



**KRIEK WASSENAAR & VENTER ING**  
PROKUREURS - ATTORNEYS

Our Ref: PJ Wassenaar/es/QB1021  
Your ref:

23 September 2022

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Mr President/Minister/Sir/Madam

**URGENT: SAKELIGA NPC / THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA & OTHERS  
IN RE: DITSOBOTLA LOCAL MUNICIPALITY**

1. We act on the instructions of Sakeliga NPC (“our client” / “Sakeliga”).
2. Sakeliga is a non-profit business interest organisation with the objective of protecting constitutional rights, constitutional order, the rule of law, free market principles and a just and sustainable business environment within the Republic of South Africa. Our client specifically seeks to promote economic prosperity and the sustaining of favourable business environments in the interest of the common good.
3. Sakeliga is already the applicant in a High Court application issued in the North West High Court, Mahikeng, under case number M311/2021. Except for the President, all the parties to which this letter is addressed are also parties to the litigation.
4. Sakeliga inter alia seeks a structured interdict with the intention that the Court, for as long as it may be necessary, retains a constitutional oversight role to ensure that all relevant players in the three different spheres of government (national, provincial and local government) comply with their constitutional duties in regard to the severely financially distressed Ditsobotla Local Municipality. The application has one goal: ensuring effective and functional local government.
5. Ditsobotla Local Municipality has over the last 10 years suffered a progressive collapse in municipal governance. Currently, the residents and businesses within Ditsobotla suffer due to municipal management and basic service delivery failure. Despite various attempts to enforce voluntary intervention in terms of section 139(1) of the Constitution, the North West province has been unsuccessful in its attempts to remedy the growing crisis in Ditsobotla.

6. Ditsobotla is a debt-ridden and failing municipality plagued by mismanagement, political factionalism, and corruption. Fiscal and administrative control in the municipality is non-existent. The municipality is factually insolvent. According to our client's records, the municipality has received year-on-year qualified audits with serious detrimental findings. This situation has had a direct negative social and economic impact on every resident and every business operating within its jurisdictional area. Many businesses, including large industries, have moved their operations to other jurisdictions. Ditsobotla has become an unsustainable and unprofitable economy for business.
7. Gross mismanagement in the municipality also endangers the national electricity and water networks. Ditsobotla plays a significant role in the Eskom debt-crisis. According to our client's records, the municipality has also failed to pay its debts to the former Sedibeng Water Board. Sedibeng Water has apparently since the issuing of Sakeliga's application collapsed.
8. Like the Eskom debt-crisis, concerns exist about the municipality's ability to provide its residents proper water, sanitation, and other municipal services. Sakeliga believes that Ditsobotla is no longer in a position, financially and administratively, to manage and maintain effective municipal services in its area.
9. In the already issued application, our client *inter alia* seeks the following relief:
  - 9.1 That Ditsobotla be found to be in serious and persistent material breach of its obligations to provide basic services and to meet its financial commitments;
  - 9.2 That the provincial government's failure to implement mandatory intervention in terms of section 139(5) of the Constitution, read with sections 136(4), 139 and 140 of the MFMA, be found to be inconsistent with the Constitution;
  - 9.3 That the MEC for Cooperative Governance, alternatively the provincial government of North West province, be directed to apply mandatory intervention as envisaged in section 139 of the MFMA;
  - 9.4 That the provincial government be directed to:
    - 9.4.1 Determine the reasons for the crisis in Ditsobotla's financial affairs;
    - 9.4.2 Assess the financial status of the municipality;

