

Date: 21 April 2023

File Reference: 4/4/1

Author: Adv N Mpangane

Report Number:

HOD (acting): Corporate Service

NOTING AND APPROVAL

- 1st Level: EMT (Not applicable)
- 2nd Level: Section 80 Committee (Not applicable)
- 3rd Level: MAYCO (Not Applicable)
- 4th Level: Council (25 April 2023)

SUBJECT: DESIGNATION OF COUNCILLOR AS AN ACTING EXECUTIVE MAYOR

1. PURPOSE

- 1.1 The purpose of this report is to request the Municipal Council to designate a councillor as the acting Executive Mayor for the Mangaung Council in terms of Section 56(7) of the local Government Municipal Structures Act, (Act 117 of 1998).

2. BACKGROUND

- 2.1 The Mangaung Metro is a Category A Municipality with a Mayoral Executive combined with the Ward Participatory System as contemplated in Sections 7 and 9 of the Municipality Structures Act. The Mayoral Executive System provides for the executive authority in municipalities to be executed by the Executive Mayor in whom the executive leadership of the municipality is vested and who is assisted by a Mayoral committee.

3. DISCUSSION

- 3.1 The position of the Executive Mayor has once again become vacant due to the *rule nisi* interdict order granted in favour of the African National Congress (ANC) that lodged an urgent application against the Speaker, Mayor, and municipality. The basis of the application was that the municipality has allowed 7 expelled ANC councillors from the political party to attend meeting held on 14 April 2023.

The relief sought by the ANC was that the meeting held on 14 April 2023 be set aside and that Mr Papi Mokoena be interdicted to execute duties as the Executive Mayor.

- 3.2 The former acting Executive Mayor is amongst one of the expelled councillors by the ANC which renders council having vacancies of Executive Mayor and Deputy Executive Mayor. Section 56(7) of the Municipal Structures Act states that ***"If the executive mayor is absent or not available and the municipality does not have a deputy executive mayor, or the deputy executive mayor is also absent or not available, the council must designate a councillor to act as executive mayor"***. Considering the circumstances herein, council is recommended to designate a councillor in an acting capacity as the Executive Mayor from April to July 2023.

Functions and powers of Executive Mayors

- (1) An Executive Mayor is entitled to receive reports from section 80 committees, and other committees supporting the work of the executive arm of Council and to forward these reports together with a recommendation to the Council when the matter cannot be disposed of by the Executive Mayor in terms of the Executive Mayor's delegated powers.
- (2) The Executive Mayor must-
 - (a) Identify the needs of municipality.
 - (b) Review and evaluate those needs in order of priority.
 - (c) Recommend to the Municipal Council strategies, programmes and services to address priority needs through the integrated development plan, and the estimates of revenue and expenditure, taking into account any applicable national and provincial development plans; and
 - (d) Recommend or determine the best way, including partnership and other approaches, to deliver those strategies, programmes and services to the maximum benefit of the community.
- (3) The Executive Mayor in performing the duties of office must-
 - (a) Identify and develop criteria in terms of which progress in the implementation of the strategies, programmes and services referred to in subsection (2).
 - (b) can be evaluated, including key performance indicators, which are specific to the municipality and common to local government in general;
 - (c) Evaluate progress against the key performance indicators;
 - (d) Review the performance of the municipality in order to improve -:
 - (i) the economy, efficiency and effectiveness of the municipality;
 - (ii) The efficiency of credit control and revenue and debt collection services; and;

- (iii) The implementation of the municipality's by-laws;
- (e) Monitor the management of the municipality's administration in accordance with the directions of the municipal council.
- (f) Oversee the provision of services to communities in the municipality in a sustainable manner.
- (g) Perform such duties and exercise such powers as the council may delegate to the Executive Mayor in terms of section 59 of the local government: Municipal Systems Act; 2000 (Act 32 of 2000);
- (h) Annually report on the involvement of communities and community organizations in the affairs of municipality; and
- (i) Ensure that regard is given to public views and report on the effect of consultation on the decisions of the Council

4. LEGISLATIVE PROVISIONS

- 4.1 The municipal council is not compelled to follow the procedure prescribed in Schedule 3 of the Municipal Structures Act, to designate of councilor to act in the position of Acting Executive Mayor, therefore the voting may be by a show of hands, or any other method as prescribed by the Speaker but agreed upon by majority of councillors in the meeting.
- 4.2 Although, the Municipal Structures Act does not prescribe that the acting period of the acting Executive Mayor, it is in the interest of council and community of Mangaung that the period of acting should be for period of three months from April to July 2023 to allow council to address compliance matters without any hindrance.
- 4.3 Section 16(1) dealing with the annual budgets states that the council of a municipality must for each financial year approve an annual budget for the municipality before the start of that financial year;
- 4.4 Section 16(2) states that in order for the municipality to comply with sub-section (1) the mayor of the municipality must table the annual budget of a council meeting at least 90 days before the start of budget year;

5 DELEGATIONS

The delegations to the acting Executive Mayor are as per the Statutory legislation and also in line with the Delegations of Powers policy.

