

TO: EPHRAIM MOGALE LOCAL MUNICIPALITY

**RE: EPHRAIM MOGALE LOCAL MUNICIPALITY // MS
MATHARA MONICA MATHEBELA**

DATE: 09 NOVEMBER 2020

LEGAL OPINION

INTRODUCTION:

1.

Machaka NC Incorporated has been asked to express an opinion on the following:

- 1.1 The implication of compliance/implementation or the non-compliance/non-implementation of the settlement agreement concluded in the month of October between Ephraim Mogale Local Municipality and Ms MM Mathebela in view of the recovery of irregular expenditure process in terms of section 32 (1) (c), (d) and (2) of the Local Government: Municipal Finance Management Act, 2003(Act No: 56 of 2003).

- 1.2 For the purpose of this opinion the writer has been briefed/instructed with the following:
 - 1.2.1 Certain correspondence between Ephraim Mogale Local Municipality (hereinafter referred to as "the Municipality") and Limpopo Provincial Treasury Department (hereinafter referred to as "the Provincial Treasury") regarding the implementation of recommendations of the report on an investigation into the irregular investment made by 12 Limpopo Municipalities (LPT 003 / 2018-V05/N003/2018).
 - 1.2.2 Council Resolution Number: SCS/05/2020 regarding the implementation of recommendations of the report on an investigation into the irregular investments made by 12 Limpopo Municipalities (LPT 003 / 2018-V05/N003/2018) including Ephraim Mogale Local Municipality and the recovery of irregular expenditure in terms of section 32 (1) (c), (d) and (2) of the Local Government: Municipal Finance Management Act, 2003(Act No: 56 of 2003).
- 1.3 Due to its involvement in the review application against the ruling of the chairperson in the disciplinary proceedings against Ms Mathara Monica Mathebela, Machaka NC Incorporated, *inter alia*, has in its possessions, the review papers, the letter to the judge president

requesting an expedited and/or preferential date for hearing the review application, Resolution SC1/12/2020 dated 27 August 2020 regarding an out of court settlement in the review application between Ephraim Mogale Local Municipality and the Ms MM Mathebela and the settlement agreement.

- 1.4 For the purpose of this opinion it is important to record that the Municipality requested an opinion insofar as compliance or non-compliance with the provisions of the settlement agreement are concerned.
- 1.5 This question which is the subject of this legal opinion involves two aspects in law namely, the law of contract and administrative law. The Municipality specifically requested an opinion on the potential consequences in the event of non-compliance (breach) with the provisions of the settlement agreement, especially the potential consequences of non-payment of twelve (12) months' salary in full and final settlement of the dispute are relevant.
- 1.6 Though we were not provided with the instructions or required to pronounce on the lawfulness, or otherwise of the settlement agreement. It is however our considered opinion, that the Municipality is compelled in law to comply with the provisions of all applicable legislation including the Municipal Finance Management Act no 56 of 2003 ("the MFMA") or any other relevant statute that

may be applicable to the Municipality and its statutory duties and obligations are of legal force and/or effect.

- 1.7 As regards the question of lawfulness, the statutory compliance came to mind, however, due to lack of instruction on the administrative statutory compliance with all applicable legislation by the Municipality leading to the conclusion of the settlement agreement, this opinion will be confined to the contractual issues in accordance with the law of contract; especially the breach of contract (non-compliance with the settlement agreement) are of relevance and applicable.
- 1.8 Suffice it to submit a note of caution to the Municipality insofar as statutory compliance are of importance; in that the non-compliance with all applicable legislation will render the settlement agreement as a whole unlawful and therefore of no cause or effect, void and unenforceable.
- 1.9 We therefore reiterate that for the purpose of this opinion, based on the instructions of the Municipality as well as the documents provided the opinion are set out below.

THE BACKGROUND AND FACTS:

2.

- 2.1 The following facts are common cause insofar as they appear from the documents in our possession, including those that form part of the application for review in the Labour Court against the disciplinary findings cum 'recommendations' of the chairperson who presided over disciplinary proceedings instituted against Ms Mathebula ("the Employee"), as well as documentation received thereafter, which contents and relevance will be referred to briefly below.
- 2.2 On 26 October 2018 the Council referred an allegation that the municipal manager, Ms M M Mathebela ("the Employee"), irregularly invested money in the Venda Building Society ("VBS") to the Council's Financial Misconduct Board.¹
- 2.3 On 12 December 2018 the Council suspended the municipal manager with full pay.²
- 2.4 On 14 December 2018 the Council considered the report from its Financial Misconduct Board and resolved that the investment of the moneys in the VBS Bank be referred to the next level of investigation in terms of Regulation 5(4) of the Municipal Regulations on Financial Misconduct Procedure and Criminal Proceedings. In terms of the

¹ Mayor's Report to the Special Council Meeting of 20 June 2019

² Disciplinary Ruling: par [15], p 7

resolution taken on 14 December 2018 it was decided that after the supply chain process has been followed an external investigator be appointed.

