

Annexure 10.1



CURRICULUM VITAE:
VUYOKAZI JEAN-FORTUNE MBELANI
 mobile phone [REDACTED]

Email vuyokazimbelani@gmail.com;

Gender:	Female	
Nationality:	South African	
Date of Birth:	[REDACTED]	
Home Address:	[REDACTED]	
Email	[REDACTED]	
Mobile phone number	[REDACTED]	
Senior Certificate:	Ndamase High School, Ngqeleni, Eastern Cape	1986
Academic Qualifications and exposure:	• Bachelor of Social Science, University of Cape Town in 1990, majored in Public Administration (second and third year modules focused on Local Government Management) & Industrial Sociology. • Advanced Practical Course in Local Government Management In 1991 (University of Birmingham – School of Public Policy). Field Study in practical Local Government Course in India - All India Institute of Local Self Government and Zimbabwe. Placement in the Blackburn Borough Council (England) and Masvingo Rural Council (Zimbabwe) • Course in Monitoring and Evaluation in Regent College in London – 1995 • Course in Salary Structuring by Mouton & Associates – 2007 • Training course in Facilitation and Communication Skills in Local Economic Development by DBSA Vulindlela Academy in partnership with GTZ Invent – 2006 • Course in Finance for Non- Financial Managers by the USB Executive Development Ltd of the University of Stellenbosch Business School – 2009 • Course in Corporate Governance by Astrotech - 2009	
Further studies underway:	• Certificate Programme in Management Development for Municipal Finance (CPMD) – Wits Business School - 2007 • Course in Performance Management and Evaluation – Arms Audit Consultants - 2013	•

	Post Graduate Course in Applied Population Studies Training & Research. School of Development Studies, University of KwaZulu – Natal - 2014	
Work experience:		
VARA Transkei – Company of Town and Regional Planners and Architects	JOB TITLE: Researcher and trainee project manager on a six (6) months contract. DUTIES & PROJECTS: Researcher in the IDT Capital Subsidy Scheme housing development project assessment focusing in Isolomzi Mount Fletcher, Butterworth, Port Elizabeth and interviewed the architect of the IDT Housing Capital Subsidy Scheme, late Mr Govan Mbeki. Trainee project manager in the Mouth Fletcher upgrading of Isolomzi settlement. This was an in situ upgrading with its challenges which are more complex than the green fields development.	January 1993
Transkei Land Service Organisation	JOB TITLE: Researcher on six (6) months contract. DUTIES: Urban land claims for the traditional communities in Ntabankulu who lost their tribal commonage land in the early 20 th century to Transkei towns at the time of the establishment of the towns. Mgungundlovu land claim against the Wild Coast Sun International in Bizana. Facilitated Greenville community of Mbizana for the commencement of the research for their land claim against the Pondoland Sugar Company.	July 1993
Transkei Government – Department of Public Service Commission	JOB TITLE: Training officer	January 1994
Office of the MEC for Administration and Land in the new Provincial Government	JOB TITLE: Officer in the MEC's personal staff team to the MEC. DUTIES: Advising the MEC on land matters and working as his personal support team on land matters. Facilitated the consultation of the stakeholders in the development and consultation of new land policies and legislation. Consolidation of the reports for the MEC on land matters, including but not totally exclusive of Provincial Legislature, Executive Committee and MuniMEC nationally. Consultation and drafting of the resource mobilisation for the land rights campaign for the people in the farms from the Swiss NGOs.	August 1994
Department of Land Affairs	JOB TITLE: DEPUTY DIRECTOR DUTIES: Establishment of the Eastern Cape Land Redistribution Pilot	1995- 2000

	Programme which covered areas in and around Queenstown. These covered Whittlesea, Queenstown, Lady Frere, Indwe areas. Responsible for the development of the local area plans using the then Rapid Rural Appraisal methodology now called Community Based Planning (CBP), which led to the development of the project proposals which were submitted to the National DG for approval and also integration of these land reform development plans with those of other government departments and NGOs. Responsibility of heading the sub-directorate Land Tenure, whose focus was former Transkei and Ciskei (the former TBVC) areas of the province. As the Deputy Director responsible for tenure rights, I represented the Department of Land Affairs in the Wild Coast Spatial Development Initiative (SDI) project which was Department of Trade and Industry project in partnership programme between National and Provincial governments. Facilitated and organised communities readiness to participate in the business coastal tourism, agriculture and forestry with private sector. Participated in the restructuring of the Agricultural Parastatals, Ulimorcor and Tracor. Facilitated the acquisition of the shares in the Magwa Tea after the Provincial Government liquidated the then Magwa Tea Plantation. Establishment of the community owned business for Mabandla Administrative Area into the 1000 hectares for the afforestation business in partnership with SAPPI. Facilitated the partnership agreement with skills development and transfer. Rationalisation of the Category A, B and C forests and beneficiation of the communities.	
Vuyo Mbelani Consulting	JOB TITLE: Director PROJECTS INVOLVED IN: DWAF Partnered with business associates that were contracted (facilitated land use, access rights by communities adjacent to the category C forests in the former Transkei and Ciskei areas as part of forest management plans); Eastern Cape Provincial Department of Environmental, Economic Affairs and Tourism: Environmental management plans and integration in the coastal municipalities IDP in O.R. Tambo District; CIMEC – facilitated resolution of land matters in Port St Johns CIMEC projects for investment readiness. Sub contracted: Drafting of IDP of Nkonkobe Municipality.	2000
Independent Development Trust	Independent Development Trust (IDT) -IDT contracted me directly to manage the Integrated Sustainable Rural Development Plan (ISRDP) of the Presidential Anchor	

