



EPHRAIM MOGALE LOCAL MUNICIPALITY REPORT BY THE MAYOR

REPORT ON THE MATTERS BETWEEN THE MUNICIPALITY AND THE FORMER MUNICIPAL MANAGER

1. PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to give a brief overview of the sequence of event in a matter between the municipality and the former municipal manager.

2. OVERVIEW

2.1

Item	Action Description	Date	Comments
1.	Investment with VBS	7 th September 2017	
2.	MPAC report on VBS Investment	14 th June 2018	
3.	Report by Grant Thornton dated 22 nd August 2018 on VBS Investment is submitted to Council for consideration.	30 th August 2018	
4.	Matter referred to Financial Misconduct Committee	26 th October 2018	
5.	Financial Misconduct Committee report and recommends that the matter be investigated externally	11 th December 2018	
6.	Council resolves to issue a Notice of Intention to suspend the Municipal Manager	26 th October 2018	
7.	Notice of Intention to suspend the Municipal Manager	29 th October 2018	
8.	Suspension of the municipal manager	18 th December 2018	
9.	Investigation report by Lucky Thekisho Incorporated is submitted to Council.	5 th March 2019	
10.	Council resolves to institute disciplinary proceedings against the municipal manager	5 th March 2019	
11.	Council resolves to appoint the prosecutor and chairperson of the disciplinary hearing.	5 th March 2019	
12.	Disciplinary enquiry convened	18 th March 2019 and 13 th May 2019	

13.	Ruling	25 th May 2019 SANCTION That the Employee be suspended without pay for a period of three months. That the Employee be ordered to attend short courses in management, investment and finance in order to sharpen her management skills particularly.	
14.	The Chairperson of the Disciplinary Hearing issued out a sanction.	25 th May 2019	
15.	Ruling/Sanction of the Chairperson of the Disciplinary Hearing submitted before Council in line with Regulation 12 (2) (e) of the Local Government: Disciplinary Regulations for Senior Managers, 2010.	20 th June 2019	
16.	Council resolves to file a review of the Chairperson's ruling in line with section 158 of the Labour Relations Act at the Labour Court <i>(Council Resolution -Annexure A (1))</i>	20 th June 2020	Council viewed the sanction meted out against the municipal manager as been too lenient and not fitting the misconduct committed. The sanction meted out is not proportionate to the misconduct.
17.	N C Machaka Attorneys is appointed to file a Review Application at the Labour Court and the review is filed	30 August 2019 (Filing of Review Application)	
18.	Municipal Manager files opposing papers, including Condonation Application at the Labour Court		The Municipal Manager did not file any opposing papers since the 30 August 2019 and when the attorneys representing the municipality was in the process of requesting a trial date, the municipal manager then files her opposing affidavits.

19.	Municipality files its papers its opposing papers including notice to oppose condonation by the municipal manager	22 nd May 2020	
20.	<p>Attorney advised that the Labour Court has issued a directive to the effect that the Court will no longer set down any matters for oral hearing in light of the declaration of the state of the national disaster by the President of the Republic of South Africa which prohibited, <i>inter alia</i>, gatherings, movements of persons and others. The attorney advised that only urgent matter will be heard and the Court is encouraging parties to settle their matters out of court.</p> <p>Matters would only be set down after April 2021.</p>		<p>This new development by the Labour Court that it will no longer set down any matters on the roll for oral hearing and that matters will only be set down after April 2021 led to the municipal council to start thinking about settling the matter out of court.</p> <p>It was obvious that the matter will only be heard somewhere after April 2021.</p> <p>The municipal manager was still drawing her full salary with all the fringe benefits attached to her salary.</p> <p>There was also an uncertainty as to when and how will the matter finally disposed off by the Labour Court which meant that the municipality would still incur further legal costs.</p> <p>The municipal council then decided to look into the possibilities of settling the matter out of court.</p>

21.	Council resolves to settle the matter out of court. (Council Resolution - Annexure B (1-2))	27 th August 2020	
22.	Settlement Agreement signed by both parties	6 th October 2020 and 12 th October 2020	
23.	Municipal Manager tendered her resignation.	19 th October 2020	
	TIME-LINES BETWEEN THE 19TH OCTOBER 2020 AND 10 DECEMBER 2020. (WHEN THE FORMER MUNICIPAL MANAGER TENDERED HER RESIGNATION AND WHEN COUNCIL RESOLVES NOT TO IMPLEMENT THE SETTLEMENT AGREEMENT)		
24.	Item on the resignation of the municipal manager serves before municipal Council Council Resolution - Annexure C (1)	22 nd October 2020	Municipal council resolves to defer the item for further investigations
25.	Item on the settlement agreement serves before the municipal council Council Resolution - Annexure D (1)	29 th October 2020	Municipal Council resolves to defer the item for further information.
26.	Item on the settlement agreement serves before the municipal council Council Resolution - Annexure E (1).	17 th November 2020	Council resolves to instruct an attorney to institute civil action against the former municipal manager. (Council resolution dated 17 November 2020 is attached.
27.	Legal Opinion from Machaka N C Attorneys dated 9 November 2020 received by the municipality on the 25 November 2020 The legal opinion recommended that the settlement agreement be implemented. Legal Opinion – Annexure F (1-26)	25 th November 2020	

28.	<p>Council had a consultation with Dabishi Nthambeleni Incorporated to seek their opinion on the implementation of a settlement agreement and in view of a legal opinion received from Machaka N C Attorneys.</p> <p>Dabishi Nthambeleni Incorporated was of the view that settling the matter would be irregular.</p>	04 th December 2020	
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29.	<p>Legal Opinion from Machaka N C Attorneys and Items on the resignation of the former municipal manager and signed settlement agreement serves before municipal council. Municipal Council resolved to:-</p> <ul style="list-style-type: none"> (a) Accept the resignation of the municipal manager from her position as the municipal manager. (b) To note a legal opinion from Machaka N C Attorneys with regard to the settlement agreement, and held a strong view that the legal opinion is not precise on how the matter should be concluded and rejected the legal opinion. (c) To file an application to have the signed settlement agreement set-aside. <p>(Council Resolution marked Annexure G (1-2) and H (1-2))</p> <p><i>(NB. A settlement agreement has been signed but NOT implemented and NO payment was made to the municipal manager in the form of a hand shake except her salary after her resignation)</i></p> <p><i>Settlement Agreement –Annexure HMP1</i></p>	10 th December 2020	<p>Dabishi Nthambeleni Incorporated was of the view that settling the matter would be irregular in view of the fact the investment made will be irregular.</p> <p>Based on the opinion from Dabishi Nthambeleni Incorporated though not in writing, the municipal council resolved not to go ahead in implementing the settlement agreement. The municipality had also received a letter from the Limpopo Department of Treasury which wanted progress on the implementation of the recommendations from their investigation which recommended that the municipality must recover from the municipal manager.</p> <p>The portfolio committee may contact Dabishi Nthambeleni Incorporated at (012) 323 4583 or 072 219 5751</p>
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Legal Costs paid for review: R 726 327, 63.

The municipality has instructed the attorneys to file an application at the Labour Court to set aside the settlement agreement and civil proceedings at the High Court for the recovery in line with section 32 (1) (c) & (d) of the MFMA.

The matters are still before the courts and sub-judice.

Hope the above is in order,

Kind Regards

A handwritten signature in black ink, consisting of a series of vertical strokes and a curved line at the bottom.

CLLR: MOLAUDI MOTHOGWANE
MAYOR.