2.5 Lucky Thekiso Inc (appointed as the external investigator) completed its investigation report into the financial misconduct in respect of funds deposited with VBS on 28 February 2019. In terms of the report (which consists of a Part A and Part B) the external investigator found, *inter alia*, that the municipality, in transferring R80 million from its FNB account to VBS failed to comply in various aspects with the provisions of the Municipal Finance Management Act, no 56 of 2003 ("the MFMA").³ The report recommended that disciplinary steps be implemented against the municipal manager, Ms M M Mathebela (hereinafter referred to as "the Employee") or "the Municipal Manager") and the Chief Financial Officer, Ms K Ramosibi. It was also recommended that steps in terms of the Code of Conduct for Councillors be taken against the former mayor of the municipality.

2.6 Adv Jimmy Hlongwane was appointed as the disciplinary chairperson of the disciplinary hearing against the municipal manager, Ms M M Mathebela and the chief financial officer, Ms K A Ramosibi.

³ Para 7.1 and 7.2, p 24 of the Thekiso Investigating Report

- 2.7 On 7 March 2019 the Chief Financial Officer resigned with immediate effect.
- 2.8 On 8 March 2019 a charge sheet was served on the Municipal Manager. The charge sheet as provided for in the provisions of the Local Government Disciplinary Regulations for Senior Managers, 2010⁴ ("the Disciplinary Regulations"). The charge sheet consisted of five charges of misconduct based on the provisions of the MFMA. Count No 2 and Count No 5 also contained alternative counts.
- 2.9 The counts were based on the Municipal Manager's transgression of the provisions of the MFMA.
- 2.10 The disciplinary hearing was scheduled for 18 March 2019 but was postponed to 13 May 2019 to enable the parties to exchange documents and to conduct a pre-hearing meeting.⁵
- 2.11 Adv Hlongwane, on 25 May 2019, in his Disciplinary Ruling, made a recommendation that, first, the employee be suspended without pay for a period of 3 months, and, secondly, that she be ordered to attend short courses in management, investment and finance in order to sharpen her management skills, particularly in investment.⁶

⁴ Disciplinary Ruling: par [16], p 7

⁵ Disciplinary Ruling: par [3], p 2

⁶ Disciplinary Ruling: par [67], p 33

- 2.12 The speaker of the Council, Cllr B Modisha, on 18 June 2019, gave notice in terms of section 29 of the Local Government Structures Act, No. 117 of 1998 that a Special Council Meeting will be held on 20 June 2019.⁷
- 2.13 The Disciplinary Ruling by Adv Jimmy Hlongwane in the disciplinary hearing between the Municipality and the municipal manager, Ms M M Mathebela, was, on 20 June 2019, presented to the Council. The report dealt briefly with the history of and the recommendations by the disciplinary chairperson, Adv Jimmy Hlongwane.⁸
- 2.14 On 20 June 2019, the Council of the consultant took a resolution that:
- “1. *That Council note the disciplinary hearing of Municipal Manager Ms Mathara Monica Mathebela as represented by Advocate Hlongwane.*
 2. *That Council note the recommendations of the disciplinary hearing report.*
 3. *That Council review the matter to labour court with immediate effect.*

⁷ Notice issued on 18 June 2019

⁸ See the Mayor's report prepared for the council meeting held on 20 June 2019

4. *That Acting Municipal Manager Mr Makoko Lekola must inform municipal manager Ms Monica Mathebela in writing not to report on duty until the matter is finalized.*
5. *That Acting Municipal Manager implements the decision accordingly.”⁹*

REVIEW APPLICATION:

3.

