

TO: ACTING HOD: CORPORATE SERVICES

ITEM: 6

**REPORT ON THE COURT ORDERS AGAINST 7 EXPELLED COUNCILLORS & THE EXECUTIVE
MAYOR APPOINTED AT A SPECIAL COUNCIL MEETING OF 14 APRIL 2023**

1. On 14 April 2023, the African National Congress ("ANC") obtained the Court Order against Puseletso Seleke, Mpho Nkoakoa, Makoa Lelala, Mapaseka Mothibi-Nkoane, Patrick Monyakoana, Chabeli Frank Rampai and Lehlohonolo Moqolo interdicting and restraining them from:
 - 1.1 in any way further acting as Councillors of the Mangaung Metropolitan Municipality;
 - 1.2 performing any associated function germane and/or related to the holding of a position of a Councillor of the Mangaung Metropolitan Municipality;
 - 1.3 attending the Mangaung Metropolitan Municipality Council meeting scheduled for 14 April 2023, in any capacity whatsoever and to perform any actions associated with the holding of a Council seat at said meeting
 - 1.4 In terms of paragraph 6 of the said Court Order the African National Congress was granted leave to serve the Court Order on the Councillors referred to above by way of Whatsapp.
2. On 14 April 2013 at **14:14** and before the executive mayor and the chief whip were appointed, Puseletso Seleke, Mpho Nkoakoa, Makoa Lelala, Mapaseka Mothibi-Nkoane, Patrick Monyakoana, Chabeli Frank Rampai and Lehlohonolo Moqolo by way of Whatsapp were served with the Court Order obtained by the African National Congress.
3. In terms of paragraph 3 of the aforesaid Court Order, Puseletso Seleke, Mpho Nkoakoa, Makoa Lelala, Mapaseka Mothibi-Nkoane, Patrick Monyakoana, Chabeli Frank Rampai and Lehlohonolo Moqolo were interdicted and restrained from, *inter alia*, further acting as Councillors of the Mangaung Metropolitan Municipality, attending the Mangaung Metropolitan Municipality council scheduled meeting for 14 April 2023, and performing any actions associated with the holding a Council seat at said meeting.
4. Council proceeded on the 14th of April 2023 and the Executive Mayor and the Chief Whip were appointed.

Review application of decision/s taken at Special Council meeting of 14 April 2023

5. The African National Congress launched the High Court application for an order to review and set aside the decision taken at the Special Council meeting on 14 April 2023.
6. The review application is pending and the answering affidavit still needs to be filed after the filing of the records.

Interdict against the appointed Executive Mayor

7. On 19 April 2023, the African National Congress obtained another Court order against the appointed Executive Mayor interdicting and restraining him from:
 - 7.1 in any manner or from performing the functions associated with the Office of the Executive Mayor of Mangaung Metropolitan Municipality,
 - 7.2 Holding himself out as the Executive Mayor of Mangaung Metropolitan Municipality, and
 - 7.3 Performing any acts and/or in enlisting the assistance of any other person to perform any act in pursuance of his election as Executive Mayor of Mangaung Metropolitan Municipality, pursuant to his unlawful election into this position on 14 April 2023.
8. In terms of paragraph 4 of the said Court Order, the Order operated as an interim interdict with immediate effect, pending the finalization of review proceedings impugning the appointment of the Executive Mayor of Mangaung Metropolitan Municipality.

Confirmation of the interim interdict against 7 Expelled Councillors

9. On 23 June 2023, the High Court confirmed the interim interdict granted on 14 April 2023 against the 7(seven) expelled Councillors.
10. The confirmation of the interim interdict meant the following:
 - 10.1 that the Court Order was properly granted by the High Court 14 April 2023 against the 7(seven) expelled Councillors;
 - 10.2 that the 7(seven) expelled Councillors were properly served with the said interim interdict; and
 - 10.3 that the 7(seven) expelled Councillors were lawfully interdicted and restrained from attending the Mangaung Metropolitan Municipality Council meeting scheduled for 14 April 2023.
11. In essence, the above Order has the effect of confirming that the majority of the Councillors were not present at a Special Council meeting of 14 April 2023 as required by Rule 12.1 of the Standing Rules and Orders, and therefore the Municipal Council was not within its legislative powers to consider any matter and/or vote on it.

Confirmation of the interim interdict against the appointed Executive Mayor

12. The High Court confirmed the interim interdict granted on 19 April 2023 against the appointment of the Executive Mayor at a Special Council meeting of 14 April 2023.
13. The confirmation of the interim interdict meant the following:
 - 13.1 that the Court Order was properly granted by the High Court on 19 April 2023 against the appointment of the Executive Mayor at a Special Council meeting of 14 April 2023;
 - 13.2 that the Executive Mayor appointed at a Special Council meeting of 14 April 2023 was properly served with the said interim interdict; and
 - 13.3 that the Executive Mayor appointed at a Special Council meeting of 14 April 2023 was lawfully interdicted and restrained from, *inter alia*, performing the functions associated with the Office of the Executive Mayor of Mangaung Metropolitan Municipality pending the finalization of review proceedings impugning his appointment at a Special Council meeting of 14 April 2023.

The Special Council meeting of 14 April 2023 was contrary to the law

14. The Standing Rules and Orders By-Law, which govern Council proceedings, was passed by Council on 30 June 2016, amended by Council on the 14th of December 2017, and promulgated on the 13th of March 2020.
15. In terms of Rule 12.1, a majority of the Councillors must be present at a meeting of the Council before any matter may be considered and/or voted on.
16. In the circumstances, the Special Council meeting on 14 April 2023 failed to comply with the provisions of Rule 12.1 of the Standing Rules and Orders.
17. The motion to appoint the Executive Mayor and the Chief Whip at the Special Council meeting on 14 April 2023 was considered, voted on and passed contrary to the law as contemplated in Rule 12.1 of the Standing Rules and Orders.
18. Taking into consideration the above mentioned Court Order, the motion considered, voted on and passed by the Council on the 14 April 2023 was contrary to the provisions of the Standing Rules and Orders and is therefore unlawful, invalid, of no force and effect.

Correction of motion unlawfully passed on 14 April 2023


19. The Council is empowered to correct the impugned decision of the Special Council meeting of 14 April 2023 by appointing the Executive mayor and the Chief Whip at the properly constituted Council meeting that quorates as contemplated in Rule 12.1 of the Standing Rules and Orders, where a majority of the councillors will be present to consider and/or vote on the matter.
20. It may be argued that rescinding a Council Resolution within 3 months of Council having taken such a resolution, may be in breach of Rule 29.(5).

21. For ease of reference, Rule 29(5) is transcribed hereunder and provides:

“When a member introduces a motion which is intended to rescind or amend a resolution passed by a Council in the preceding three months or which has the purport as a motion that was not supported within the three preceding months shall not be entertained.”

22. In this case it must be noted that in line with Rule 12(1), the decision of the Special Council meeting of 14 April 2023 does not constitute a resolution passed by the council *ab initio* and therefore does not fall foul of Rule 29(5) of the Standing Rules and Orders.

Submitted by



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GM: LEGAL SERVICES

3/07/23
DATE:

Supported / ~~Not Supported~~ by



ADV NKATEKO MPANGANE
ACTING HOD: CORPORATE SERVICES

04/07/2023
DATE:

Approved / ~~Not Approved~~



MRS NGAKA DUMALISILE
ACTING CITY MANAGER

04/07/2023
DATE:

Ratified / ~~Not Ratified~~ by



MS GUGU MALAZA
NATIONAL CABINET REPRESENTATIVE

04 July, 2023
DATE: