity cover or no proceeds from such professional indemnity cover are received by us or paid to you, then our aggregate liability will be limited to three times the amount of our fees (excluding VAT and disbursements) charged and received by us in respect of this advice.

3. THE FACTUAL CONTEXT

3.1 On 14 February 2023, at a special meeting, the Knysna Municipal Council decided to readvertise the position of Director: Corporate Services. In summary, subsequent to the advertisement, the selection process for the position of Director: Corporate Services consisted of a screening process whereby six candidates were shortlisted for interview and assessment sessions. The recruitment and selection panel (the **"Selection Panel"**) that was constituted recommended three shortlisted candidates for the position, in an order of priority: Ms Ivy Sikhulu-Nqwena (**"Ms Sikhulu Nqwena"**), Mr Sakhekile Sidney Fadi (**"Mr Fadi"**) and Advocate Loliwe.

3.2 In a letter dated 10 August 2023, the Knysna Municipal Manager informed the Minister that the Knysna Municipal Council had resolved at a special meeting on 31 July 2023 to appoint Advocate Loliwe as the Director: Corporate Services of the Knysna Municipality. Further correspondence was exchanged which ultimately culminated in this Application.

4. DOES ADVOCATE LOLIWE MEET THE PRESCRIBED COMPETENCY REQUIREMENTS TO BE APPOINTED AS DIRECTOR: CORPORATE SERVICES?

4.1 As above-mentioned, the Minister seeks declaratory relief that the decision of the Knysna Municipal Council to appoint Advocate Loliwe as Director: Corporate Services is null and void.

4.2 Section 56(1)(b) of the Systems Act provides that a manager directly accountable to the municipal manager must at least have the skills, expertise, competencies and qualifications as prescribed. Section 56(2) of the Systems Act further provides that the appointment of such a manager is null and void if the person appointed does not have the prescribed skills, expertise, competencies or qualifications, or the appointment was otherwise made in contravention of the Systems Act.

4.3 The Municipal Regulations on Minimum Competency Levels, GN R493 in GG 29967 of 15 June 2007 (the **"Minimum Competency Regulations"**) issued in terms of the Local Government: Municipal Finance Management Act 56 of 2003 set out the minimum competency levels required for senior managers. This includes, in respect of a municipality such as Knysna Municipality, a minimum of seven years work-related experience at senior and middle management level, of which at least two years must be at senior management level.[1]

4.4 It is our view that Advocate Loliwe does not satisfy the above work-related experience required for the position of the Director: Corporate Services.

4.5 In terms of Advocate Loliwe's *curriculum vitae*, he acted as the Manager: Legal Services of the Bitou Municipality from 2018 until he was appointed in 2019 and resigned in September 2022. This would constitute approximately four years and nine months' experience. The Minister's founding affidavit provides that this position does not directly report to the Municipal Manager. Therefore, this experience would constitute middle management experience.

4.6 Advocate Loliwe's *curriculum vitae* further provides that he was seconded to the Knysna Municipality as the Acting Director: Corporate Services in August 2022, which terminated on 16 September 2022, and was appointed the Acting Director: Corporate Services on 18 September 2022. As at the closing date for applications for the position of Director: Corporate Services, 6 March 2023, Advocate Loliwe's senior management experience would therefore amount to approximately seven months' experience.

4.7 The Minimum Competency Regulations define *'senior management level'* to include a person that occupied a position in a management level substantially similar to senior management level, outside the local government sphere.[2] One would assume that senior-management level experience outside the local government sphere also entails supervising middle-management level staff who also supervise staff below them.

4.8 Advocate Loliwe's *curriculum vitae* lists his experience as a shareholder and director of Costal Entertainment (Pty) Ltd from 2014 to 2020. However, it is our view that this would not constitute a senior management level position. There is no evidence that Advocate Loliwe, in his position as a director of Coastal Entertainment (Pty) Ltd, did more than register a company and trade. There is no evidence that he supervised middle-management level staff who also supervise staff below them when he was such a director. Furthermore, Advocate Loliwe gained this experience whilst he held the position as a Legal Advisor for the Bitou Municipality as well as the Manager: Legal Services of the Bitou Municipality. It is arguable that senior management experience could only

[1] Minimum Competency Regulations, chapter 4, regulation 7.
[2] Minimum Competency Regulations, chapter 1, regulation 1(1).

be gained through full-time management, and therefore Advocate Loliwe's experience as a director and shareholder of Coastal Entertainment (Pty) Ltd cannot be not senior-management level experience.

4.9 It is therefore evident that Advocate Loliwe's experience is deficient considering the minimum competency levels required for the position of Director: Corporate Services. Accordingly, it is our view that the decision to appoint Advocate Loliwe to such a position is null and void in terms of section 56(2) of the Local Government: Municipal Systems Act 32 of 200, as amended (the "**Systems Act**").

5. IS THE MINISTER TIME-BARRED FROM BRINGING THE APPLICATION?

5.1 The Systems Act provides that if the person is appointed in contravention of the Systems 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 the Systems Act, which steps may include an application to court for a declaratory order on the validity of the appointment or any other legal action against the Municipal Council.[3]

5.2 .The Minister was informed that the Knysna Municipal Council had resolved to appoint Advocate Loliwe as the Director: Corporate Services of the Knysna Municipality in a letter dated 10 August 2023. The Minister, however, only filed the Application on 9 November 2023. Therefore, there was a nearly two-month delay before the Minister took the appropriate steps to enforce compliance with the Systems Act. In our view, the Minister was time-barred from bringing the Application.

5.3 The Minister relies on a provision in the Systems Act that provides that 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.[4] The Minister argues that the 14 day period, referred to in clause 5.1 of our advisory note, does not run until the requisite information has been provided. However, it is our view that this interpretation is not correct. Section 56(6) of the Systems Act clearly states that the MEC for local government must take the appropriate steps to ensure compliance with the Systems Act within 14 days of becoming aware of the appointment, and not within 14 days of being provided with all the requisite information. In any event,

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[3] Systems Act, section 56(6).
[4] Systems Act, section 56(5)(a).

it is our view that the documentation enclosed in the letter to the Minister, dated 10 August 2023, was sufficient to enable the Minister to ascertain what the appropriate steps were to ensure compliance with the Systems Act, and to launch the Application.