	projects and Anchor Regions of the District Municipalities, with O.R. Tambo and Alfred Nzo DMs as the focus areas. On the job training on PMBOK project management and Integrated Development Plans (IDP) training.	
Kantu- Southern Trails Consulting firm (specialising in tourism business development and land reform)	Job Title: Managing Director. Projects: Appointed by National Department of Environment and Tourism (DEAT) to develop business plans for the projects that were submitted by individuals and community members for funding by DEAT. Contracted by individual persons and companies bidding for land based development projects contracted the company to develop their business plans, development of tourism businesses; development of the business plan for Hluleka Nature reserve as well as develop a submission to the request for proposal by the Provincial Department of Environmental Affairs. DWAF : Facilitated the resolution of the occupation of the DWAF property by the Port St Johns informal settlement.	2001
Board member	Board member of the South African Parks Board and also served in the sub -committee People and Parks.	2001- 2004
PondoCrop NGO based in Mzamba, Bizana	JOB TITLE: Manager DUTIES: PondoCrop was appointed by the Wild Coast European Union (EU) Tourism Programme. PondoCrop and two other NGOs were contracted to implement the programme and directly appointed by the European Union, with joint management by DTI and the EU team. Facilitation of the development of the tourism business entities, developing the beneficiation concepts and beneficiation business units partnering with the land owning entity and the various enterprises supporting the tourism business. The example is the Pondoland hiking trail; Amadiba Tourism Business in Mzamba. Development of the business plans, training and mentoring of the development of partnerships and collaboration with the government stakeholders including municipalities, other tourism businesses elsewhere for purposes of learning and sharing experiences. Development of the community owned tourism business model and development of individual enterprises and facilitating skills development and training and mentorship of the same. Development of the reports for the provincial, national government and EU funder in order to meet the conditions	2002

	of the grant and for ongoing review and development of the programme concepts and policies. Assessment of the Coastal IDPs of the Province the extent of the Integrated Environmental and Coastal Management plans, which was a provincial government's project – Environmental Affairs.	
Mbizana Local Municipality	TITLE: Manager Development Planning (Section 56 Manager) DUTIES: Head of the Department responsible for the following sections: • Local Economic Development (LED), • Environmental Management, • Land, • Buildings, • Housing, • Town Planning, and • IDP. • Development of the Sector Plans, namely, Tourism Master Plan; Coastal Management Plan; Intergrated Environmental Management Plan; Housing Sector Plan; Rezoning Plan; Spatial Development Plan; Local Economic Development Plan. Responsible for the Human resources, financial management, departmental compliance, departmental risk management, policy development and review, monitoring and evaluation, development and review of the IDP, development and review of the SDBIP, departmental performance management, compliance reporting, annual report. Development of the sustainable village model which was piloted in the ancestral home of late ANC President O.R. Tambo in Nkantolo as part of the intergovernmental structures of Eastern Cape. Facilitated partnership and twinning between Mbizana and Ekurhuleni municipality through heritage business and enterprise development. Development of the PPP model for the revival and development of the rural town of Mbizana. Facilitated together with East Cape Parks Board and Land Affairs the beneficiation of the Mbizana community from the Mzamba Wild Coast Sun through development of individual enterprises and broader community projects. Member of the Bid Adjudication Committee. Members of the District Heritage Development Forum.	August 2004

	Members of the District LED Forum. Participated in the UNDP Institutional re-engineering project which was a joint project of the Office of the Premier and UNDP's support of dis-functional municipalities in O.R. Tambo District. Got mentored by two (2) specialists (LED specialist and the Town Planner for six (6) and twelve (12) months respectively by the US based organisation contracted by UNDP. This is where my business processes engineering, business plans development, resource mobilisation, performance management, strategic planning skills were sharpened.	
Ugu District Municipality in KZN (Water authority, water provider and sanitation authority)	TITLE: Director Corporate Services (Section 56 Manager) DUTIES: Head of the Department responsible for the following sections: • Human Resources, • Auxiliary Services, • Registry, • Council Support, • ICT, • Disaster Management, • Special Programmes and HIV-Aids, & • Communication. Responsible for the IDP development, review of the IDP, development and review of the Departmental Service Delivery and Budget Implementation Plan; development and consolidation of the Municipality's Annual Report. Responsible for the Human Resources Development Strategy; District Job Evaluation Strategy and Plan; District Disaster Management Plan. Responsible for the Human resources, financial management, departmental compliance, departmental risk management, policy development and review, monitoring and evaluation, development and review of the IDP, development and review of the SDBIP, development and review of the IDP, development and review of the SDBIP, departmental performance management, Compliance reporting and Service Delivery Improvement Plan. Chief Information Officer of the Municipality Member of the Bid Adjudication Committee. Member of the District HR Managers. Heading the District Job Evaluation Centre.	June 2007 – October 2008

	Heading of District Disaster Management Centre. Chairing the Ugu DM's Women Development Forum.	
Amathole District Municipality (Water authority, water provider and sanitation authority)	TITLE: Strategic Manager Amathole District Municipality (Section 56 Manager) DUTIES: Head of the Department, responsible for the following sections: • Strategic Planning and management (DM IDP, PMS, Sector Plans Management, SDBIP development and Implementation/Strategic Planning, Institution's Annual Report • ICT, • Executive Services (offices of the Executive Mayor and Speaker of Council), • Special Programmes and HIV-Aids, • Institution's Communication & Customer Care, • Intergovernmental Relations, • International Municipal Relations, • Public Participation, • Municipal Support Unit (providing support to the district constituent municipalities in all aspects of the functioning of the municipality as well as overall facilitation of the LMs' IDPs, PMS), • Risk Management, • Local Economic Development (Tourism, Heritage, Agriculture) After 8 months, the LED section was removed from the Strategic Planning Department. • Responsible for the Human resources, financial management, departmental compliance, departmental risk management, policy development and review, monitoring and evaluation, departmental performance management, development and review of the IDP, development and review of the SDBIP, Compliance reporting, annual report, • Local Government Turn Around Strategy (LGTAS), Chief Risk Officer and Chief Information Officer for the municipality. Member of the Bid Adjudication Committee. Head of the District Strategic Managers Forum Development of innovations which would enhance the functioning of the municipality.	November 2008
Consultant	JOB TITLE: MD OF ToluTobs Consultancy and Trading PROJECTS: • TRAINING AND FACILITATION: Appointed by SALGA to carry out facilitation of induction of the	April 2010-2011