- 9.4.3 Instruct the Municipal Finance Recovery Service of the National Treasury to prepare a recovery plan for Ditsobotla;
  - 9.4.4 Recommend appropriate changes to the municipality's budget and revenue raising measures that will give effect to a recovery plan, as developed.
  - 9.5 That the MEC: Cooperative Governance be directed to prepare a report to be filed with the court every two calendar months after the granting of the order, setting out the steps taken by the respondents, as the case may be, in recovering the Ditsobotla Local Municipality, which report shall provide updates on the implementation of the developed financial recovery plan;
  - 9.6 That all reports prepared during the recovery of Ditsobotla be provided to Sakeliga and its local supporters.
- 10. It is worth mentioning that the national and provincial respondents to the application have all opposed our client's application. Ditsobotla has filed a notice of intention to oppose but failed to file any answering affidavits in response to the applicant's constitutional challenge. Eskom Holdings SOC Ltd, who is also a respondent in the application, filed an affidavit which largely supports the applicant's relief.
  - 11. We can confirm that the application has been referred to case management and that a meeting with the presiding judge occurred on 7 September 2022. A further case management hearing has been scheduled for 17 November 2022 to dispose of interlocutory applications and finally enrol the matter for hearing on 23 and 24 March 2023.
  - 12. Sakeliga believes that answering affidavits filed by the respondents, except those filed by Eskom, have raised only procedural defences to the constitutional challenge, whilst effectively admitting that Ditsobotla is in long-term systemic financial and administrative collapse.
  - 13. On 21 September 2022, our client was informed by supporters conducting business in Ditsobotla, that the provincial government on 15 September 2022 proceeded to invoke section 139(1) of the Constitution and called for the disbanding of the municipal council, the appointment of an administrator and the development of a recovery plan. This decision to again invoke discretionary intervention, particularly in the view of the severe and persistent breach by Ditsobotla of its ability to provide basic services and the serious and continuing crisis in

Ditsobotla's financial affairs, came as a shock to our client – especially given the already pending litigation seeking mandatory intervention.

14. On what basis can voluntary intervention in terms of section 139(1) of the Constitution still be an option?
15. According to the records available to our client:
  - 15.1 Ditsobotla does not keep full and proper records of its affairs. This has resulted in repeated disclaimed Auditor-General of South Africa (“AGSA”) opinions being issued. According to the AGSA’s *Material Irregularities Status Report* as of 15 April 2022, the Municipality’s failure to correct its financial accounting failures is substantially harming the institution. In the opinion of the Auditor-General, the municipality’s financial position *was so **poor that it disclosed a material uncertainty regarding its ability to continue operations***. (AGSA Material Irregularities Status Report 15 April 2022 p72-p73).
  - 15.2 Ditsobotla has also been identified as one of twenty-four public institutions that have failed to make any progress in resolving material irregularities over the last audit period. (**AGSA Material Irregularities Status Report 15 April 2022 p5**).
  - 15.3 According to the AGSA’s General Report issued on 15 June 2022, Ditsobotla’s audit outcome has been identified as a *repeat disclaimed opinion*, under circumstances where the accounting officers have taken *little or no action* (**AGSA General Report 15 June 2022 p52**). The audit outcomes have remained disclaimed outcomes and unchanged since at least 2016.
  - 15.4 Unauthorised expenditure increased from R87.1 million (2019), to R134 million (2020). Fruitless and wasteful spend increased from R153.9 million (2019), to R209.1 million (2020). Irregular spending increased from R119.9 million (2019) to R159.9 million (2020). No further entity specific opinions have been made available since publication of the AGSA General Report. However, Sakeliga has been advised that the issue has not improved.
  - 15.5 Municipal workers regularly face problems with the prompt payment of salaries. According to Sakeliga’s supporters in Ditsobotla, the municipality has still not paid employees for August 2022 due to ‘cash flow problems’ (the municipality’s

spokesperson, Pius Batsile has admitted this fact to journalists on 22 September 2022). Sakeliga has been advised that salaries for September 2022 has already become due, but that payment is unlikely.