- 3.1 Notwithstanding the seriousness of the charges, to which Ms MM Mathebela submitted a plea of guilty and to the Municipality's surprise and concern the Chairperson of the disciplinary hearing(Adv Jimmy Hlongwane), on 25 May 2019, made a finding that, Ms MM Mathebela be suspended without pay for a period of 3 months, and, secondly, that she be ordered to attend short courses in management, investment and finance in order to sharpen her management skills particularly in investment.
- 3.2 As a consequence of the Chairperson of the disciplinary hearing's contentious recommendation the speaker of the Council called for a special Council meeting to be held in order to address the patent and inherent gross irregularities, material defectiveness of the Chairperson of the disciplinary hearing's findings; especially the

⁹ Extracts from the minutes of the 16th Special Council Meeting held on 20 June 2019

failure to appreciate and attach any weight to the public interest, the financial losses incurred by the tax payer as a consequence of the Employee's misconduct and the gross inappropriateness of the sanction, the resolution was made that the findings be taken on review to the Labour Court with immediate effect and that the Acting Municipal Manager inform the Employee not to report for duty until the review application has been adjudicated by the Labour Court.

- 3.3 Following thereon the Applicant's attorneys of record on 30 August 2019 delivered the application for review in compliance with Rule 7A of the Rules of the Labour Court.
- 3.4 Of importance is that the review application was paginated and indexed in compliance with Rule 22B on 30 January 2020 and for all intents and purposes stood uncontested.
- 3.5 It should be mentioned that Ms MM Mathebela's (Employee) appointed attorneys of record Mushwana Incorporated on 30 January 2020, filed a notice of appointment of attorneys of record.
- 3.6 Ms. MM Mathebela's attorneys failed to comply with the Court Rules by filing an affidavit in answer to the Municipality's founding affidavit in answer to the allegations made by the Municipality therein. At the time of filing the Notice of Appointment as Attorneys of Record on 30 January 2020, the Chairperson of the

disciplinary hearing was already late with the filing of the answering affidavit.

- 3.7 On 02 March 2020, Machaka NC Incorporated directed correspondence to the Registrar of the Court that the matter remained unopposed in terms of Rule 7A (9) insofar as the Ms MM Mathebela did not deliver answering affidavits to the Municipality's founding affidavit. The Municipality requested that the application be set down on the unopposed roll.
- 3.8 On 03 March 2020, following the Court's directive, the Municipality delivered its Heads of Argument, namely on 05 May 2020. It should be mentioned that in the Court's directive it was indicated that the matter stands opposed because of the Notice to Oppose served on 31 January 2020.
- 3.9 As late as 15 May 2020, Ms MM Mathebela's attorneys filed an opposing affidavit and an application for condonation which the Municipality's attorneys opposed by filing opposing papers to the condonation application as well as a reply to the erstwhile Municipal Manager's replying affidavit, insofar as it may be necessary.
- 3.10 The above constitutes a brief factual background and summation of the material facts including the grounds on which the Municipality brought an application for the review application to be heard on an expedited date.

SETTLEMENT:

4.

- 4.1 Following thereon and pursuant to a special Council meeting held on 27th August 2020 it was, *inter alia*, resolved that the dispute between parties be settled by means of compensation equivalent to Ms. MM Mathebela's twelve months' salary, in full and final settlement, with the proviso that Ms. MM Mathebela's tender resignation immediately upon acceptance of the settlement proposal.
- 4.2 A special Council meeting was held on 22nd October 2020, where a resolution was handed down wherein it was, *inter alia*, resolved that notwithstanding the settlement of the pending Labour Court Application, civil proceedings in terms of section 32(1)(c), (d) and section 32 (2) Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) should be launched against Ms. MM Mathebela with the purpose of recovery of the irregular expenditure in the form of an irregular investment made and/or authorised by the Employee with VBS Mutual Bank.
- 4.3 Ms. MM Mathebela tendered resignation on 21 October 2020 in accordance with the settlement agreement. It follows that payment of the agreed amount equal to twelve months' (12) salary

should be made to Ms. MM Mathebela in compliance with the agreement.

- 4.4 On or about the 09th October 2020 the Treasury Department of Limpopo Provincial Government served a letter on the Council wherein it is recommended that the Council, *inter alia*, institute civil proceedings against the Ms. MM Mathebela as well as other parties that have been involved in the irregular investments with the purpose of recovery of the amounts invested by the municipal officials involved.
- 4.5 Pursuant to a meeting with the consultant on 05th November 2020 the questions raised at the consultations are addressed in the opinion that follows below.

THE LEGAL POSITION:

5.