	Traditional Leaders in Functioning of the Municipalities as they were now participating in the municipal councils Chris Hani and Joe Gqabi DMs • Sub- contracted by Siseko Development Agents : Performance Management and development of performance contracts and cascading of performance management (pms0 for Joe Gqabi DM. • Managed Blue Berry Coffee Shop	
Eastern Cape Department of Local Government & Traditional Affairs	PROJECT: CONTRACT FOR A PERIOD OF FOUR MONTHS FOR EXTERNAL AUDIT READINESS – JOB TITLE: Assistant Director Monitoring and Evaluation DUTIES: Institutionalise M&E and alignment with the PMDS (performance contracting)	January 2011 – April 2011
Eastern Cape Department of Local Government & Traditional Affairs	JOB TITLE: Seconded as ACTING MUNICIPAL MANAGER – AMAHLATHI MUNICIPALITY. There was a political instability within the council and in the municipal administration and there was no Municipal Manager.	May 2011- December 2012
SALGA	Training and Induction of the Traditional Leaders participating in the Municipal Council in Local Government legislation and functioning of municipalities – Chris Hani and Joe Gqabi DMs	2012
Eastern Cape Department of Local Government & Traditional Affairs	JOB TITLE: DIRECTOR – SPECIALIST OPERATION CLEAN AUDIT AS MUNICIPAL OVERSIGHT SPECIALIST on introduction of the Municipal Oversight Committees DUTIES: Providing support to the municipalities with bad audit outcomes by capacitating the Municipal Oversight Committees, Audit Committee and Internal Audit units with carrying out their fiducial duties to ensure oversight towards achieving improved audit and oversight of running of the municipality. Strengthening and improvement of the functioning of the section 79 and 80 committees. Facilitated the review of the oversight reporting mechanisms and systems, including but not exclusive of the council structures systems/ agenda formats, report structures. Hand holding/ on the job training of the MPAC chairpersons and the MPAC offices in carrying out their statutory MPAC duties. Facilitated the establishment, strengthened the functioning of the office of the Chairperson of the Municipal Public Accounts Committee (MPAC). Facilitated the working relationship between the Chairperson of the Municipal Public Accounts Committee, the Audit Committee and the Internal Audit Unit. Strengthened the practical functioning of the MPAC and Audit Committee.	August 2012 – January 2013

	Supported in the development of the annual oversight plan and calendar. Assisted through capacitation of the MPAC in preparing and conducting departmental hearings on the performance of the departments and oversight of the actual projects. Assisted the MPAC Chairperson and his office with the development and understanding of the Municipal Compliance Register. Provided support to the Mayoral Committees and the portfolio committee heads in carrying out their duties. Facilitated an improved working relationship between the Portfolio Head and the Head of Department (Section 56 Manager) in order to ensure functional and systematic and regular working relationship/ interaction while mitigating the perceived political interference. Capacitating portfolio heads to translate the legislation and Risk Registers into compliance and policy review and development. Capacitating portfolio heads to be proactive in the development of the monthly departmental reports and oversight the departmental performance. Drafted compliance register in support of the political leadership. Assisted in the strengthening of the functioning of the office of the Mayor in order to ensure a functional political administration of the municipality. The following were the municipalities assigned to me: • King Sabata Dalindyebo Municipality (all); • O.R. Tambo DM (MPAC only) ; • Nyandeni Municipality (MPAC and Audit committee only); • Inkwanca Municipality (all); • Great Kei Municipality 9 MPAC and Audit Committee)	
Eastern Cape Department of Local Government & Traditional Affairs	JOB TITLE: SECONDED BY THE MEC FOR LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS TO NGQUSHWA MUNICIPALITY AS ACTING MUNICIPAL MANAGER. Problem: The municipality was dis-functional. It was fraught with political instability within the council and within the municipal administration with on-going labour disputes and strikes, poor capacity/skills of municipal staff, collapsed municipal services, non-payment of rates and services, under- utilisation of municipal grants (multi-year under expenditure and absence of accountability), collapsed	January 2013

	administrative and financial accounting systems. Main duties: implement the recommendations of the forensic report conducted by Province, recruit the section 56 and 57 managers and day to day running of the administration.	
Ngqushwa Municipality	Job Title: Municipal Manager Duties: Accounting Officer, day to day running of the municipality's administration. Mutually agreed to terminate relations due to unfortunate irreparable relations.	September 2013 to December 2014
NGQUSHWA MUNICIPALITY	JOB TITLE: MUNICIPAL MANAGER and IEC Municipal Electoral Officer for Ngqushwa. Contract terminated due to mutual agreement as a result of unfortunate irreparable relations.	September 2013- December 2014
PROSPERO CONSULTANCY	JOB TITLE: CEO PROJECTS: • Development of value chain project concepts for businesses in energy, fuel and petroleum and processing industries. • Development of the project concepts for agriculture commodity groups and facilitate their value chain farming programmes in order to jointly benefit from the market. • Development of the project concepts and Resource mobilisation for municipalities from DPSA Tirelo Boshia Service Delivery Improvement Programme to benefit the interface between the municipality and the community and its customers. • Resource mobilisation for municipalities from Agri-SETA and Construction SETA. • Resource mobilisation for the NPOs. • Skills Development facilitation • Facilitation of the crop growers and linking them up with the market and resource mobilisation. • Municipal support services; design of business processes as part of the institutionalisation of daily disciplines in the Finance department. • Training and facilitation.	March 2015 to date
SALGA	• Councillor Induction 2016	
Hluma Creations	Senior Consultant: • Bitou Municipality Executive Support Services Strategic Planning Session	February 2017
REFERENCES:		
	1. Mayor of Ngqushwa LM, Councillor Solomzi Ndwayana [redacted] email address [redacted] 2. Mayor of King Sabata Dalindyebo Councilor	did not [redacted] [redacted]

Nonkoliso Ngqongwa [REDACTED]

email address [REDACTED]