5.4 Section 56 of the Systems Act does not expressly provide for condonation for delay by the Minister in bringing the Application in terms of section 56(6) of the Systems Act. The Courts have taken seemingly conflicting approaches on whether there is an inherent power to condone non-compliance with a statutory time period, independent of the interpretation of the relevant provision.

5.5 In *Mohlomi v minister of Defence* 1997 (1) SA 124 (CC) ("***Mohlomi***"), the Constitutional Court made an *obiter* statement that:

> *"It appears to have presupposed a power inherent in the courts to condone defaults of the kind covered which needed to be preserved. But the courts have no such inherent power, and none derived from any source unless and until it is conferred on them. That the sub-section grants them the power in the circumstances must necessarily be implicit in its terms, however, since they make no sense otherwise."*[5]

5.6 However, in *Toyota South Africa Motors (Pty) Ltd v Commissioner, South African Revenue Service* 2002 (4) SA 281 (SCA) ("***Toyota***"), the Supreme Court of Appeal made an *obiter* statement that:

> *"These conclusions based on interpretation are strengthened, of course, by the separate consideration that the High Court has inherent jurisdiction to govern its own procedures and, more particularly, the matter of access to it by litigants who seek no more than to exercise their rights. It has been held that this jurisdiction pertains not only to condonation of non-compliance with the time limit set by a Rule but also a statutory time limit."*[6]

5.7 Various High Court judgments have analyzed the above *obiter dicta*. *Sand Grove Opportunities Master Fund Ltd and Others v Distell Group Holdings Ltd and Others* 2022 (5) SA 277 (WCC) ("***Sand Grove***") distinguished *Toyota* from the set of facts in that case:

> *"The question involved in the condonation of the late noting of appeals from judgments of lower courts (Toyota affords an example) in any event,*

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[5] *Mohlomi*, paragraph 17.
[6] *Toyota*, paragraph 10.

by their very nature, involve the court's process and are, in my opinion, quite distinguishable from what would be entailed were a court to purport to elasticize a statutory prescript that has the effect of extinguishing a right to prosecute a claim if the right is not exercised within a stipulated time."[7]

5.8 Furthermore, the case of *Vlok No and Others v Sun International South Africa Ltd and Others* 2014 (1) SA 487 (GSJ) ("***Vlok***"), the High Court noted that the Court in *Toyota* was concerned with whether it could be interpreted that there was an implied power from the statutory provision that the Court to condone a delay, and noted that:

"This anxious search for the presence or absence of an implied power to condone in the presumed intention of the legislature would be nonsensical if the general power to condone were a hovering presence even in the absence of an implied power on a proper construction."[8]

5.9 *Vlok* supported this interpretation by referring to a body of case law which anxiously considers whether various statutory time period provisions could be interpreted to operate as absolute, or subject to some exceptions.[9]

5.10 *Vlok* further argues that the *obiter dictum* in *Toyota* should be interpreted "*as employing the* <u>*notion*</u> *of the existence of a power of the court to condone as a factor that influences the interpretive exercise and strengthens a particular reading, not as a rule that overrides an interpretive outcome*"[10], and therefore that it does not conflict with the *obiter dictum* in *Mohlomi*.[11]

5.11 In addition, *Phillips and Others v National Director of Public Prosecutions* 2006 (1) SA 505 (CC) ("***Phillips***") provides, in respect of section 173 of the Constitution, which regulates the inherent power of the High Court, that:

"Whatever the true meaning and ambit of section 173, I do not think that an Act of Parliament can simply be ignored and reliance placed directly on a provision in the Constitution, nor is it permissible to side-step an Act of Parliament by resorting to the common law.

I doubt that the inherent jurisdiction of the court under section 173 is such that it empowers a judge of the high court to make orders which negate

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[7] *Sand Grove*, paragraph 59.
[8] *Vlok*, paragraph 39.
[9] *Vlok*, paragraph 46-48.
[10] *Vlok*, paragraph 42.
[11] *Vlok*, paragraph 41.

the unambiguous expression of the legislative will. Moreover, the power that a court has to use its inherent power is a special and extraordinary power which should be exercised sparingly and only in clear cases. The present case is not such a case."[12]

5.12 It is, therefore, our view that the Courts do not have an inherent power to condone a delay with a statutory time period. The question is then whether it can be interpreted from section 56(6) of the Systems Act that the Court has the implied power to condone the delay in the Minister bringing the Application to Court.

5.13 The objectives of the Systems Act are as follows:

"To provide for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities, and ensure universal access to essential services that are affordable to all; to define the legal nature of a municipality as including the local community within the municipal area, working in partnership with the municipality's political and administrative structures; to provide for the manner in which municipal powers and functions are exercised and performed; to provide for community participation; to establish a simple and enabling framework for the core processes of planning, performance management, resource mobilisation and organisational change which underpin the notion of developmental local government; to provide a framework for local public administration and human resource development; to empower the poor and ensure that municipalities put in place service tariffs and credit control policies that take their needs into account by providing a framework for the provision of services, service delivery agreements and municipal service districts; to provide for credit control and debt collection; to establish a framework for support, monitoring and standard setting by other spheres of government in order to progressively build local government into an efficient, frontline development agency capable of integrating the activities of all spheres of government for the overall social and economic upliftment of communities in harmony with their local natural environment; to provide for legal matters pertaining to local government; and to provide for matters incidental thereto."[13]

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[12] *Phillips*, paragraph 51-52.
[13] Systems Act, Preamble.

5.14 Considering the purposes of the Systems Act, it cannot be said that, by necessary implication, there is a power to condone the Minister's delay in taking the appropriate steps in section 56 of the Systems Act. Such power would undermine certainty and efficiency in local government leadership. Finality ensures that there will be no major disruptions to leadership, which could have a ripple effect on service delivery and other community initiatives. It is our view that section 56(6) must be read to be peremptory, with no provision for an extension of the time period. In our opinion, it can be reasonably argued that Minister is time-barred from bringing the Application, and for that reason, is not suited.

5.15 Therefore, in our view, the Minister's delay in bringing the Application under section 56(6) of the Systems Act cannot be condoned.

