

Se Coop 30 July
2013



Department of Co-operative Governance
& Traditional Affairs
Kwazulu-Natal Provincial Government

UMVOTI INTERVENTION IN TERMS OF SECTION 139 (1)(b) OF THE CONSTITUTION

**PEOPLE CENTRED SUSTAINABLE CO-OPERATIVE GOVERNANCE,
WHICH FOCUSES ON EFFECTIVE SERVICE DELIVERY RESPONSIVE TO THE NEEDS OF THE COMMUNITY.**

PURPOSE

- To inform the Select Committee of the decision of the Provincial Executive Council to intervene at Umvoti municipality in terms of section 139(1)(b) of the Constitution dated 17 July 2013;
- To inform the Select Committee of the reasons for the intervention; and
- To inform the Select Committee of the scope of the intervention in respect of the aforementioned resolution;
- To request the Select Committee to consider this matter to recommend approval of this intervention to the NCOP;

HISTORY OF UMWOTI

- Based on the outcome of the 2011 Local Government elections, at Umvoti municipality, the ANC received 43.00% votes, the IFP received 41.08% votes, the NFP received 9.49% votes, the MF received 0.98% votes and the DA received 5.46% votes.
- The council is comprised of 22 councillors. Ten ANC, nine IFP, two NFP and one DA.
- In terms of section 43(1) of the Structures Act the municipality qualifies to have four exco members.
- In terms of the formula adopted by the Department and accepted in the Province, which is used to calculate the composition of the exco, the ANC won two seats and the IFP won two seats on the exco.
- However, at the inauguration meeting, council resolved to reduce the size of their exco from four to three.
- Therefore, the ANC, with a majority of votes, occupied two seats and the third seat belonged to the IFP.
- Subsequent thereto, the ANC, invoking section 43(3) of the Structures Act which complies with section 160(8) of the Constitution, offered one seat to the NFP. Therefore, the exco was constituted as follows: one ANC, one NFP and one

LITIGATION AT UMVOTI

- The decision regarding the size of exco did not find favour with the IFP which then brought an urgent application in the PMB High Court under case 6152/2011 for relief, *inter alia*, declaring the aforementioned decision unconstitutional and invalid. This matter, having been instituted in 2011, has not as yet been finalised;
- On 05 /11/2012 the IFP submitted a motion for the removal of the exco, the election of a new exco and the election of a Mayor and Deputy Mayor. This motion was due to serve before a council meeting to be held on 20/11/2012;
- On receipt of this motion, the Mayor together with other councillors brought an urgent application under Case no. 10568/12 in the PMB High Court, to interdict the motion and the meeting. An interim order was obtained preventing the tabling of the motion and directing the Speaker to postpone the meeting. Accordingly the meeting did not proceed. On 18/03/2013 judgment was delivered wherein he discharged the interim order;
- As a result of an IFP PR councillor resigning, Cllr. P.N. Ngubane replaced such councillor and was declared as such by the IEC. When he attempted to assume his position as councillor, he was not accepted by a portion of council, on the basis that he is also employed by the Department of Education.
- Litigation was instituted by the IFP and Cllr Ngubane under Case No 11216/12;
- The High Court granted a declaratory order on 14/05/2013 confirming the status of Cllr P. Ngubane as a councillor of Umvoti municipality.

FUNCTIONALITY OF COUNCIL

- At a council meeting held on 28/03/2013, whereat the mayor was tabling a municipal budget, councillors from the IFP, DA and NFP staged a walk-out claiming that they required time to consult. A further meeting was convened on 04/06/2013, whereat the mayor again tabled the budget. The budget went to a vote and was not passed with a vote of twelve to ten;
- A further meeting was then convened for 12/06/2013. Department officials were in attendance at this meeting on request made by Umvoti;
- At the commencement of the meeting the mayor announced that he was resigning and was, therefore, not in a position to table the budget;
- The IFP accepted his “resignation” and it was at this stage that councillors from the IFP, DA and NFP walked-out leaving the council meeting inquorate;
- At this meeting Department officials were informed that a notice of motion to remove the mayor and two other members of the executive committee, was received on 06/06/2013, signed by twelve of the twenty-two councillors. The council meeting at which such motion was to be considered was scheduled for 21/06/2013.