3. Cllr Mabuya, MPAC Chairperson, Nyandeni Municipality [REDACTED]
4. Cllr Pasika Nontshiza, Chairperson of MPAC, King Sabata Dalindyebo Municipality 047 501 4000 [REDACTED]
5. Chief Whip Cllr Noluzola Mlahleki, Amahlathi Municipality [REDACTED] 043- 683 5000; MBishop@amahlathi.gov.za;
6. Cllr Vusi Ntshuba O.R. Tambo DM [REDACTED]
7. Happy Kwetana, Chief Of Staff Eastern Cape Department of Rural Development and Agriculture, [REDACTED]
8. SG Stanley Khanyile, Eastern Cape Department of Social Development, [REDACTED]
9. Ms Ntombi Baart, DDG Eastern Cape Department of Social Development, [REDACTED] email address Ntombi.Baart@ecdsc.gov.za
10. DDG Ngwadi Mzamo, Eastern Cape Department Cooperative Government and Traditional Affairs, [REDACTED] email address [REDACTED]
11. Nkosi Nosandi Mhlauli Member of the National House of Traditional Leaders [REDACTED]
12. Luvuyo Mahlaka – Municipal Manager Mbizana LM (Former MM- Ugu DM) [REDACTED]
13. Mr E. Vermaak – Senior Manager Eastern Cape COGTA [REDACTED]
14. CEO The Leaf Consulting, Nokulunga Mqeta, [REDACTED]
15. PJ Cloete Attorneys [REDACTED] email pjcloeteattorneys.co.za
16. Dr Winston Plaatjies, chairperson of the Ngqushwa Audit Committee [REDACTED], email address [REDACTED]
17. Khaya Ngqula (community member of Ngqushwa)

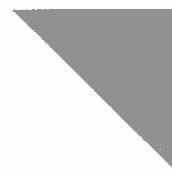
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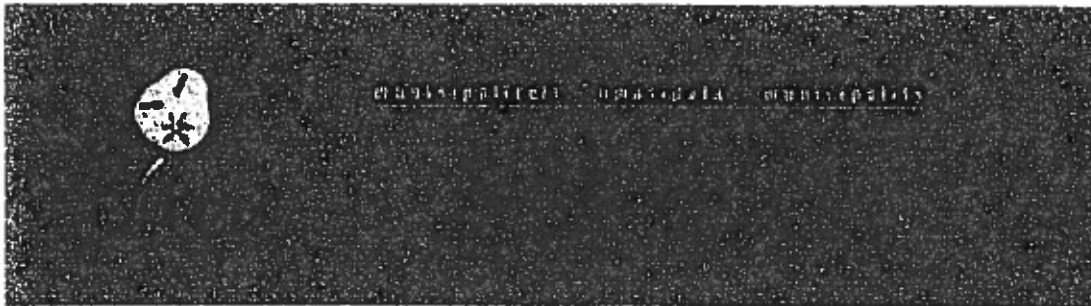
	[REDACTED] 18. Nondumiso Gwayi, Member of the Audit Committee Amahlathi Municipality [REDACTED]	
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Annexure 10.2



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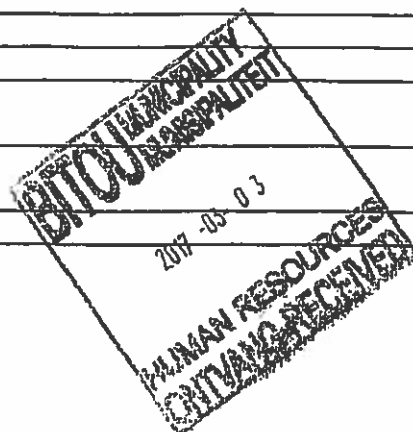
APPLICATION FORM FOR EMPLOYMENT FOR SENIOR MANAGERS

TERMS AND CONDITION

1. The purpose of this form is to assist a municipality in selecting suitable senior managers candidates for an advertised position.
2. This form must be completed in full, accurately and legibly. All substantial information relevant to a candidate must be provided in this form. Any additional information may be provided on the CV.
3. Candidates shortlisted for interviews may be requested to furnish additional information that will assist municipalities to expedite recruitment and selection processes.
4. All information received will be treated with strictly confidentiality and will not be used for any other purpose than to assess the suitability of the applicant.
5. This form is designed to assist municipalities with the recruitment, selection, and appointment of senior managers in terms of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000)

A. DETAILS OF THE ADVERTISED POST (as reflected in the advert)

Advertised post applying for	DIRECTOR CORPORATE SERVICES
Reference number (if any)	
Name of Municipality	BITOU MUNICIPALITY
Notice service period	A.S.A.P.
B. PERSONAL DETAILS	
Surname	MBELANI
First Names	VUYOKAZI JEAN-FORTUNE MBELANI
ID or Passport Number	[REDACTED]
Race	☒ African ☐ Coloured ☐ Indian ☐ White
Gender	☒ Female ☐ Male
Do you have disability?	Yes ☒ No
If yes elaborate	N/A
Are you a South African citizen?	☒ Yes ☐ No
If no, what is your Nationality	N/A
Work Permit number (if any)	N/A



Do you hold any political office in a political party, whether in a permanent, temporary or acting capacity? If yes provide information below		NO
Political Party: N/A	Position: N/A	Expiry date: N/A
Do you hold a professional membership with any professional body? If yes, provide information below		NO
Professional Body: N/A	Membership Number: N/A	Expiry date: N/A

C. CONTACT DETAILS			
Preferred language for correspondence		ENGLISH	
Telephone number during office hours		[REDACTED]	
Preferred method for correspondence (Mark with X)	Post	E-mail ☒	Fax
Correspondence contact details (in terms of above)		[REDACTED]	

D. QUALIFICATIONS (Additional information may be provided on your CV)		
Name of school / Technical College	Highest Qualification Obtained	Year Obtained
Univ. Cape Town	Bachelor Social Science	1990

E. WORK EXPERIENCE (Additional information may be provided on your CV)				
Employer (starting with the most recent)	Position	From	To	Reason for leaving
Prospero Consulting	Managing Director	2015	To date	Current
Ngqushwa LM	M.M.	2013 Sept	Dec 2014	Disciplinary & mutually agreed to end contract.
Cogta EC	Seconded MM	2013 Jan	Sept 2013	appointed MM
Cogta EC	Sen. Manager	2012 Aug	Jan 2013	Second ment by MEC
Amabuthi LM	Seconded MM	April 2011	Jan 2012	end of secondment
Amathole DM	Strategic Mgr.	November 2008	March 2010	Resigned
If you were previously employed in Local Government indicate whether any condition exists that prevents your re-employment:			Yes	No ☒
If yes, provide the name of the previous employing municipality		N/A		

refer to attached letter from my attorney

F. DISCIPLINARY RECORDS		
Have you been dismissed for misconduct on or before 05 July 2011?	Yes	No ☒ But had a disciplinary case & resolved to mutual termination/ end contract
If yes, Name of Municipality / Institution		
Type of a Misconduct / Transgression		
Date of Resignation / Disciplinary case finalised		
Award / Sanction		
Did you resign from your job on or before 05 July 2011 pending finalization of the disciplinary proceedings, If yes, provide details on a separate sheet		

