

**IN THE HIGH COURT OF SOUTH AFRICA**  
**(NORTH WEST DIVISION, MAHIKENG)**

CASE NO.: M311 /2021

In the application between:

**SAKELIGA NPC**

Applicant



and

**THE MEMBER OF THE EXECUTIVE COUNCIL:**

**NORTH WEST PROVINCE: COOPERATIVE GOVERNANCE,  
HUMAN SETTLEMENT AND TRADITIONAL AFFAIRS**

1<sup>st</sup> Respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL:**

**NORTH WEST PROVINCE: FINANCE**

2<sup>nd</sup> Respondent

**THE MINISTER: NATIONAL DEPARTMENT OF**

**COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

3<sup>rd</sup> Respondent

**THE MINISTER OF FINANCE**

4<sup>th</sup> Respondent

**DITSOBOTLA LOCAL MUNICIPALITY**

5<sup>th</sup> Respondent

**NALEDI LOCAL MUNICIPALITY**

6<sup>th</sup> Respondent

**THE PREMIER: NORTH WEST PROVINCE**

7<sup>th</sup> Respondent

**ESKOM SOC LIMITED**

8<sup>th</sup> Respondent

**MAGALIES WATER BOARD**

9<sup>th</sup> Respondent

**SEDIBENG WATER BOARD**

10<sup>th</sup> Respondent

**NOTICE OF MOTION**

**TAKE NOTICE** that the applicant intends making application to this Court for an order in the following terms:

1. That the fifth and sixth respondent municipalities be found in terms of Section 139 (5) of the Constitution, read with Sections 136 (4), 139 and 140 of the Local Government: Municipal Finance Management Act, No. 56 of 2003 ("MFMA"), to be in serious and persistent material breach of their obligations to provide basic services and to meet their financial commitments.
2. That the first and second respondent's failure to implement mandatory intervention in terms of Section 139 (5) read with Sections 136 (4), 139 and 140 of the MFMA, be found to be inconsistent with Sections 2, 10, 24, 139 (5), 195 and 237 of the Constitution;
3. That the first respondent be directed to intervene in terms of the provisions of the Local Government: Municipal Finance Management Act, No. 56 of 2003 ("MFMA"), in the fifth and sixth respondent municipalities and to forthwith take over their basic service delivery obligations;
4. That the intervention referred to in prayer 1 *supra* be a mandatory intervention, as envisaged in Section 139 of the MFMA and that, should the fifth and sixth respondent municipalities, its administration and/or its respective councils resist such intervention, to dissolve each of the councils of the affected municipalities and that administrators be appointed to take over the control of the affected municipalities;

5. That the third and fourth respondents be directed to:
  - 5.1. determine the reasons for the crisis in each of the affected municipalities' financial affairs;
  - 5.2. assess each of the municipalities' financial status;
  - 5.3. instruct the Municipal Finance Recovery Service of the fourth respondent to prepare a recovery plan for the affected municipalities;
  - 5.4. recommend appropriate changes to the municipalities' budgets and revenue raising measures that will give effect to a recovery plan, as developed;
  - 5.5. submit to the second respondent the determination and assessment, referred to in prayers 5.1 and 5.2 *supra*, together with the recovery plan and recommendations, referred to in prayers 5.3 and 5.4 *supra*;
6. That the first respondent be directed to prepare a report to be filed on the court file in this case every 60 (sixty) days (or two calendar months) after the date of this court order, setting out the steps taken by the respondents, as the case may be, in recovering the fifth and sixth respondent municipalities, which report shall provide updates on the implementation of the developed financial recovery plan;

7. The first to fourth respondents are directed to provide copies of all reports and recovery plans prepared with reference to the recovery of the fifth and sixth respondent municipalities, to the applicant;
8. That, pending the proper implementation of the financial recovery plan, Advoca Auditors, Lynnwood, Pretoria, Gauteng Province, be appointed as a so-called special master in respect of the fifth and sixth respondents, with the following duties:
  - 8.1. collecting and overseeing the ringfencing in separate municipal bank accounts all municipal income generated from the sale of electricity and the sale of water;
  - 8.2. effecting the distribution of the municipal income received and ringfenced in terms of prayer 8.1 above, to:
    - 8.2.1. Eskom and/or any other supplier of bulk electricity to the municipality on receiving a proper invoice from the supplier; and
    - 8.2.2. Magalies Water and/or any supplier of bulk water service to the municipality on receiving a proper invoice from the supplier;
    - 8.2.3. paying contractors required to conduct emergency maintenance to the sanitation, storm water, electricity and water reticulation networks within the municipalities;