6. IS THE APPOINTMENT OF ADVOCATE LOLIWE RATIONAL?

6.1 Although the Application is not couched as a judicial review, a rationality attack would have significant force should the Minister proceed to amend his notice of motion.

6.2 The case of *Democratic Alliance v President of South Africa and Others* 2013 (1) SA 248 (CC) ("***Simelane***") provides that:

> *"...rationality review is really concerned with the evaluation of a relationship between means and ends: the relationship, connection or link (as it is variously referred to) between the means employed to achieve a particular purpose on the one hand and the purpose or end itself. The aim of the evaluation of the relationship is not to determine whether some means will achieve the purpose better than others but only whether the means employed are rationally related to the purpose for which the power was conferred."*[14]

6.3 *Simelane* further distinguished between substantive rationality and procedural rationality:

> *"A related question, if the process is to be rationally related to the purpose for which the power has been conferred, is whether each step in the process must be so rationally related. The parties were ultimately in agreement that, while each and every step in the process resulting in the decision need not be rationally viewed in isolation, the rationality of the*

[14] *Simelane*, paragraph 32.

steps taken have implications for whether the ultimate executive decision is rational... We must look at the process as a whole and determine whether the steps in the process were rationally related to the end sought to be achieved and, if not, whether the absence of a connection between a particular step (part of the means) is so unrelated to the end as to taint the whole process with irrationality."[15]

6.4 In *Simelane*, the Constitutional Court held that the appointment by the President of the National Director of Public Prosecutions was irrational.[16] The President's failure to consider a relevant factor, including adverse findings of dishonesty of the appointee, that rendered him unsuitable for a position requiring integrity, coloured the entire process irrational, and therefore rendered the ultimate appointment irrational.[17]

6.5 Similarly, in this matter, it is our view that the Knysna Municipal Council's failure to take into account various relevant considerations taints the appointment of Advocate Loliwe as Director: Corporate Services of Knysna Municipality as irrational.

6.6 In the Selection Report – Director Corporate Services, dated June 2023 (the "**Selection Report**"), it was noted that Ms Sikhulu-Nqwena received the highest score in the interview process, followed by Mr Fadi, and then followed by Advocate Loliwe. The Selection Report provided that the interview process was based on 13 competency areas. All three shortlisted candidates were found to be competent in the assessment results. Further, it is evident from the Selection Report that both Ms Sikhulu-Ngwena and Mr Fadi both satisfied the knowledge and experience competencies, and in fact exceed Advocate Loliwe in this respect. In the Selection Report, the Selection Panel recommended that the position of Director: Corporate Services first be offered to Ms Sikhulu-Nqwena, and should she not accept the offer, the position should be offered to Mr Fadi. Only should Mr Fadi not accept the offer, it was recommended that the Knysna Municipal Manager be authorized to offer the position to Advocate Loliwe.

6.7 In the Minutes for the Selection Panel for the position of Director: Corporate Services, held on 26 June 2023 and 11 June 2023, although it was recommended that all three of the above-mentioned candidates were recommended as suitable for the appointment, it was noted that the Knysna

[15] *Simelane*, paragraph 37.
[16] *Simelane*, paragraph 86.
[17] *Simelane*, paragraph 86.

Municipal Council should take into consideration the employment equity targets for the position. The Minutes of the Shortlisting Panel for the position of Director: Corporate Services, held on 4 April 2023 confirmed that the employment equity target for the position is that the Knysna Municipal Council would prefer to appoint an "African, Coloured, Indian, White Female or Indian Male".

6.8 In our view, the "*purpose*" of the appointment of the Director: Corporate Services would be to appoint a candidate who has the relevant skills, expertise, competencies and qualifications[18] to ensure that the public administration is governed by values "*based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation*".[19]

6.9 The steps in the process to the appointment of the Director: Corporate Services are not rationally related to the above-stated purpose. Ms Sikhulu-Ngwena and Mr Fadi scored higher in the interview process. It is irrational to appoint a candidate, such as Advocate Loliwe, who received a lower score. The interview was based on 13 competency areas, and therefore, this is presumably indicative of the candidates' ability and competencies. Furthermore, as above-mentioned, the employment equity targets should have been taken into consideration in the appointment. As Ms Sikhulu-Ngwena is a female, it would have been rational to rather appoint her to the position of the Director: Corporate Services, rather than Advocate Loliwe, who is a male. Furthermore, the meeting minutes for the Municipal Council meeting held on 31 July 2023, where it was resolved that Advocate Loliwe be appointed to the position of Director: Corporate Services, do not record any reasons for preferring Advocate Loliwe over the other two shortlisted candidates.

6.10 Therefore, it is our view that the decision to appoint Advocate Loliwe to the position of the Director: Corporate Services would not withstand a rationality attack.

7. THE RELIEF SOUGHT BY THE MINISTER IN THE APPLICATION

7.1 As above-mentioned, in our view, the Minister did not seek the appropriate relief for a rationality attack.

7.2 In the Minister's notice of motion, it only sought declaratory relief that the decision to appoint Advocate Loliwe as Director: Corporate Services is null and void. This is of some importance to the Knysna Municipality as should this

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[18] Systems Act, section 56(1)(b).
[19] The Constitution, 1996, section 195(1)(i).

declaratory relief be granted, it would have the effect that the appointment of Advocate Loliwe is null and void from the time of his appointment. The decisions taken by Advocate Loliwe from his purported appointment would therefore be invalid.

7.3 However, had the Minister sought a review of the appointment of Advocate Loliwe as Director: Corporate Services on the grounds of rationality in its notice of motion, and the Court found such appointment to be irrational, this would only take effect from the date of the Court order, and the decisions taken by Advocate Loliwe, in his capacity as Director: Corporate Services, prior to this time would be unaffected.

7.4 Although the Application is not couched as a judicial review, the Minister may amend his notice of motion accordingly, and in our view, such amended application would be difficult to oppose.

8. ADDITIONAL CONSIDERATIONS

8.1 In our consultation on 30 October 2023,[20] various additional considerations were raised in respect of this matter. We will briefly deal with these considerations hereinbelow.