G. CRIMINAL RECORD	
Were you convicted of a criminal offence involving financial misconduct, fraud or corruption on or after 5 July 2011? If yes, provide details on a separate sheet	NO
If yes, type of criminal act	
Date criminal case finalized	
Outcome / Judgment	

H. REFERENCE				
Name of Referee	Relationship	Tel(Office hours)	Cell Number	Email
S. NDWAYANA	Former Mayor & Supervisor			ndibongas@matatole.gov.i
Tobela Jany	Supervisor Salga			
Luvuyo mahlaka	MM supervisor			
Ndumiso Gwayi	Audit committee member			ngwayi@ant.org.za

I. DECLARATION	
I hereby declare that all the information provided in this application and any attachments in support thereof is to the best of my knowledge true and correct. I understand that any misrepresentation or failure to disclose any information may lead to my disqualification or termination of my employment contract, if appointed	
Signature: 	Date: 01/03/2017

Reference Checking Consent & Authorization Form

Read carefully and completely before signing.

SECTION I - CONSENT

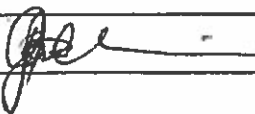
I have applied for employment with the Bitou Local Municipality and have provided information about my previous employment. My signature below authorizes my former or current employers and references to release the contents of my employment record with their organizations and to provide any additional information that may be necessary for my application for employment to the Bitou Local Municipality, whether the information is positive or negative.

I authorize the Bitou Local Municipality to investigate all statements made in my application for employment and to obtain any and all information concerning my former/current employment. This includes my job performance appraisals/evaluations, salary history, disciplinary action(s) if any, and all other matters pertaining to my employment history. I knowingly and voluntarily release all former and current employers, references, and the Bitou Local Municipality from any and all liability arising from their giving or receiving information about my employment history, my academic credentials or qualifications, and my suitability for employment with the Bitou Local Municipality.

This form may be photocopied or reproduced as a facsimile, and these copies will be as effective as a release or consent as the original which I sign.

SECTION II - SIGNATURE

Applicant Name: Vuyotazi Mbelani

Applicant Signature: 

Date: 28/02/2017

Annexure 10.3



No file
Mail box
4/15/6 +
April 2011
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Reference Check: Head Corporate Services

Candidate: VUYOKAZI JEAN-FORTUNE MBELENI

Company: NGQUSHWA LOCAL MUNICIPALITY.

Reference contacted: [REDACTED] voice mail.
Mayor / Councillor Solomon Ndwayana.

Date and time of interview: 4 APRIL 2017. (phone or voicemail).

1. Verify the candidate's dates employment, title.

2. What were the responsibilities of the position the candidate had while working at your company?

3. Do you think the candidate is qualified to assume the responsibility of Corporate Services? Why or why not?

4. How would you describe the candidate's management style management?

5. What was the candidate's attendance record? Was the candidate on-time and dependable? In other words punctual as well

6. What are the candidate's three strongest qualities? Would you describe candidate as a hard worker.

7. What would you say was candidate's weakness

8. What was the candidate's reason for leaving the position?

9. Would you rehire this candidate?

10. Did the employee get along well with her peers? With managers?

11. Is there anything else I should take into consideration before I hire this candidate?

Interview done by: _____

No Answer
4/5/16 + April 2017

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Reference Check: Head Corporate Services

Candidate: Vuyokazi Mbelani

Company: Mbigana LM.

Reference contacted:

(EX-MM) Luvuyo Mahlaka. (REDACTED)

Date and time of interview: 4 April 2017 (phone call to voice-mail)
2007 - 2013 CK

1. Verify the candidate's dates employment, title.

General Manager / Head - Corporate Services

2. What were the responsibilities of the position the candidate had while working at your company?

3. Do you think the candidate is qualified to assume the responsibility of Corporate Services? Why or why not?

Yes; Extensive knowledge/Experience ^{to} be app. as
Head Corporate Services
Previously worked

4. How would you describe the candidate's management style management?

Good Management Style
Energetic
Motivate & develop People
Strong on Operational Issue
Meets Deadlines
Hands-on HOD & delegate.

5. What was the candidate's attendance record? Was the candidate on-time and dependable? In other words punctual as well

Team Player
Knowledgeable & like to transfer skills to empower
People
Loyal.

6. What are the candidate's three strongest qualities? Would you describe candidate as a hard worker.

- # Hard Worker
- # Strong Willed Person
- # Strong Operations Manager

7. What would you say was candidate's weakness

Put too much Pressure when they do not
Perform - before consulting People.

8. What was the candidate's reason for leaving the position?

left due to Promotional Position at a Bigger
Municipality & to be closer at home.

9. Would you rehire this candidate?

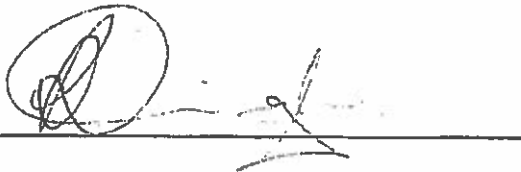
Will definitely hire her.

10. Did the employee get along well with her peers? With managers?

Get along with all People → no matter Social level
Very Professional
Good Inter Personel / Self disciplined.

11. Is there anything else I should take into consideration before I hire this candidate?

Interview done by:



✓ Reference
NO: 2

Reference Check: Head Corporate Services

Candidate: VUYOKAZI MBELANI

Company: KING SABATA DAUNDYEBU MUNICIPALITY.