- 15.6 The failure to pay employees, the lack of an appointed administrator and the anarchy resulting from the dissolving of the municipal council, have resulted in unsupervised desperate employees misusing their positions in the municipality to conduct unlawful collection practices with the hope of 'securing' their salaries.
- 15.7 Only a handful of workers are working (without payment) to ensure that at least water and electricity services remain. Most of the municipal staff have refused to return to work. All other services, even emergency services, have stalled.
- 15.8 The municipal offices have been closed, and no one is supervising the municipality.
- 15.9 The provincial executive has continued to withhold the municipality's equitable share.
- 15.10 Ditsobotla remains in breach of its contractual and public duty to pay Eskom. According to our sources, Ditsobotla's outstanding account with Eskom is currently more than R806 million in arrears.
16. The municipality is clearly in persistent breach of its service delivery obligations. Ditsobotla's financial crisis cannot be ignored or denied anymore.
17. Section 139(1) can only be implemented under circumstances where there is a failure to fulfil an *executive obligation in terms of the Constitution or legislation*. The section is not designed for cases of serious financial and service delivery collapse.
18. Where a municipality faces *a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments*, **the relevant provincial executive is constitutionally obligated to intervene in terms of section 139(5) of the Constitution**. If the provincial executive fails to intervene, the obligation falls onto the national executive to do so in terms of section 139(7) of the Constitution.
19. Sakeliga believes that the provincial executive is acting in breach of its constitutional obligations by placing Ditsobotla under section 139(1) voluntary intervention under circumstances where a clear case for mandatory intervention under section 139(5) has existed since prior to the

issuing of our client's first application. However, the current collapse in municipal government at Ditsobotla has shifted the need for mandatory from a constitutional priority to a constitutional emergency.

20. The main features of this crisis in Ditsobotla are (1) the severe and persistent financial mismanagement at Ditsobotla, (2) the refusal by the provincial executive to implement mandatory intervention, (3) the severe cash-flow problems facing the municipality, and the subsequent failure to pay employees, (4) the closing of the municipal offices, (5) the failure to ensure that an administrator is appointed to ensure that basic municipal services can continue and (6) the dispute between the municipal council and the provincial executive regarding those intervention steps already taken by the province.
21. Sakeliga and its supporters are aggrieved by the failure by all spheres of government to meaningfully engage with them over the last 18 months, especially during the months preceding the collapse in Ditsobotla. Our client's supporters are people and businesses directly affected by state failure. Despite litigation having been initiated by Sakeliga and its supporters to seek long-term solutions, specific mandatory intervention, and court oversight in Ditsobotla, our client and its supporters have only been ignored. Whilst national and provincial executives plan, the residents of Ditsobotla face the consequences of failing municipal structures and constant service delivery failures.
22. Not a single party to Sakeliga's current application before the High Court has provided our client the courtesy of informing us of the developments in the provincial executive's 'intervention' plans. Our client only found out about the municipal collapse in Ditsobotla when supporters started contacting Sakeliga on 21 September 2022 about the closure of the municipal offices and the unlawful debt-collection activities being employed by desperate unpaid employees.
23. Sakeliga insists that government, especially the national executive, meet with our client to meaningfully engage on the issues underlying the crisis and possible solutions to those problems facing recovery. Our client and its supporters have a right to meaningful engagement, especially where state failures directly affect municipal residents' dignity and constitutional rights.
24. Our client requests an urgent meeting with government representatives and suggests a meeting on 27 September 2022 at 09h00, alternatively for an urgent time and date to be arranged.
25. Furthermore our client demands the following undertakings from government:



- 25.1 That the provincial executive immediately impose urgent mandatory intervention in Ditsobotla in terms of section 139(5) of the Constitution, alternatively and in the event of the provincial executive failing and/or refusing to do so, that the national executive impose urgent mandatory intervention in Ditsobotla in terms of section 139(7) of the Constitution;
- 25.2 That an administrator be appointed by no later than 27 September 2022;
- 25.3 That that the provincial executive release to the administrator a sufficient portion of Ditsobotla's equitable portion in order to allow the administrator to pay employee salaries for August 2022 and September 2022 by no later than 27 September 2022;
- 25.4 That the appointed administrator be authorised to pay municipal employees and to oversee the day to day management and control of the municipal administration and service delivery functions by no later than 28 September 2022;
- 25.5 That the appointed administrator be instructed to meet with Sakeliga and the residents of Ditsobotla to discuss the municipality's current problems and seek solutions.
26. Our client requires a response to this letter by no later than Monday, **26 September 2022 at 10h00**. Our client reserves the right to approach the High Court for constitutional, declaratory, and mandatory relief, which can include relief sought by means of an urgent application. Our client would of course prefer to meaningfully engage with government to seek solutions.
27. We respectfully await your urgent response.

Yours faithfully,



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