8.2 As above-mentioned, the Minimum Competency Regulations set out the minimum competency levels required for senior managers. Such regulations set out different levels of competency depending on whether the relevant municipality has an annual budget under R1 billion, or equal to or greater than R1 billion.[21] In our consultation, it was raised that the budget caters for monetary expectations that are not met, and therefore Knysna Municipality's actual budget may be less than R1 billion. We have not seen the Knysna Municipality's annual financial statements to confirm this. However, it must be noted that the Knysna Municipality advertised the position of Director: Corporate Services as a position requiring the minimum competency levels of that required for a municipality with an annual budget equal to or greater than R1 billion. It is our view that the Court would not look upon the Knysna Municipality's *post-facto* change of their view of their annual budget.

8.3 In any event, it is not Advocate Loliwe's case that he does not meet the minimum competency requirements for the position of Director: Corporate Services for a

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[20] We were advised that submissions from Advocate Loliwe and the Chairperson of the relevant portfolio would be forthcoming. However, as at the date of dispatch of this advisory note, we have not received any such submissions.

[21] Minimum Competency Regulations, Chapter 4, Regulation 7.

municipality with an annual budget equal to or greater than R1 billion. It is exactly the opposite – he asserts that he does meet such requirements. The argument in respect of Knysna Municipality's annual budget therefore does not actually arise at all.

8.4 Secondly, in our consultation, it was raised that the Ms Sikhulu-Nqwena and Mr Fadi, the other two short-listed candidates for the position, were not appointed because Ms Sikhulu-Nqwena had a criminal record, and Mr Fadi only had a few years left before his retirement. In terms of the Employment Equity Act 55 of 1998, as amended (the "**EEA**"), no person may unfairly discriminate, directly or indirectly, against an applicant for employment, in any employment policy or practice on the grounds of age.[22] Furthermore, in respect of Ms Sikhulu-Nqwena's alleged criminal record, we note that the Minutes of the Selection Panel meeting of 11 and 26 June 2023 indicated that "*[t]he panel noted that Ms. I. Sikhulu-Nqwena's criminal checks revealed a pending case and the panel went further to analyse the charge and seek clarity from HR on what the regulations say and HR went through the government gazette 37245 a. HR also made the panel aware that the candidate did declare on the application form.*"

8.5 We have not been provided with instructions on what the pending charge entailed or what was declared on the application form. However, it is clear from the minutes that the shortlisted candidate did not have a criminal record but rather a pending charge. Furthermore, it was concluded inter alia that "*[a]ll three top candidates be recommended <u>as suitable candidates</u> for appointment to council.*"

8.6 Lastly, a potential constitutional challenge of Regulation 7 of the Minimum Competency Regulations was raised in the consultation. It was noted that in terms of Slingers J's judgment in *Member of the Executive Council for Local Government, Environmental Affairs and Development Planning, Western Cape Province v Knysna Municipality* (Case No: 3488/2023) heard with *Member of the Executive Council for Local Government, Environmental Affairs and Development Planning, Western Cape v Knysna Municipality* (Case No: 4884/2023) , any person acting in the position of a senior manager was also required to meet the minimum competency levels as set out. In essence, it appeared to be argued that if the requirements for acting positions are the same as those for permanent positions, no opportunity then exists for a person to obtain senior management experience in order to obtain the necessary

[22] EEA, section 6(1) read with section 9.

competency required in terms of the Minimum Competency Regulations, which is unconstitutional.

8.7 As attractive as this argument might be, it would be of no assistance to the Knysna Municipality. The regulations in terms of which the position was advertised remain lawful until it is set aside, and Advocate Loliwe participated in the process of appointment. Advocate Loliwe did not raise any objection to the criteria being constitutionally repugnant. Furthermore, it is difficult to discern which constitutional right is being infringed, if any. While the minimum competency requirements might make appointments to a position such as Director: Corporate Services difficult and impractical, such an appointment is not impossible for aspirant candidates. Indeed, Advocate Loliwe could in future meet such requirements. Moreover, this constitutional challenge is best launched by Advocate Loliwe, and it would be for him to articulate the exact contours thereof. In our cursory views, such challenge has limited merit.[23]

9. CONCLUSION

9.1 In conclusion, it is our view that:

9.1.1 Advocate Loliwe does not meet the prescribed competency requirements to be appointed as the Director: Corporate Services of the Knysna Municipality; and

9.1.2 despite our views that the Minister is potentially time-barred from bringing the Application, the Application would have reasonable prospects of success if the rationality attack is supported by suitable amendments to the Minister's notice of motion.

9.2 We advise accordingly.

LIONEL EGYPT

SABRINA DE FREITAS

JULIET KILLICK

[23] We note that we have not been instructed to provide a detailed advisory note on the constitutionality of the Minimum Competency Regulations.

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

CASE NO.: 17306/2023

In the matter between:

WESTERN CAPE PROVINCIAL MINISTER OF LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING	Applicant
and	
THE KNYSNA MUNICIPALITY	First Respondent
THE SPEAKER OF THE KNYSNA MUNICIPAL COUNCIL	Second Respondent
THE DIRECTOR: CORPORATE SERVICES OF THE KNYSNA MUNICIPALITY	Third Respondent
LUVUYO LILWE	Fourth Respondent

NOTICE OF INTENTION TO OPPOSE

KINDLY TAKE NOTICE THAT the First, Second and Third Respondents hereby give notice of their intention to oppose the above application and have appointed the offices of **WEBBER WENTZEL**, 15th Floor, Convention Tower, Heerengracht, Foreshore, Cape Town, at which it will accept service of all documents in these proceedings.

Dated at **CAPE TOWN** on this **23rd** day of **OCTOBER 2023**.