Settlement Agreements

- 5.1 It is important to note that it is not uncommon for the parties involved in litigation to conclude out of court settlements before the matter comes to court or before an arbitrator.¹⁰

¹⁰ John Grogan "*Workplace Law*" (2014) 11 ed., 206 to 207

- 5.2 Parties to a settlement agreement cannot normally proceed to litigate against each other, because the settlement agreement to a particular extent constitutes a waiver of their rights against each other in so far as the issues which forms part of the settlement have been resolved.¹¹
- 5.3 However, the settlement agreement should have been concluded in good faith¹² and the parties must be aware of the binding nature and consequences of a settlement agreement.¹³
- 5.4 Once an employer has unambiguously agreed to pay the settlement amount to the employee, it cannot subsequently renege from the settlement agreement, unless facts giving rise to misrepresentation or fraud exists.¹⁴
- 5.5 It is submitted that the same principles as discussed in paragraphs 1.3 and 1.4 are applicable when parties enter into a settlement agreement especially insofar as the offer of settlement should be made and accepted in good faith. [Emphasis added].

¹¹ See: *Ferguson v Basil Read (Pty) Ltd* [2013] 3 BLLR 174 (LC).

¹² See: *Ocean Basket Airport v Bargaining Council for Restaurant Catering & Allied Trades* (2013) 34 ILJ 1569 (LC), where the Court held that an offer to reinstate the employee and offer him an appeal had not been made in good faith.

¹³ See: in *Johnson v Anglo Operations Ltd t/a Boart Longyear Operations* (2005) 26 ILJ 2216, where the Labour Court held that CCMA Commissioners have jurisdiction to determine the validity of settlement agreements.

¹⁴ See: *Venture Otto (Pty) Ltd v Metal & Engineering Industries Bargaining Council & others* (2005) 26 ILJ 349 (LC).

- 5.6 Settlement agreements may be made orders of the Labour Court, which renders the parties liable for contempt of Court if the agreement is not honored.
- 5.7 Against the above legal background, the consultant raised the possibility of non-compliance with the settlement agreement, ostensibly based on the grounds of 'misrepresentation.' The misrepresentation cited was that at the time of the settlement agreement when the Council resolved to settle the matter it did not have the view of the Provincial Treasury letter dated 09 October 2020, *inter alia*, recommending that the steps providing for civil recovery in terms of section 32(1)(c) and section 32(2) of the MFMA be considered against the Municipal Manager and the Chief Financial Officer.
- 5.8 Following below, general submissions on the law as to the effects of misrepresentation on a contract / settlement agreement.

Misrepresentation and fraud

- 5.9 In short, the general effect of misrepresentation and fraud on a contract can be captured in brief. A party who has been induced to enter into a contract by the misrepresentation of an existing fact is entitled to rescind the contract **provided the misrepresentation**

was material, was intended to induce him to enter into the contract and did so induce him.¹⁵

- 5.10 In modern law, in which all contracts are *bonae fide*, it is not necessary to prove that a misrepresentation was fraudulent in order to invalidate the contract/agreement, and the innocent party is equally entitled to rescind whether misrepresentation was fraudulent or innocent.¹⁶
- 5.11 According to Christie at 271, the reason is that, once it has been discovered that the representation was incorrect it is against good faith for the party who made it to continue to hold the innocent party to a contract so obtained.
- 5.12 The question that comes to mind is, what is misrepresentation and under what circumstances would such misrepresentation entitle the innocent party to resile from the contract /settlement agreement?

¹⁵ R H Christie "*The Law of Contract in South Africa*" (2006) LexisNexis 5th ed, 271, where the learned author refers to *Viljoen v Hillier* 1904 TS 312 315 as regards the rights of the innocent parties in the case of misrepresentation/fraud

¹⁶ *Parke v Hamman* 1907 TH 47 52

What Is Misrepresentation?

5.13 In the case of ***Slabbert v MEC for Health and Social Development, Gauteng***¹⁷, the court was confronted with an appeal against the decision of the Gauteng High Court in Pretoria whereof the Pretoria High Court set aside the consent order and the underlying compromise agreement. The facts in Slabbert case are relevant to the opinion required by the Municipality in so far as it relates to the Minister of Social Development who approached the Supreme Court of Appeal seeking, *inter alia*, seeking an order to set aside a compromise agreement. To the extent where it is relevant, the writers would refer and/or quote the relevant parts of the judgement in order to respond to the question raised by the consultant in seeking the legal opinion.

5.14 The Slabbert case relates to an application for rescission whereof the MEC relied on the report of Prof Smuts which was alleged to contain new evidence that had not been available to her prior to the conclusion of the compromise agreement.

