



Established 1853

# McWilliams & Elliott Incorporated

ATTORNEYS NOTARIES AND CONVEYANCERS

**THE ACTING CITY MANAGER**  
Knysna Municipality  
5 Clyde Street  
Knysna  
6570  
PER EMAIL: knysna@knysna.gov.za

Our Ref: IP/sm

Your Ref:

Date: 05 JUNE 2020

Dear Sir,

**RE: DR VATALA v KNYSNA MUNICIPALITY: UNLAWFUL SUSPENSION**

1. We confirm that we are instructed to act for Dr Vatala with regards to his suspension.
2. We are instructed to record that in our client's view his suspension has automatically lapsed given the provisions of the Local Government Disciplinary Regulations applicable to senior managers as gazetted on 21 April 2011 (*"the Disciplinary Regulations"*).
3. In our client's view there are two provisions in the Disciplinary Regulations which are applicable.
4. Firstly, there is section 9 of the Disciplinary Regulations provides as follows:
  - (9) (1) *The notice contemplated in sub-regulations 8(3) must be given to the senior manager in writing at least seven [7] days before the date of the hearing.*
  - (2) *The notice of the disciplinary hearing contemplated in sub-regulation (1) must. Substantially be compliant with Annexure F"*
5. Secondly, there is section 6 of the Disciplinary Regulations which provides as follows:
  - (6) (a) *If a senior manager is suspended, a disciplinary hearing must commence within three months after the date of suspension, failing*

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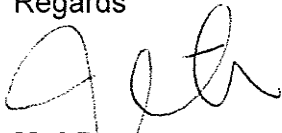
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*which the suspension will automatically lapse.*

*(b) The period of three months referred to in paragraph (a) may not be extended by council."*

6. When it comes to the facts relevant to this matter what happened is that one day before the purported disciplinary hearing, namely on 11 May 2020, our client was informed by way of a one lined email that the hearing would proceed on 12 May 2020.
7. There was thus clearly material non-compliance with the mandatory provisions contained in section 9 in that:
  - 7.1 As opposed to affording our client seven days' notice of the hearing he was afforded effectively less than one day's notice; and
  - 7.2 Instead of furnishing our client with a notice substantially the same as annexure F he received a one line email.
8. In our view there can be no excuse for such conduct. Even with the lockdown there was nothing preventing the Municipality from giving our client a timeous notice of the hearing and from furnishing our client with a notice substantially compliant with annexure F.
9. The question which arises is why would there be such a material degree of non-compliance with the peremptory regulations. It is not difficult to find a motive therefore.
10. Unless you can apprise us differently, the irresistible inference is to be found in the circumstance that the Municipality belatedly realised that if it complied with the regulations it would not be in a position to hold the hearing prior to the automatic lapsing of the suspension of our client.
11. It follows that the Municipality decided, deliberately so, to contravene the regulations in a thinly veiled but impermissible attempt to thwart the automatic lapsing of our client's suspension. Self-evidently such conduct is not lawful. A party cannot set a matter down with an ulterior purpose.
12. To aggravate matters, we are informed by our client that the above defects in the notice were not disclosed to the Presiding Officer. If we are wrong in this regard, please let us know as to how it was disclosed to the Presiding Officer and what his response was thereto.
13. Either way, we have now explained the position to our client who is a layman and who was unaware of the legal consequences of the conduct of the Municipality and it is our client's contention that the provisions referred to above are clearly peremptory and a failure to comply with them will mean that the notice and thus the holding of the enquiry were nullities and fall to be disregarded.
14. In the result, our client's suspension has automatically been uplifted and our client hereby tenders his services to return to fill his position. Should we not hear anything further from you, our client will report for duty at 08h00 on Tuesday, 9 June 2020.

Regards



**Mr I Petersen**  
**McWILLIAMS ELLIOTT**

**AND TO: MINNAAR NIEHAUSE**  
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**AND TO: LULAMA PRINCE INC.**  
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**AND TO: KNYSNA MUNICIPALITY LEGAL DEPARTMENT**  
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