COUNCIL MEETING 21 JUNE 2013

- Existing exco members were removed and it was apparently agreed that the exco should comprise of four members; *ex magr.*
- The ANC nominated Councillors Mavundla and Maphanga and the IFP nominated Councillors Maharaj (IFP), Buss (DA) and Xaba (NFP). Ballot papers were prepared with the names of the nominees thereon. The vote took place by secret ballot but none of the ANC councillors cast a vote; *seats already calculated*
- Councillor Buss received 12 votes, Councillor Maharaj received 11 votes, Councillor Maphanga received 2 votes and Councillor Xaba received 12 votes;
- The Speaker apparently stated that under Section 43(2) the ANC should have two seats on the exco and appointed Cllrs Mavundla and Maphanga to the exco as the nominees of the ANC. Based on the results of the election the DA (Buss) and NFP (Xaba) took the remaining two seats, leaving the IFP out of exco;
- The election then took place for the position of Mayor, and Cllr Xaba was elected as Mayor, and Councillors Maharaj (IFP) and Maphanga (ANC) were nominated. The Speaker determined that as Maharaj was not a member of the exco, he could not be Deputy Mayor, and Maphanga was declared to have been elected as Deputy Mayor.
- Subsequently, Cllr Xaba approached the High Court under Case No. 7267/2013 to obtain an order declaring that Cllr Mavundla is not a member of the exco, that the Speaker's declaration that Cllr Maphanga was the Deputy Mayor of the municipality was unlawful and of no force and effect, declaring that the council is entitled to hold a meeting to elect a Deputy Mayor, interdicting Cllr Mavundla from holding himself out as a member of the exco and interdicting Cllr Maphanga from holding himself out as the Deputy Mayor; *ANC nominate*

COUNCIL MEETING 05 JULY 2013

- Councillors put forward a notice of a motion to remove the Speaker, certain councillors objected thereto and raised two points of order, being that the council should not deal with the matter as the dispute was sub judice because of the present proceedings, and that the proposed notice of motion did not contain the name of the councillor but only a signature.
- This led to considerable chaos and disorder in the meeting with the effect that the South African Police had to intervene and enter the council chamber to ensure that order was maintained.
- The proposed motion was never seconded and there was no vote.
- The Department was advised that the Speaker adjourned the meeting. After some time the remaining twelve councillors (excluding the ANC councillors) reconvened. The meeting was presided over the Municipal Manager.
- The matter was not put to the vote and he simply stated that the motion had been passed and that the Speaker had been removed. He then called for verbal nominations for the position of Speaker. Councillor Yengwa was verbally proposed and seconded as Speaker, and was declared elected as Speaker.

REQUEST TO “CLOSE” MUNICIPALITY

- The MEC received a request from the MM of the municipality dated 11/07/2013 for approval to close the municipal offices until 18 July 3013, as a result of the state of affairs at Umvoti;
- The MM informed the MEC that in the last few days there had been no peace, and that it seemed as if the situation would continue without any indication as to when the municipality would run smoothly again;
- There had been acts of violence at the municipality which included a group of people who were walking in and out of the offices making political statements to staff members and passing threatening words of violence;
- An exchange of firearms had been seen inside the municipal offices. Staff members were unable to move from one office to another as they feared to walk across unknown people who sat in the premises from morning till noon;
- The MM indicated that staff members were also politically affiliated and this also caused pressure and internal fights. Only essential services which include, Protection Services and the Engineering Department would remain open as well as the library and Museums, Financial Cashiers and the Stores Department will continue as they are not directly affected.
- It is clear from the request of the municipal manager, that service delivery and functionality were being seriously compromised as a result of the instability and dysfunctionality of the council.