WEBBER WENTZEL
First, Second and
Third Respondent's Attorneys
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Ref: L Egypt / S De Freitas

TO: **THE REGISTRAR**
HIGH COURT
Western Cape Division
CAPE TOWN

AND TO: **STATE ATTORNEY CAPE TOWN**
Attorneys for the Applicant
4TH Floor, 22 Long Street
CAPE TOWN
Ref: T Shabane
Tel: 021 441 9251
Email: TShabane@justice.gov.za

WEBBER WENTZEL

in alliance with > Linklaters

The Knysna Municipality

Attention: Marilyn Botha

Email: mbotha@knysna.gov.za

15th Floor, Convention Tower
Heerengracht, Foreshore
Cape Town, 8001

PO Box 3667, Cape Town
8000, South Africa

Docex 34 Cape Town

T +27 21 431 7000
F +27 21 431 8000

www.webberwentzel.com

Your reference	Our reference	Date
	L Egypt / S De Freitas	25 October 2023

Dear Marilyn

WESTERN CAPE PROVINCIAL MINISTER OF LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING // THE KNYSNA MUNICIPALITY AND OTHERS (CASE NO.: 17306/2023)

1. We refer to the above-mentioned matter and the previous correspondence herein.

2. We can confirm that we have filed a notice of opposition on behalf of the First, Second and Third Respondent. This notice of opposition was filed to afford the Knysna Municipality with additional time to carefully assess the merits of the above application.

3. Kindly note that a detailed advisory note will be provided in due course, however we have dealt with herein below our cursory views on the merits of the application.

4. The Applicant's application is premised on two fundamental challenges:

4.1 the Fourth Respondent does not meet the competency requirements as prescribed in terms of section 56(1)(b) of the Local Government: Municipal Systems Act 32 Of 2000 (the "**Systems Act**"), as amended, and therefore, in terms of section 56(2) of the Systems Act, the decision to appoint the Fourth Respondent as Director: Corporate Services is null and void; and

4.2 the appointment of the Fourth Respondent as Director: Corporate Services was not a rational decision.

5. We will briefly deal with each in turn.

6. **Does the Fourth Respondent meet the prescribed competency requirements to be appointed as Director: Corporate Services?**

6.1 In this regard, we confirm what we have previously advised on this aspect.

6.2 It does not appear that the Fourth Respondent has the requisite work-related experience qualifying him for appointment in terms of the Municipal Regulations on

Minimum Competency Levels, GN R493 in GG 29967 of 15 June 2007 (the "**Minimum Competency Regulations**") issued in terms of the Local Government: Municipal Finance Management Act 56 of 2003. Such regulations require an appointee to a position such as that of the Director: Corporate Services to have a minimum of seven years' experience at senior and middle management level, of which at least two years must be at senior management level.

6.3 As per the Fourth Respondent's curriculum vitae, his experience does not amount to the requisite experience. It is unlikely that his seven years' experience, from 2014 to 2020, as a director of the Coastal Entertainment (Pty) Ltd qualifies as senior management experience in terms of the Minimum Competency Regulations. Therefore, in our preliminary view, the Applicant's contention that the Fourth Respondent does not have the necessary competency has merit.

7. Was it rational to appoint the Fourth Respondent as Director: Corporate Services?

7.1 On the papers, it seems that there is no rational basis for not appointing Ms Ivy Sikhulu-Nqwena or Mr Sakhekile Sidney Fadi, who were the two other candidates shortlisted for the position by the Recruitment and Selection Panel, as Director: Corporate Services. In the Selection Panel Report, dated June 2023, both these candidates were recommended in preference to the Fourth Respondent. Both candidates were scored higher than the Fourth Respondent by the Recruitment and Selection Panel.

7.2 Further, in the Minutes of the Selection Panel for the Position of Director Corporate Services, it was stated that the employment equity targets for the position should be taken into consideration for the appointment of Director: Corporate Services. Taking this into account, as the first above-named candidate was a female, it would have been rational to rather appoint her to the position. In addition, there were no reasons recorded for the appointment of the Fourth Respondent over the other two shortlisted candidates. Therefore, it is our view that the appointment of the Fourth Respondent was not rational.

7.3 Although the application is not couched as a judicial review, the rationality attack will have significant force should the Applicant proceed to amend its notice of motion.

8. The relief sought by the Applicant

8.1 In our view, the Applicant did not seek the appropriate relief for a rationality attack.

8.2 In the Applicant's notice of motion, it only seeks declaratory relief that the decision to appoint the Fourth Respondent as Director: Corporate Services is null and void. This is of some importance to the First Respondent as should this declaratory relief be granted, it would have the effect that the appointment of the Fourth Respondent is null and void from the time of his appointment.

8.3 However, had the Applicant sought a review of the appointment of the Fourth Respondent as Director: Corporate Services on the grounds of rationality in its notice of motion, and the Court found such appointment to be irrational, this would only take effect from the date of the Court order, and the decisions taken by the Fourth Respondent prior to this time would be unaffected.

9. In conclusion, it is our preliminary view that the Fourth Respondent did not meet the prescribed competency requirements to be appointed as Director: Corporate Services, and further, such appointment was irrational.

10. We propose that we have a consultation to obtain further instructions regarding the rationality attack and to discuss the further steps in the matter.

11. We will await your response.

Yours faithfully

WEBBER WENTZEL
Lionel Egypt
Partner
Direct tel: +27 21 431 7166
Direct fax: +27 21 431 8166
Email: lionel.egypt@webberwentzel.com

Letter sent electronically. A signed copy will be provided on request.

Knysna
Municipality Munisipaliteit uMasipala
inclusive • innovative • inspired

Collab Ref: 1686928
File Ref: 13/1/1
M Botha

2024-01-04

Mr Lionel Egypt
Webber Wentzel Attorney
15th Floor, Convention Tower
Heerengracht, Foreshore
Cape Town
8001

Via email: lionel.egypt@webberwentzel.com

Dear Sir,

COUNCIL RESOLUTION DATED 12 DECEMBER 2023
CASE 17306/2023: MEC // KM // SPEAKER // DCS // LUVUYO LOLIWE

The above matter refers.

As a valued service provider, kindly herewith accept our well wishes for 2024 and we trust you had a blessed festive season.