5.15 It should be noted that the court upheld the appeal with costs including the costs of two counsels. The court, *inter alia*, held as follows:¹⁸

¹⁷ (432/2016) [2016] ZASCA 157 (3 October 2016)

¹⁸ *Slabbert v MEC for Health and Social Development, Gauteng*, 432/2016) [2016] ZASCA 157 at para 7- 8

[7] An agreement of compromise creates new rights and obligations as substantive contract that exists independently from the original cause.¹⁹ The purpose of a compromise is twofold: (a) to bring an end to existing litigation and (b) to prevent or avoid litigation.²⁰ When a compromise is embodied in an order of court the order brings finality to *lis* between the parties and it becomes *res judicata*.²¹ The court order changes the terms of a settlement agreement to an enforceable court order -through execution or contempt proceedings.²² Thus litigation after the consent order will relate to non-compliance with the consent order and not the underlying dispute.

[8] This being said, a **transactio** (compromise) is made by consent between parties and like any contract or order of court made by consent, it may be set aside on ground that it was fraudulently obtained. It may also be set aside on the ground of **justus** error, provided that such error vitiated true consent and did not merely relate to motive or to the merits of a dispute which it was the very purpose of the parties to compromise.²³ A compromise agreement may also be set aside if the parties to the agreement laboured

¹⁹ Road Accident Fund v Ngubane [2007] ZASCA 114; 2008(1) SA 432(SCA) para 12

²⁰ Vena v Port Elizabeth Divisional Council 1933 EDL 75 at 87

²¹ Gollach & Components (1967) (Pty) Ltd v Universal Mills & Produce Co (Pty) Ltd & others 1978 (1) SA 914 (A) at 922C

²² Eke v Parsons [2016] ZASCA 97 para 9

²³ Gollach (above) at 922H-923A

under a common mistake. However, a unilateral mistake on the part of one party that does not flow from a misrepresentation by the other does not allow for the former party to resile from the consent agreement.²⁴ The question thus is whether one of these grounds exists for the MEC to resile from the compromise agreement.

[15] The compromise agreement thus cannot be set aside on the basis of a mutual error as there was no mutual error. The MEC cannot rely on her own mistake to avoid contract which was in any event initiated by her.²⁵ The unilateral mistake accordingly did not amount to a *justus* error. As stated by Christie:²⁶

‘However, material the mistake, the mistaken party will not be able to escape from the contract if his mistake was due to his own fault. This principle will apply whether his fault lies in not carrying out reasonably necessary investigations before committing himself to the contract that is, failing to do his homework’ (Footnote omitted).

[16] Parties to a compromise agreement accept an element of risk that their bargain might not be as advantageous to them as litigation might have been. This

²⁴ *Botha v Road Accident Fund* [2016] ZASCA 97 para 9

²⁵ *Botha* (above) para 11; and *Palcor Quarries CC v Issroff and others* 1998 (4) SA 1069 SECLD at 1085A-E

²⁶ RH Christie & G B Bradfield *Christie's Law of Contract in South Africa* 6 ed (2011) at 329-330.

element of risk is inherent in the very concept of compromise.

Unilateral Mistake:

5.16 A unilateral mistake that does not flow from the misrepresentation of a party and is not reasonable, does not permit the mistaken party to resile from the agreement. The unmistaken party is entitled to certainty and the right to enforce a contract lawfully entered.

WHETHER THE MUNICIPALITY CAN RESILE FROM THE SETTLEMENT:

6.

6.1 Similarly as in the above referred Slabbert case, it is the writer's opinion that the court would not come to the aid of the Municipality where it could elect not to implement the settlement agreement and approach the court to set aside the settlement agreement. The view is informed by the fact that there is no existence of misrepresentation on the part of the other party which could have induced the Municipality in resolving to conclude the settlement agreement.

6.2 There are risks associated with not honouring the settlement, which, *inter alia*, include the possibilities of the court dismissing an

application to set aside the settlement agreement with punitive costs.

The implications of not implementing the settlement agreement and consideration of other options

6.3 The writers have considered other options, which, *inter alia*, the possibilities of bringing an application to stay the execution pending the finalisation of the recovery claim litigation and pay the amount equivalent to the amount of settlement agreement into the account of the sheriff and/or the attorney's trust account who will in turn issue security as stated in this paragraph.

6.4 However it should be mentioned that the approach opined at paragraph 6.3 is dependent on the following:

6.4.1 That in addition to the recovery process an application to stay the execution of the settlement agreement/court order pending the finalisation of the recovery process.

6.4.2 The success of the approach at 6.4.1 above is reliant on the possibility of the court ruling in favour of the Municipality in an application to stay the execution of the award pending the recover process.