6. IMPLICATIONS

6.1 Financial

Acting Executive Mayor is designated as full-time councillor and his or her salaries and benefits are defined and provided in *Determination of Upper Limits of salaries and benefits for councillors* determined annually by the Minister for CoGTA.

6.2 Legal

The designation of acting Executive Mayor may be by showing of hands and or any other method prescribed by the Speaker but agreed upon by majority of councillors present in the meeting.

6.3 Communication

None

6.4 Community & Service Delivery

Urgent filling of the vacancy of the Executive Mayor in an acting capacity in accordance with the legislative requirements is of importance and critical to ensure uninterrupted service delivery by the City of Mangaung and to ensure legislative compliance such as tabling of draft Budget and draft Integrated Development Plan are tabled and the process of filling the position of City Manager may commence.

7. RECOMMENDATION

- (a) That Council take note of the report and
- (b) That the Mangaung Metro designate one councillor to serve as the acting Executive Mayor on a full-time basis.

8. WRITTEN BY:


Adv Nkateko Mpangane
ACTING HOD: CORPORATE SERVICES

21/04/2023
DATE

9. RATIFIED BY:


Ms Gugu Malaza
NATIONAL CABINET REPRESENTATIVE

21/04/2023
DATE

10. ANNEXURES

10.1 ANNEXURE A : HIGH COURT OF SOUTH AFRICA HANDED AT FREE STATE DIVISION, BLOEMFONTEIN



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Case No: 1887/2023

Before the Honourable Judge **S CHESIWE**

On the 19th day of **APRIL 2023**

In the matter between:

THE AFRICAN NATIONAL CONGRESS Applicant

and

**THE SPEAKER: MANGAUNG METROPOLITAN
MUNICIPAL COUNCIL** 1st Respondent

**THE EXECUTIVE MAYOR: MANGAUNG
METROPOLITAN MUNICIPALITY** 2nd Respondent

THE MANGAUNG METROPOLITAN MUNICIPALITY 3rd Respondent

Having considered the documents filed of record and having heard the legal practitioner/s,

IT IS ORDERED THAT:

1. The Applicant's non-adherence to this court's rules related to time periods and service is condoned and the application is heard as an urgent application in terms of Rule 6(12).
2. A rule *nisi* do issue, returnable on **Thursday, 1 June 2023**, calling upon the Respondents to show cause, if any, why the following order should not be made final:
 - 2.1 The Second Respondent is interdicted and restrained from in any manner or form performing the functions associated with that of the Executive Mayor of the Third Respondent.
 - 2.2 The Second Respondent is interdicted and restrained from holding himself out of as the Executive Mayor of the Third Respondent.

- 2.3 The Second Respondent is interdicted and restrained from performing any acts and/or in enlisting the assistance of any other person to perform any act in pursuance of his election as the Executive Mayor of the Third Respondent, pursuant to his unlawful election into this position on **14 April 2023**.
3. The order granted in prayers 2.1 to 2.3 above shall operate as an interim interdict with immediate effect, pending the finalisation of this application.
 4. The orders contained in prayers 2.1 to 2.3 shall further serve as a temporary interdict with immediate effect, pending the finalisation of review proceedings or any other effective relief the Applicant is advised to take, the Applicant shall embark upon within 5 days after the granting of the rule *nisi*, impugning the appointment of *inter alios* the Second Respondent as Executive Mayor of the Third Respondent.
 5. The Applicant shall provide the Respondents with a copy of the transcription of the evidence led on **Friday, 14 April 2023** in this court, on strength of which the Applicant secured an order against the seven former Municipal Councillors mentioned in the Applicant's Founding Affidavit.
 6. Leave is granted to the Respondents to anticipate the return day of this order, with no less than 36 hours' notice to the Applicant, after provision of the transcription mentioned in para 5 above.
 7. The Respondents shall file their Opposing Affidavits, if any, and in the event of them not anticipating the return day as set out in para 6 above, by no later than **Friday, 5 May 2023**.
 8. The Applicant shall reply by no later than **Monday, 22 May 2023**.
 9. Costs of this application on this day shall be adjudicated on the return date.

BY ORDER OF THIS COURT


COURT REGISTRAR

2023 -04- 19

SMO SEOBE ATTORNEYS INC

FSD-BFT 003