FAILURE TO COMPLY

- Local government creates a forum for the democratic representation of its electorate. By the alienation or refusal of certain parties to effectively allow other parties within the council to participate in the executive committee or to deliberately frustrate council business by disrupting meetings, is a contravention of the Constitutional principles envisaged for local government;
- Section 43 of the Structure Act is clear. It provides that an exco must be composed in such a way that parties and interests represented in the municipal council are represented in the exco in substantially the same proportion they are represented in council. Furthermore, the KwaZulu-Natal Determination of Types of Municipality Act No. 7 of 2000 dictates a “collective executive system”.
- The process followed by the council to elect the exco and the insistence on the composition of the exco which excludes parties of substantial proportion in council but includes parties of minor proportion, is clearly in contravention of what was envisaged by section 43 and the Constitution itself.
- Similarly the motion removing the Speaker is defective as it was never seconded nor voted upon, nor was there an opportunity for a counter proposal or debate thereon before the vote took place;
- The subsequent election of Councillor Yengwa was also irregular and unlawful as there was no compliance with the formal requirements of item 3 of Schedule 3, read with Section 36 of the Structures Act.

GOVERNANCE COMPROMISED

- Although council may delegate most of its authority to the exco, an exco is not only reliant on powers delegated to it by council for its authority. It has original powers - once a council chooses to establish an exco the provisions Structures Act apply. An exco has the specific powers granted to it by section 44 of the Structures Act, and it is given specific functions in other local government legislation.
- A Speaker performs a number of important functions, including those set out in section 37 of the Act. In terms of section 36 of the Act each Municipal Council must have a Speaker, and when it is necessary to fill a vacancy, a Municipal Council must elect a Speaker from one of its Councillors. The Speaker convenes and chairs meetings of council;
- Clearly as a result of the illegality of the processes to elect the executive committee and the speaker, the tasks set out above are compromised;
- Any decisions or resolutions made by improperly constituted or elected office bearers will be illegal and fall to be set aside, which may have consequences for the municipal fiscus and the residents in its area of jurisdiction.

FAILURE TO FULFIL THE EXECUTIVE OBLIGATION TO GOVERN LAWFULLY

- As was established in the case of Imbabazane and imputed in the case of Umvoti, that the unlawful election of the exco, Mayor and Deputy Mayor as well as the removal of the Speaker and election of a new Speaker, can be seen as the failure of the council to fulfil its executive obligation to govern lawfully;
- Until such time as the High Court corrects this position (as has been initiated by the MEC), the illegality will continue and the council of the municipality will continue to govern unlawfully.
- The Constitutional Court (Second Certification Judgment) stated that in the constitutional scheme as embodied in the Constitution, the “Provincial Executive is fully entitled, if not obliged to do what is necessary to ensure that the Constitution and legislation consistent with the Constitution are adhered to”. The power to intervene must be read in this context as well.
- It is also necessary to correct an illegality as soon as possible. This is illustrated in the case of Imbabazane municipality, where various decisions taken by the unlawfully constituted council had to be reviewed and even set aside. This had serious personnel, financial and contractual implications for the municipality.

DECISION TO INTERVENE

- For these reasons, it was resolved by the Provincial Executive Council to intervene at Umvoti municipality in terms of section 139(1)(b) of the Constitution and to assume the functions specified in section 51 of the Local Government: Municipal Systems Act 32 of 2000 (“Systems Act”);
- The MEC responsible for Co-operative Governance and Traditional Affairs was directed to appoint her representative to undertake the function in terms of section 51 of the Systems Act to establish and organise the administration in a manner that would enable the municipality to achieve the objects of local government as set out in section 152 of the Constitution;
- The purpose of the intervention is to ensure that that the municipality meets its constitutional objectives within the constitutional imperative of legality and participatory democracy;
- The Municipality has been informed of the intervention, statutory letters to the NCOP, National Minister and KZN Legislature have been dispatched.

THANK YOU

PEOPLE-CENTERED SUSTAINABLE CO-OPERATIVE GOVERNANCE WHICH FOCUSES ON EFFECTIVE SERVICE DELIVERY RESPONSIVE TO THE NEEDS OF THE COMMUNITY