6.4.3 The challenge with the above approach is that the court might have issues against the Municipality in so far as its bona fides are concerned when it resolved the matter.

The non - implementation or suspension of the implementation of settlement agreement pending the outcome of the recovery claim litigation might be viewed as an act of *mala fide* and might be visited with a punitive cost order against the Municipality.

6.5 The risk associated with not implementing the settlement agreement can be summed as follows:

6.5.1 The court refusing an application to stay the execution of the settlement agreement with a punitive cost order against the Municipality.

6.5.2 The risk of the accounting officer being found to be in contempt of court as the parties have agreed in the settlement agreed that it be made an order of court and at the time of this opinion the applicant's attorney had already initiated the process of making the settlement agreement an order of court.

Whether there is an existence of misrepresentation to vitiate the consent of the parties

6.6 The consultants / Municipality in the consultation of 05 November 2020, cited misrepresentation in that when the settlement agreement was concluded, a letter of 09 November 2020 was concealed from and/or that they did not have the view of the letter. At this stage, I wish to *ad seriatim*, state how the settlement agreement was concluded:

6.6.1 The settlement negotiation was an ongoing process which ensued started as back as 30 January 2020 with a settlement agreement of three (3) months which was directed to Ms. MM Mathebela by the Municipality.

6.6.2 The parties differed in so far as the settlement amount was concerned and made counter offers to each other until the Ms. MM Mathebela made a counter proposal of 12 months on 05 August 2020, in full and final settlement of the dispute (review application) between the parties.

6.6.3 The Council resolved on 27th August 2020 to pay the Municipal Manager twelve (12) months' salary in full and final settlement and the acting municipal manager was instructed to implement the resolution.

- 6.6.4 The above resolution was communicated to the attorney to communicate the resolved settlement proposal with Ms. Mathebela which resulted in a draft settlement agreement.
- 6.6.5 The Council signed the settlement agreement on 06 August 2020 with the Applicant signing on 12 August 2012.
- 6.6.6 The Provincial Treasury send a letter to the Municipality on 12 August 2020, requesting feedback on the implementation of the recommendation of the report on an investigation into the irregular investments made by 12 Limpopo Municipalities which includes Ephraim Mogale.
- 6.6.7 At the time on which the Council became aware of the correspondence it was the time upon which the settlement agreement was to be fulfilled/implemented.
- 6.7 The writers considered all the facts and concluded that there are no facts to sustain the view that the Municipality was misrepresented in concluding the settlement agreement.
- 6.8 The writers have further considered circumstances leading to the Council resolving the dispute, which could reasonably be viewed to have been reasonable under the circumstances, which amongst other things include the following:

- 6.8.1 That the Municipality took disciplinary action against Ms. MM Mathebela.
- 6.8.2 In view of the seriousness of the allegations against Ms. MM Mathebela, the Municipality challenged the ruling of the Disciplinary hearing by reviewing it.
- 6.8.3 The Municipality made efforts to expedite the hearing of the review application, by *inter alia*, directing a request/application to the Labour Court Judge President, requesting the preferential hearing date but the request was impacted by COVID-19 regulations resulting in the Court indicating that the allocation of the date may be considered in 2021.
- 6.8.4 The Municipality was without a substantive Municipal Manager since December 2018.
- 6.8.5 The Municipality continued to pay the salary of Ms. MM Mathebela and the acting allowance to the acting municipal managers.
- 6.8.6 That the Municipality continued incurred legal costs and by not implementing the settlement agreement, it will continue to incur further legal costs for further legal actions in resisting the implementation of the settlement agreement.

CONCLUSION:

7.

- 7.1 The Municipality signed the agreement on 06 August 2020 and the letter dated 09 October 2020 from treasury came after the facts, that is after the Municipality has signed the settlement agreement.
- 7.2 Subject to the proviso that the Municipality complied with its legal obligations as per various statutes and regulations and in view of the above fact including the absence of facts (misrepresentation or fraud) that could vitiate the consent of the parties when concluding the settlement agreement; it is the opinion of the writer that the Municipality should implement the terms of the settlement agreement and proceed to institute the civil recovery legal proceedings in terms of section 32(1) (c) , (d) and section 32(0 of the MFMA against the erstwhile Municipal Manager and Chief Financial Officer.
- 7.3 In conclusion and insofar as the lawfulness of the settlement agreement we reiterate the note of caution referred to in paragraphs 1.6 to 1.9. are concerned.



NAKEDI MACHAKA
MACHAKA NC INCORPORATED