Kindly be advised that Council during its Special Council meeting held on 12 December 2023, considered both your cursory- and finals views dated 25 October 2023 and 15 November 2023, respectively. Council subsequently under Item C02/12/23(IC), by majority vote, resolved as follows:

C02/12/23[IC] REPORT ON LEGAL ACTION INSTITUTED AGAINST KNYSNA MUNICIPALITY. CASE 17306/2023 – APPOINTMENT OF DIRECTOR CORPORATE SERVICES, ADV LUVUYO LOLIWE

RESOLVED BY MAJORITY

a) That the report on the legal action instituted against Knysna Municipality by the MEC for Local Government under Notice of Motion, Case 17306/2023, challenging the appointment of Luvuyo Loliwe as Director: Corporate Services be noted;
b) That the Cursory Views of Webber Wentzel dated 25 October 2023, be noted;
c) That the final Advisory Note of Webber Wentzel dated 15 November, be noted;
d) The Municipal Manager be instructed not to defend/oppose the application; and
e) That Council agrees to the setting aside of the appointment.

We are of the view that above decision was taken on behalf of the 1st respondent, the Knysna Municipality. In said regard kindly be advised that your mandate therefore is to only act on behalf of the 1st respondent going forward.

Both 2nd and 3rd respondents indicated that they wish to be represented by a firm of their choice and you are therefor requested not to engage with said respondents.

We trust that the decision taken by Council on 12 December 2024, will be communicated with the applicant and you are therefore instructed to withdraw the initial Notice to Oppose filed on behalf of the 1st respondent and to file a Notice to Abide. You are also to file a notice of withdrawal as attorney of record for 2nd and 3rd respondents.

In above regard we would appreciate a virtual consultation with yourselves upon your return to office with specific regard to the implication of a potential cost order against 1st respondent, the possible negotiation thereof with the applicant and the impact of the 1st respondent not further opposing this matter, on the payment of remuneration to 3rd respondent.

We trust that you have been advised accordingly and await potential dates for a consultation at your earliest convenience.

Should you require any further information, kindly contact our Acting Manager Legal; Ms. Marilyn Botha on (044) 302 6230 or alternatively at mbotha@knysna.gov.za.

Yours faithfully,

MR. OMBALI PHINEAS SEBOLA
MUNICIPAL MANAGER

C02/12/23[IC] REPORT ON LEGAL ACTION INSTITUTED AGAINST KNYSNA MUNICIPALITY. CASE 17306/2023 – APPOINTMENT OF DIRECTOR CORPORATE SERVICES, ADV LUVUYO LOLIWE

RESOLVED BY MAJORITY

[a] That the report on the legal action instituted against Knysna Municipality by the MEC for Local Government under Notice of Motion, Case 17306/2023, challenging the appointment of Luvuyo Loliwe as Director: Corporate Services be noted;

[b] That the Cursory Views of Webber Wentzel dated 25 October 2023, be noted; and

[c] That the final Advisory Note of Webber Wentzel dated 15 November, be noted.

[d] The Council instruct the Municipal Manager not to defend/oppose the application,

[e] That Council agrees to the setting aside of the appointment.

C02/12/23[IC] REPORT ON LEGAL ACTION INSTITUTED AGAINST KNYSNA MUNICIPALITY. CASE 17306/2023 – APPOINTMENT OF DIRECTOR CORPORATE SERVICES, ADV LUVUYO LOLIWE

RESOLVED BY MAJORITY

[a] That the report on the legal action instituted against Knysna Municipality by the MEC for Local Government under Notice of Motion, Case 17306/2023, challenging the appointment of Luvuyo Loliwe as Director: Corporate Services be noted;

[b] That the Cursory Views of Webber Wentzel dated 25 October 2023, be noted; and

[c] That the final Advisory Note of Webber Wentzel dated 15 November, be noted.

[d] The Municipal Manager be instructed not to defend/oppose the application,

[e] That Council agrees to the setting side of the appointment.

Dear Marilyn,

Thank you for your e-mail.

Whilst we are of the view - on the papers and the facts at our disposal - that any opposition would have limited prospects of success it would be too early to file a notice of non-opposition. We believe that an opportunity might exist to negotiate an order that will ameliorate some of the consequences of the declarator. The approach adopted will also be influenced by the approach adopted by the fourth respondent. It is these aspects that we would like to discuss with yourselves.

Best

Lionel

Lionel Egypt | Partner | Webber Wentzel
T: +27214317166 | lionel.egypt@webberwentzel.com | **www.webberwentzel.com**

From: Marilyn Botha <mbotha@knysna.gov.za>
Sent: Wednesday, October 25, 2023 10:21 AM
To: Lionel Egypt <Lionel.Egypt@webberwentzel.com>; Zita Stevens <zstevens@knysna.gov.za>
Cc: Ombali Phineas Sebola <mm@knysna.gov.za>; Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>; Juliet Killick <Juliet.Killick@webberwentzel.com>
Subject: RE: MEC / KM and others

Dear Lionel,

Thank you for the cursory views.

Myself and the MM briefly discussed same and the MM as per the conclusions reached, wants to know whether you can perhaps add that it is not advisable to proceed with defending this matter?

Kind regards / Vriendelike groete,
Marilyn Botha - Legal Advisor
P O Box 21. Knysna. 6570. Western Cape. South Africa
Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6230 (direct)

From: Lionel Egypt <Lionel.Egypt@webberwentzel.com>
Sent: Wednesday, 25 October 2023 09:39
To: Marilyn Botha <mbotha@knysna.gov.za>; Zita Stevens <zstevens@knysna.gov.za>
Cc: Ombali Phineas Sebola <mm@knysna.gov.za>; Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>; Juliet Killick <Juliet.Killick@webberwentzel.com>
Subject: Re: MEC / KM and others

Dear Marilyn

Please find herewith our letter detailing our cursory views.

Kindly advise when we will be able to meet to discuss further.

Best

Lionel

Lionel Egypt | Partner | Webber Wentzel
T: +27214317166 | lionel.egypt@webberwentzel.com | **www.webberwentzel.com**

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Dear Mr Egypt,

Kindly be advised that the MM approved the date in April 2024 for this matter to be heard on the semi-urgent roll.

Thank you.

Kind regards / Vriendelike groete,
Marilyn Botha - Legal Advisor
P O Box 21. Knysna. 6570. Western Cape. South Africa
Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6230 (direct)

From: Zita Stevens <zstevens@knysna.gov.za>
Sent: Monday, 30 October 2023 08:51
To: Lionel Egypt <Lionel.Egypt@webberwentzel.com>; Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>; Ombali Phineas Sebola <mm@knysna.gov.za>; Anita Strydom <astrydom@knysna.gov.za>; Marilyn Botha <mbotha@knysna.gov.za>
Subject: RE: NOTICE OF MOTION: MEC // KM // SPEAKER & OTHERS - CASE 17306/2023

Good day morning Lionel,

I trust you are well.