Reference contacted:

MAYOR NONKOLISO Nggangwa

Date and time of Interview:

1. Verify the candidate's dates employment, title.

SECONDED BY COCTA to ASSIST ^{Municipality with} OPERATION CLEAN-Audit

2. What were the responsibilities of the position the candidate had while working at your company?

Improving Audit Outcome; Advising office of Mm
issues of Financial Statements etc.
Disclaim to improve

3. Do you think the candidate is qualified to assume the responsibility of Corporate Services? Why or why not?

Yes, she does part of Sr. Admin some time at various
Municipality. She ^{worked previously at} ~~is~~ on their Category B Municipality
wide experience in terms of LG. Few people trained on
LG before fully started. Hledge d

4. How would you describe the candidate's management style management?

leader & Management Qualities
Good Team leader.

Before working at COGTA she previously worked as a Similar Manager
which was same size as their Category B Municipality.

5. What was the candidate's attendance record? Was the candidate on-time and dependable? In other words punctual as well

Very punctual; she use to co-ordinate a team with a lot of ease

6. What are the candidate's three strongest qualities? Would you describe candidate as a hard worker.

Hard worker, knowledgeable; Go beyond her limits works until is finished.

7. What would you say was candidate's weakness

She likes to see things happening if people are slow she then becomes irritated.

Consistency.

Gets disappointed.

8. What was the candidate's reason for leaving the position?

taken to a Municipality after 7 years after they received a Qualified audit.

9. Would you rehire this candidate?

⇒ No. will would prefer her to

10. Did the employee get along well with her peers? With managers?

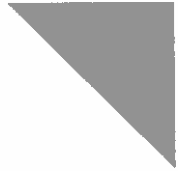
Get working well with every one to a extent most people were reluctant to interact with the impact of she has place
Had a major

11. Is there anything else I should take into consideration before I hire this candidate?

Would not say there is anything else. She was merely seconded & after she did what she was supposed to do - COGTA redeployed her to the another Municipality.

Interview done by: _____

Annexure 10.4





INTERVIEW QUESTIONS HOD: CORPORATE SERVICES

NAME OF CANDIDATE:

Ms VJ MABELANI

DATE:

12/04/2017

NAME OF PANELIST:

THABO NDLORU

Scoring matrix:

1= Unsatisfactory 2= Satisfactory 3= Fair 4= Good 5= Excellent

NO	QUESTION	1	2	3	4	5
1	What are your relevant notable achievements in your career to date that you think make you to be most suitable to be considered for this post?				X	
	Objectives:					
	• Demonstration of the relevant achievements, productivity and strategic acumen.					
	Comments: (a) 2014 work in LG as Director Dev Planning (b) Director Corp Serv (c) Director Strat Planning (d) Administrator for two municipalities (e) multi-functional experience (f) though have been more subject to Authority (g) worked for European Union Transition					
2	Give an overview of the key elements of a properly developed HR policy/strategy and what are the issues that one has to consider in the development and implementation of HR policy/strategy in order to ensure that it has the desired impact.				X	
	Objectives:					
	• Demonstration of an understanding of the policy/strategy develop processes					
	• Demonstration of the key elements of a policy/strategy frame work					
	• Demonstration of the understanding of the impact of developing and implementing HR policies/strategy					
	Comments: (a) HRO strategy developed by expert to address imbalances of the post (b) HRO strategy should be informed by the top (c) organizational analysis (d) people centred strategy (e) internal capacity should be developed to implement the strategy/policy (f) incorporate the external factors in developing policy (g) develop procedural manual (h) have an implemental plan for the HRO strategy - funded					

(f)

NO	QUESTION	1	2	3	4	5
3	Provide an analysis of the general state of performance management in local government; what would you consider as the key elements of a successful performance management system; and what measures you'd implement in order to ensure successful implementation of performance management, including cascading it throughout the organization? Objectives: • Demonstration of the strategic importance of performance management within a municipal environment • Demonstration of the legislative context of performance management in local government • Demonstration of the general understand of performance management system • Demonstration of the experience in working with performance management at a strategic level Comments:			ten	X	
4	The Labour Relations environment in local government can sometimes be antagonistic, how would you go about ensuring that normalised and productive relations exist between Management and Labour Unions? Objectives: • Demonstration of the understanding of the labour relations environment in local government • Demonstration of understanding of conflict resolution • Demonstration of understanding of relations / stakeholder management Comments:				X	

x PDRs.

Regularly in LG for senior managers // PAC to advise
 involve internal audit // SOBIP is the basis for PMS
 Quarterly // PMS can be cascaded to lower levels
 Training of staff that coordinate PMS implementation // ePMS
 budget - towards good performance a - disbursement
 The response was adequately structured

(i) relationship building is important & involve
 labour (ii) agree to disagree (iii) have strong managers
 (iv) encourage unions to be involved in the job estimation
 process (v) L&F functionality (vi) involve labour in
 the change mgmt process (vii) participate
 labour reps. through training.

NO	QUESTION	1	2	3	4	5
5	What is the strategic importance of the Organisational Development function within an organisation?			X		
	Objectives: - Demonstration of the general concept of Organisational Development - Demonstration of the understanding of the strategic importance of Organisational Development					
	Comments: XXXXXXXXXX <i>Ten</i>					
6	How does the IDP align to other strategic planning instruments of the municipality, e.g. strategic planning, budgeting, SDBIP?					
	Objectives: Demonstration of the understanding of the municipal planning cycle					
	Comments: <i>provide support to strategic projects of the municipality</i> <i>[did not understand the question]</i>					
7	What is the strategic role of the Employee Wellness Program (EWP) in an organization and what are some of the key interventions you'd implement in order to improve employee wellness within the organisation?					
	Objectives: - Demonstration of the understanding of the importance of the EWP in an organization - Demonstration of the experience in implementing EWP interventions					
	Comments: <i>(i) EWP (ii) morale of people (iii) improves relations with employees (iv) improve resource management (v) benefits employees & employees (vi) focus on the health of employees (vii) peer groups establishment (viii) facilities for mothers</i>					