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- 8.2.4. transferring the balance available for distribution after the payment of the suppliers, mentioned in prayers 8.2.1, 8.2.2 and 8.2.3 above, to the municipality in question;
- 8.3. provide, within 14 (fourteen) days after each month-end, a proper account in respect of all money received or collected in respect of electricity and/or water from the community within the municipal area of the relevant municipality and all money paid out in accordance with prayers 8.2.1 up to 8.2.4 above;
9. That the special master shall have, in addition, the powers as set out in the schedule attached to this notice of motion and marked as **Annexure "Z"**, alternatively such powers as this Court may deem fit and appropriate;
10. That the special master shall compile and provide a report to this Court, the applicants, the first to fourth respondents and the fifth to sixth respondent municipalities, on each municipality's compliance and enforcement of Section 32 of the MFMA for the financial years ending 2017, 2018, 2019, 2020 and 2021, which report must:
- 10.1. specify every incident of unauthorised, irregular or fruitless and wasteful spending and the person/s liable for that expenditure;
- 10.2. specify every resolution passed and/or further action taken by each of the municipalities, as is required by Sections 32(2), 32(3), 32(4), 32(5) and
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32(6) of the MFMA, in relation to each incident of unauthorised, irregular or fruitless and wasteful spending;

10.3. specify every incident of non-compliance with Sections 32(2), 32(3), 32(4), 32(5) and 32(6) of the MFMA;

11. That the special master shall compile and provide a report to this Court, the applicants, the first to fourth respondents and the fifth to sixth respondent municipalities involved, in respect of the accounting systems, practices and failures of each municipality, specifically insofar as it relates to the prevention, management and recovery of unauthorized, irregular or fruitless or wasteful spending and the fifth and sixth respondent's failures to address issues raised by the Auditor-General as required by Section 131(1) of the MFMA ;

12. The respondents are directed to co-operate with the special master in the preparation and execution of the special master's duties in terms of the order, and shall ensure that:

12.1. the special master is provided with all documents and requested required and requested by the special master;

12.2. that officials of the fifth and sixth respondents are reasonably available to meet with the special master if so requested and provide the special master with such information as may reasonably be requested;

12.3. that all requests of the special master be timeously respondent to;

13. That the Court determine the remuneration of the special master and give any further directions regarding the terms of the appointment of the special master as the Court deems necessary;
14. Once the reports envisaged in these orders have been received, alternatively if any of the respondents fails to comply with the provisions of this order, the applicant shall be entitled to supplement these papers, amend its notice of motion and seek such further relief as may be necessary to give effect to this order;
15. That the first to sixth respondents be ordered to pay the costs of this application on the scale as between attorney and client, jointly and severally, the one paying the other to be absolved.
16. Cost against the seventh to tenth respondents will only be sought in the event of them electing to oppose the application;
17. Further and/or alternative relief.

**TAKE NOTICE FURTHER** that the founding affidavit and supplementary founding affidavit of **PIETER JACOBUS LE ROUX**, together with annexures thereto, shall be used in support of this application.

**TAKE NOTICE FURTHER** that the applicant appoints the address of its attorney of record, set out hereunder, as the address where the applicant shall receive notice of all process in this application.

**TAKE NOTICE FURTHER** that if you intend to oppose this application you are required to:

- (a) deliver a written notice of your intention to oppose this application within 15 (fifteen) Court days of receipt hereof, which notice shall be directed to the to the applicant's attorney of record and the Registrar of this Court;
- (b) file your answering affidavit, if any, within 15 (fifteen) Court days after you have delivered your written notice of your intention to oppose this application; and
- (c) in your notice of intention to oppose this application, provide an address as envisaged in Rule 6(5)(b) of the Uniform Rules of Court at which you shall accept notice of all process in this application.

**TAKE FURTHER NOTICE THAT** if no such notice of intention to oppose be given, the application will be made on **Thursday, the 15<sup>th</sup> day of July 2021** at 10h00 or as soon thereafter as counsel may be heard.

Dated at **MAFIKENG** on this the 26<sup>th</sup> day of May 2021.