I have sent a second link with yourselves, MM, Marilyn, Mayor, Speaker, Director Corporate and the Deputy Mayor for 11:45 today.

As per directive of the Municipal Manager, Mr. Sebola would like to consult on below first MS Teams link with yourself and Marilyn before joining the second link at 11:45.

Kindy confirm above is in order.

Thank you.

Kind regards / Vriendelike groete,

Zita Stevens - Senior Clerk: Legal Services
P O Box 21. Knysna. 6570. Western Cape. South Africa
Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6576 (direct)

-----Original Appointment-----
From: Zita Stevens
Sent: Friday, October 27, 2023 8:16 AM
To: 'Lionel Egypt'; Sabrina De Freitas; Ombali Phineas Sebola; Anita Strydom; Marilyn Botha
Subject: NOTICE OF MOTION: MEC // KM // SPEAKER & OTHERS - CASE 17306/2023
When: Monday, October 30, 2023 11:30 AM-12:00 PM (UTC+02:00) Harare, Pretoria.
Where: Microsoft Teams Meeting

Good day,

Kindly find below the MS Teams link for the meeting scheduled on Monday,30 October 2023 at 11:30.

Thank you.

Kind regards / Vriendelike groete,

Zita Stevens - Senior Clerk: Legal Services
P O Box 21. Knysna. 6570. Western Cape. South Africa
Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6576 (direct

---

Microsoft Teams meeting

Join on your computer, mobile app or room device
Click here to join the meeting

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Passcode: 8spGjC
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Learn More | Meeting options

Marilyn Botha

From: Marilyn Botha
Sent: Tuesday, 14 November 2023 10:16
To: 'Lionel Egypt'; Zita Stevens
Cc: Sabrina De Freitas; Juliet Killick; Sione Huth
Subject: RE: NOTICE OF MOTION: MEC // KM // SPEAKER & OTHERS - CASE 17306/2023

Dear Lionel,

Kindly be advised that we have followed up with the office of the DCS with regards to the submissions to be made. We were subsequently advised that his submissions will be done by 6 November 2023.

Our DCS is currently on sick leave and will be out of office for the week.

Kindly allow me to obtain instructions from the MM and we will revert soonest.

Thank you.

Kind regards / Vriendelike groete,
Marilyn Botha - Legal Advisor
P O Box 21. Knysna. 6570. Western Cape. South Africa
Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6230 (direct)

From: Lionel Egypt <Lionel.Egypt@webberwentzel.com>
Sent: Monday, 13 November 2023 10:43
To: Marilyn Botha <mbotha@knysna.gov.za>; Zita Stevens <zstevens@knysna.gov.za>
Cc: Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>; Juliet Killick <Juliet.Killick@webberwentzel.com>; Sione Huth <Sione.Huth@webberwentzel.com>
Subject: RE: NOTICE OF MOTION: MEC // KM // SPEAKER & OTHERS - CASE 17306/2023

Dear Marilyn

I trust that you are well.

We refer to our e-mail of 2 November 2023 and advise that we have finalised our draft advisory note.

We do however await the DCS submissions and additional instructions.

Kindly advise whether we must proceed with finalising the advisory note and dispatch to you without reference to the DCS submissions.

We await your urgent further instructions.

Best

Lionel

Webber Attorney to forward to Municipal Manager with the final Legal Advice on the appointment of corporate Directors case. [signature] 14/11/23

From: Lionel Egypt <Lionel.Egypt@webberwentzel.com>
Sent: Thursday, November 2, 2023 10:32 AM
To: Zita Stevens <zstevens@knysna.gov.za>; Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>
Cc: Marilyn Botha <mbotha@knysna.gov.za>; Anita Strydom <astrydom@knysna.gov.za>; Ombali Phineas Sebola <mm@knysna.gov.za>
Subject: RE: NOTICE OF MOTION: MEC // KM // SPEAKER & OTHERS - CASE 17306/2023

Dear Zita,

Thank you so much for your e-mail.

The steps to follow and relevant updates are as follows :

1. The matter will be postponed to 16 April 2024 for hearing and will proceed on that day if not settled.
2. We await the DCS submissions, and all additional instructions as discussed during our meeting on Monday.
3. We will finalise our advisory note regarding merits and approach following receipt of the abovementioned documentation.
4. Depending on the final advice contained in the note and the Municipality's final instructions in this regard the Applicant will be approached with a settlement.
5. A settlement will ultimately seek to avoid the consequences of the declaratory relief.

Please do not hesitate to call us should you require anything further.

We will then await the documentation.

Best

Lionel

Lionel Egypt | Partner | Webber Wentzel
T: +27214317166 | lionel.egypt@webberwentzel.com | **www.webberwentzel.com**

From: Zita Stevens <zstevens@knysna.gov.za>
Sent: Thursday, November 2, 2023 10:14 AM
To: Lionel Egypt <Lionel.Egypt@webberwentzel.com>; Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>
Cc: Marilyn Botha <mbotha@knysna.gov.za>; Anita Strydom <astrydom@knysna.gov.za>; Ombali Phineas Sebola <mm@knysna.gov.za>
Subject: RE: NOTICE OF MOTION: MEC // KM // SPEAKER & OTHERS - CASE 17306/2023

Dear Mr. Egypt,

I trust you are well.

As per directive of the Municipal Manager, kindly provide us with an update on this matter and advise on the next steps.

Thank you.

Kind regards / Vriendelike groete,

Zita Stevens - Senior Clerk: Legal Services
P O Box 21. Knysna. 6570. Western Cape. South Africa
Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6576 (direct)

From: Marilyn Botha <mbotha@knysna.gov.za>
Sent: Tuesday, October 31, 2023 2:56 PM
To: Zita Stevens <zstevens@knysna.gov.za>; Lionel Egypt <Lionel.Egypt@webberwentzel.com>; Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>; Ombali Phineas Sebola <mm@knysna.gov.za>; Anita Strydom <astrydom@knysna.gov.za>
Subject: RE: NOTICE OF MOTION: MEC // KM // SPEAKER & OTHERS - CASE 17306/2023

Dear Mr Egypt,

Kindly be advised that the MM approved the date in April 2024 for this matter to be heard on the semi-urgent roll.