NO	QUESTION	1	2	3	4	5
8	What are the key measures that you'd implement in order to ensure the efficient functioning of Council and its Committees and how would you ensure that the recording, monitoring of implementation and reporting of the Council resolutions is done appropriately? Objectives: - Demonstration of the understanding of the functioning of Council and its Committees - Demonstration of the experience in guiding the processes aimed at improving the functioning of Council and its Committees. Comments: (i) municipal calendar to be developed (ii) align Council Calendar with Perf report & IT work (iii) setting up of agenda items (iv) Council resolutions register (v) baseline resolutions (vi) action list developing (vii) policy for Council support				X	
9	What is the strategic role of the Corporate Services Department in ensuring that the municipality achieves legal compliance with the various legislative prescripts governing local government and what measures you'd implement in order to ensure that the organisation achieves legal compliance? Objectives: - Demonstration of the understanding of the importance of legal compliance within an organisation - Demonstration of the understanding of the role of the department in ensuring that the organisation achieves legal compliance - Demonstration of the experience in implementing of measures aimed at ensuring the organisation achieves legal compliance Comments: (i) legal register informed by powers and functions (ii) circulars should be included in the register (iii) legal services must be shared in research and interpretation of law (iv) process of bringing in changes (v) internal				X	

TOTAL SCORE: 33 / 45



INTERVIEW QUESTIONS HOD: CORPORATE SERVICES

NAME OF CANDIDATE: Ms. V.J. Mbelani

DATE: 10 APRIL 2017

NAME OF PANELIST: J. Douglas

Scoring matrix:

1= Unsatisfactory 2= Satisfactory 3= Fair 4= Good 5= Excellent

NO	QUESTION	1	2	3	4	5
1	What are your relevant notable achievements in your career to date that you think make you to be most suitable to be considered for this post? Objectives: Demonstration of the relevant achievements, productivity and strategic acumen. Comments: <i>Acted in various management positions. ?? Taking instructions. Now self-employed? WSP.</i>		<i>[Signature]</i>	X		
2	Give an overview of the key elements of a properly developed HR policy/strategy and what are the issues that one has to consider in the development and implementation of HR policy/strategy in order to ensure that it has the desired impact. Objectives: - Demonstration of an understanding of the policy/strategy develop processes - Demonstration of the key elements of a policy/strategy frame work - Demonstration of the understanding of the impact of developing and implementing HR policies/strategy Comments: <i>Situational analysis. People Centred - WSP. - Salary Policy development. Did not highlight key elements. - Procedure Manual. - Implementation Plan. - Funding.</i>			X		

NO	QUESTION	1	2	3	4	5
3	Provide an analysis of the general state of performance management in local government; what would you consider as the key elements of a successful performance management system; and what measures you'd implement in order to ensure successful implementation of performance management, including cascading it throughout the organization? Objectives: • Demonstration of the strategic importance of performance management within a municipal environment • Demonstration of the legislative context of performance management in local government • Demonstration of the general understand of performance management system • Demonstration of the experience in working with performance management at a strategic level Comments: <i>Highlighted Regulation & contents.</i> <i>Perf. Audit Committee Roles</i> <i>External Audit Unit - Sect 52(d) of MAMA.</i> <i>Roll out cascading it in Org. -</i> <i>MAYO & SNA MGT BE trained.</i> <i>Labour Unions to follow up.</i> <i>Need an IT system</i>				X	
4	The Labour Relations environment in local government can sometimes be antagonistic, how would you go about ensuring that normalised and productive relations exist between Management and Labour Unions? Objectives: • Demonstration of the understanding of the labour relations environment in local government • Demonstration of understanding of conflict resolution • Demonstration of understanding of relations / stakeholder management Comments: <i>Based on Principles, Policy Development.</i> <i>Unions to be involved in IDP Budget etc.</i> <i>eg mode: Kth Chagne. Work informed by legislation</i> <i>employee's before in JOL.</i> <i>ILF very important monthly meetings</i> <i>Change/mgmt programme. - MSCOA reforms.</i>				X	

NO	QUESTION	1	2	3	4	5
5	What is the strategic importance of the Organisational Development function within an organisation?			X		
	Objectives: - Demonstration of the general concept of Organisational Development - Demonstration of the understanding of the strategic importance of Organisational Development					
	Comments: <i>Facilitate a process of being right staff for right position</i>					
6	How does the IDP align to other strategic planning instruments of the municipality, e.g. strategic planning, budgeting, SDBIP?			X		
	Objectives: Demonstration of the understanding of the municipal planning cycle					
	Comments: <i>Situational Analysis</i>					
	<i>Dev. Obj & Strategies</i>					
7	What is the strategic role of the Employee Wellness Program (EWP) in an organization and what are some of the key interventions you'd implement in order to improve employee wellness within the organisation?			X	X	
	Objectives: - Demonstration of the understanding of the importance of the EWP in an organization - Demonstration of the experience in implementing EWP interventions					
	Comments: <i>Indicate how you care for employee.</i>					
	<i>Trust in well-being of staff.</i>					
	<i>Deals with Psychological Component of staff.</i>					
	<i>Special attention to staff working in high risk working environment</i>					
	<i>Peer Group in each Dept.</i>					

*Supporting mother - Nursery & Wash.
Is absenteeism*

NO	QUESTION	1	2	3	4	5
8	What are the key measures that you'd implement in order to ensure the efficient functioning of Council and its Committees and how would you ensure that the recording, monitoring of implementation and reporting of the Council resolutions is done appropriately? Objectives: • Demonstration of the understanding of the functioning of Council and its Committees • Demonstration of the experience in guiding the processes aimed at improving the functioning of Council and its Committees. Comments: <i>Municipal Calendar: in line with MAMA calendar etc.</i> <i>Agenda items</i> <i>Copy of Council Resolutions</i> <i>Focus more on Perf. Mgt rather than Compliance.</i> <i>Delegations Register - archiving</i>				X	
9	What is the strategic role of the Corporate Services Department in ensuring that the municipality achieves legal compliance with the various legislative prescripts governing local government and what measures you'd implement in order to ensure that the organisation achieves legal compliance? Objectives: • Demonstration of the understanding of the importance of legal compliance within an organisation • Demonstration of the understanding of the role of the department in ensuring that the organisation achieves legal compliance • Demonstration of the experience in implementing of measures aimed at ensuring the organisation achieves legal compliance Comments: <i>Update & review Legal Register</i> <i>Review of Functions</i> <i>Circulars to find expression</i> <i>Legal</i>		X	X		

TOTAL SCORE:31...../45

PANELIST'S OVERALL COMMENTS:

.....