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**KRIEK WASSENAAR & VENTER INC. ATTORNEYS**

Attorneys for the Applicant

Tel.: 012 756 7566

Fax: 086 596 8799

Email: [peter@kriekprok.co.za](mailto:peter@kriekprok.co.za)

Ref.: PJ Wassenaar/es/QB0616

**C/O SMIT STANTON INCORPORATED**

29 Warren Street

Mahikeng

Tel: 018 381 0180

Fax: 086 274 6253

E-mail: [litigation1@smitstanton.co.za](mailto:litigation1@smitstanton.co.za)

REF: KRI19/0002/21

TO:  
**THE REGISTRAR  
OF THE HIGH COURT  
MAHIKENG**

AND TO:  
**THE MEC: NORTH WEST PROVINCE: COGTA  
FIRST RESPONDENT**  
NWDC Building  
Corner Provident House and University Drive  
Mmabatho  
North West Province

**SERVICE BY SHERIFF**

AND TO:  
**THE MEC: NORTH WEST PROVINCE: FINANCE  
SECOND RESPONDENT**  
Garona Building  
2<sup>nd</sup> Floor, East Wing  
Corner James Moroka and University Drive  
Mmabatho  
North West Province

**SERVICE BY SHERIFF**

AND TO:  
**THE MINISTER: COGTA  
THIRD RESPONDENT**  
87 Hamilton Street  
Arcadia  
Pretoria  
Gauteng Province

**SERVICE BY SHERIFF**

AND TO:  
**THE MINISTER OF FINANCE  
FOURTH RESPONDENT**  
40 Church Square  
2<sup>nd</sup> Floor, Old Reserve Bank Building  
Pretoria  
Gauteng Province

**SERVICE BY SHERIFF**

AND TO:

**THE STATE ATTORNEY, PRETORIA  
FOR AND ON BEHALF OF THE FIRST TO FOURTH AND SEVENTH  
RESPONDENTS**

316 Thabo Sehume Street  
Pretoria Central  
Pretoria  
Gauteng Province

Received a copy of this on  
\_\_\_\_\_ **May 2021.**

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AND TO:

**THE STATE ATTORNEY, MAHIKENG**

1<sup>st</sup> Floor, East Gallery  
Mega City Complex  
Corner Sekame Road and Dr James Moroka Drive  
Mmabatho  
North West Province

Received a copy of this on  
\_\_\_\_\_ **May 2021.**

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AND TO:

**DITSOBOTLA LOCAL MUNICIPALITY  
FIFTH RESPONDENT**

Civic Centre  
Corner Nelson Mandela Street and Transvaal Street  
Lichtenburg  
North West Province

**SERVICE BY SHERIFF**

AND TO:

**NALEDI LOCAL MUNICIPALITY  
SIXTH RESPONDENT**

19A Market Street  
Vryburg  
North West Province

**SERVICE BY SHERIFF**

AND TO:

**THE PREMIER: NORTH WEST PROVINCE  
SEVENTH RESPONDENT**

Garona Building  
2<sup>nd</sup> Floor, East Wing  
Corner James Moroka and University Drive  
Mmabatho  
North West Province

**SERVICE BY SHERIFF**

AND TO:  
**ESKOM SOC LTD**  
**EIGHT RESPONDENT**  
Megawatt Park, Maxwell Drive,  
Sunninghill, Sandton,  
Johannesburg,  
Gauteng.

**SERVICE BY SHERIFF**

AND TO:  
**MAGALIES WATER BOARD**  
**NINTH RESPONDENT**  
38 Heystek Street,  
Rustenburg,  
North West Province

**SERVICE BY SHERIFF**

AND TO:  
**SEDIBENG WATER BOARD**  
**TENTH RESPONDENT**  
Protea Street, Balkfontein,  
Bothaville,  
Free State Province

**SERVICE BY SHERIFF**

## Annexure Z

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**POWERS AND CAPACITIES OF THE APPOINTED SPECIAL MASTER OF  
THE DITSBOTLA LOCAL MUNICIPALITY  
and  
THE NALEDI LOCAL MUNICIPALITY**

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- a) To open, on behalf of The Ditsobotla Local Municipality and The Naledi Local Municipality 2 (two) additional municipal banking accounts in respect of each of these municipalities, wherein all income derived from water sales and electricity sales shall be received and ringfenced.
- b) To take control of and operate the newly opened banking accounts of the municipalities, for the exclusive purpose as envisaged in 8.2 of the order of this Court.
- c) To appoint and pay contractors to conduct maintenance to the sanitation, storm water, electricity and water reticulation networks within the areas of the municipalities.
- d) To incur all necessary expenditure to maintain the sanitation, storm water, electricity and water reticulation networks within the areas of the municipalities.
- e) To claim all costs, charges and other expenditure reasonably incurred by the special master, including but not limited to travelling, telephone calls and accommodation in the execution of the special master's duties in terms of the order of this Court, which shall include own remuneration, as costs payable from the ringfenced municipal accounts at the rate of R2 500.00 per hour.

- f) To engage the assistance of legal, accounting, administrative or other professionals or technical assistance as may reasonably be deemed necessary for the performance of the special master's duties in terms of the order of this Court and to defray the reasonable charges and expenses thus incurred from the ringfenced municipal accounts.

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