Thank you.

Kind regards / Vriendelike groete,
Marilyn Botha - Legal Advisor
P O Box 21. Knysna. 6570. Western Cape. South Africa
Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6230 (direct)

From: Zita Stevens <zstevens@knysna.gov.za>
Sent: Monday, 30 October 2023 08:51
To: Lionel Egypt <Lionel.Egypt@webberwentzel.com>; Sabrina De Freitas <Sabrina.DeFreitas@webberwentzel.com>; Ombali Phineas Sebola <mm@knysna.gov.za>; Anita Strydom <astrydom@knysna.gov.za>; Marilyn Botha <mbotha@knysna.gov.za>
Subject: RE: NOTICE OF MOTION: MEC // KM // SPEAKER & OTHERS - CASE 17306/2023

Good day morning Lionel,

I trust you are well.

I have sent a second link with yourselves, MM, Marilyn, Mayor, Speaker, Director Corporate and the Deputy Mayor for 11:45 today.

As per directive of the Municipal Manager, Mr. Sebola would like to consult on below first MS Teams link with yourself and Marilyn before joining the second link at 11:45.

Kindy confirm above is in order.

Thank you.

Kind regards / Vriendelike groete,

Zita Stevens - Senior Clerk: Legal Services
P O Box 21. Knysna. 6570. Western Cape. South Africa
Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6576 (direct)

-----Original Appointment-----
From: Zita Stevens
Sent: Friday, October 27, 2023 8:16 AM
To: 'Lionel Egypt'; Sabrina De Freitas; Ombali Phineas Sebola; Anita Strydom; Marilyn Botha
Subject: NOTICE OF MOTION: MEC // KM // SPEAKER & OTHERS - CASE 17306/2023
When: Monday, October 30, 2023 11:30 AM-12:00 PM (UTC+02:00) Harare, Pretoria.
Where: Microsoft Teams Meeting

Good day,

Kindly find below the MS Teams link for the meeting scheduled on Monday,30 October 2023 at 11:30.

Thank you.

Kind regards / Vriendelike groete,

Zita Stevens - Senior Clerk: Legal Services
P O Box 21. Knysna. 6570. Western Cape. South Africa
Tel +27 (0)44 302 6300 (switchboard) or +27 (0)44 302 6576 (direct

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Municipality Munisipaliteit uMasipala

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Collab Ref: 1640219
File Ref: 13/1/1
M Botha

2023-10-19

Mr Lionel Egypt
Webber Wentzel Attorney
15th Floor, Convention Tower
Heerengracht, Foreshore
Cape Town
8001

Via email: lionel.egypt@webberwentzel.com

Dear Sir,

URGENT INSTRUCTION: CASE – 17306/2023: NOTICE OF MOTION: MEC // KM // SPEAKER // DIRECTOR CORPORATE SERVICES // LUVUYO LOLIWE

The above matter refers.

Herewith formal instruction to represent the 1st – 3rd respondents. The instruction is to oppose this matter.

Kindly indicate whether your office accepts the instruction whereafter all records will be provided.

Should you require any further information, kindly contact our Acting Manager Legal; Ms. Marilyn Botha on (044) 302 6230 or alternatively at mbotha@knysna.gov.za.

Yours faithfully,

MR. OMBALI PHINEAS SEBOLA
MUNICIPAL MANAGER

"X"
07/06/2024

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

Before the Acting Judge-President Goliath
At Cape Town : On 07 June 2024

STAATSPROKUREUR: KAAPSTAD
2024 -03- 12
STATE ATTORNEY: CAPE TOWN

Case No: **17306 /2023**

In the matter between:

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Private Bag X9020, Cape Town 8000
2024 -06- 10
WCD-014
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

WESTERN CAPE PROVINCIAL MINISTER OF LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING — Applicant

and

THE KNYSNA MUNICIPALITY — First Respondent

THE SPEAKER OF THE KNYSNA MUNICIPAL COUNCIL — Second Respondent

THE DIRECTOR: CORPORATE SERVICES OF THE KNYSNA MUNICIPALITY — Third Respondent

LUVUYO LOLIWE — Fourth Respondent

~~DRAFT~~ ORDER

BY AGREEMENT BETWEEN THE FIRST TO THIRD RESPONDENTS (FOURTH RESPONDENT NOT OPPOSING) IT IS ORDERED THAT:

1. The decision taken by the First Respondent's Council on 31 July 2023 to appoint the Fourth Respondent as Director: Corporate Services is reviewed and set aside.

2. The First Respondent shall pay the costs of the Applicant's senior counsel incurred up until 26 March 2024, as taxed or agreed on a party and party scale.

3. Other than that, there shall be no order as to costs.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Private Bag X9020, Cape Town 8000
2024 -06- 10
WCD-014
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN

BY ORDER OF THE COURT

COURT REGISTRAR

Applicant's Attorneys
STATE ATTORNEY, CAPE TOWN
Box: 30
Trevor Wanga Shabane
Tel: 021 441 9251
Email: TShabane@justice.gov.za

REPORT ON IRREGULAR EXPENDITURE FOR PROPERTY RENTALS FOR THE PERIOD 2022/2023 – 2025/2026

REPORT FROM THE DIRECTOR FINANCIAL SERVICES

PURPOSE OF THE REPORT

The purpose of this report is to provide the Municipal Public Accounts Committee with proof of the Irregular Expenditure for Property rentals as disclosed in the Annual Financial Statements as requested.

BACKGROUND

This expenditure was recorded as irregular expenditure in the notes to the 2022/2023 – 2024/2025 AFS and reported to Council.

Attached find the supporting documents and expenditure report.

APPENDIX / ADDENDUM

Annexure A: Irregular expenditure for property rentals
Annexure B: Supporting documents and expenditure reports

RECOMMENDATION

1. That MPAC condones the irregular expenditure.

Execution: Director Financial Services