.....

.....

SIGNATURE:



INTERVIEW QUESTIONS HOD: CORPORATE SERVICES

NAME OF CANDIDATE: VUYOKAZI MBEANI

DATE: 10th April 2017

NAME OF PANELIST: SANDISO ENOCH GCABAYI

Scoring matrix:

1= Unsatisfactory 2= Satisfactory 3= Fair 4= Good 5= Excellent

NO	QUESTION	1	(2)	3	4	5
1	What are your relevant notable achievements in your career to date that you think make you to be most suitable to be considered for this post?					
	Objectives:					
	• Demonstration of the relevant achievements, productivity and strategic acumen.					
	Comments: <u>SHE explained herself fully</u>					
2	Give an overview of the key elements of a properly developed HR policy/strategy and what are the issues that one has to consider in the development and implementation of HR policy/strategy in order to ensure that it has the desired impact.	1	2	3	(4)	5
	Objectives:					
	• Demonstration of an understanding of the policy/strategy develop processes					
	• Demonstration of the key elements of a policy/strategy frame work					
	• Demonstration of the understanding of the impact of developing and implementing HR policies/strategy					
	Comments: <u>SHE WAS able to demonstrate policy and strategy and coming with advise that will strengthen the institution.</u>					

NO	QUESTION	1	2	3	(4)	5
3	Provide an analysis of the general state of performance management in local government; what would you consider as the key elements of a successful performance management system; and what measures you'd implement in order to ensure successful implementation of performance management, including cascading it throughout the organization? Objectives: • Demonstration of the strategic importance of performance management within a municipal environment • Demonstration of the legislative context of performance management in local government • Demonstration of the general understand of performance management system • Demonstration of the experience in working with performance management at a strategic level Comments: SHE WAS VERY clear in terms of Analysing the performance management in local government. She fully explained about cascading performance through the entire organisation.					
4	The Labour Relations environment in local government can sometimes be antagonistic, how would you go about ensuring that normalised and productive relations exist between Management and Labour Unions? Objectives: • Demonstration of the understanding of the labour relations environment in local government • Demonstration of understanding of conflict resolution • Demonstration of understanding of relations / stakeholder management Comments: SHE IS VERY knowledgeable about carrying forward the agenda of local govt with the basis of including labour Unions as well.					

NO	QUESTION	1	2	3	4	5
5	What is the strategic importance of the Organisational Development function within an organisation?					
	Objectives: • Demonstration of the general concept of Organisational Development • Demonstration of the understanding of the strategic importance of Organisational Development					
	Comments: <i>Explained but not fully.</i>					
6	How does the IDP align to other strategic planning instruments of the municipality, e.g. strategic planning, budgeting, SDBIP?					
	Objectives: • Demonstration of the understanding of the municipal planning cycle					
	Comments: <i>SHE WAS ABLE TO EXPLAIN how IDP must align with other planning instruments of the municipality.</i>					
7	What is the strategic role of the Employee Wellness Program (EWP) in an organization and what are some of the key interventions you'd implement in order to improve employee wellness within the organisation?					
	Objectives: • Demonstration of the understanding of the importance of the EWP in an organization • Demonstration of the experience in implementing EWP interventions					
	Comments: <i>She was outlining the EWP perfectly and highlighting reasons of how employees must be catered for.</i>					

NO	QUESTION	1	2	3	(4)	5
8	What are the key measures that you'd implement in order to ensure the efficient functioning of Council and its Committees and how would you ensure that the recording, monitoring of implementation and reporting of the Council resolutions is done appropriately? Objectives: - Demonstration of the understanding of the functioning of Council and its Committees - Demonstration of the experience in guiding the processes aimed at improving the functioning of Council and its Committees. Comments: <i>SHE explained how Council support must be structured giving vital information on how to conduct efficient functioning of Council and its Committees.</i>					
9	What is the strategic role of the Corporate Services Department in ensuring that the municipality achieves legal compliance with the various legislative prescripts governing local government and what measures you'd implement in order to ensure that the organisation achieves legal compliance? Objectives: - Demonstration of the understanding of the importance of legal compliance within an organisation - Demonstration of the understanding of the role of the department in ensuring that the organisation achieves legal compliance - Demonstration of the experience in implementing of measures aimed at ensuring the organisation achieves legal compliance Comments: <i>SHE is well vested on how to ensure that the organisation achieves legal compliance, she explained fully.</i>					

TOTAL SCORE: 30 / 45

32

The rater did not add up correctly

[Signature]
4/10/2017
@ 4:21pm

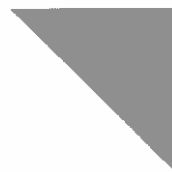
PANELIST'S OVERALL COMMENTS:

.....
GOOD
.....
.....

SIGNATURE:

S.E. Gannon

Annexure 10.5



1

2

3

4

Section 1: Office of the Municipal Manager

IN-COMMITTEE

ITEM C/1/31/04/17

Mayoral Committee for recommendation to Council

APPOINTMENT OF HEAD: CORPORATE SERVICES

Department: Office of the Municipal Manager

File Ref: 4/3/5/1/3

Attachment: Selection report signed by the Municipal Manager. (This report is considered confidential and is therefore circulated to Councillors only.)

Report from: Municipal Manager

Author: Municipal Manager

Purpose of the report

The purpose of this report is to note the process and outcomes of the evaluation and selection processes for the position of Head: Corporate Services in compliance with Section 30 (5) (c) of the Municipal Structures Act (117 of 1998) and to provide guidelines for appointment in the advertised vacancy.

Background

The Head: Corporate Services position was advertised under Notice No. 28 of 2017 in the national newspapers, Sunday Times and the Rapport on 12 February 2017. The closing date was the 6 March 2017. An erratum notice was also placed under Notice 53 of 2017 on the municipal website with closing date of 8 March 2017.

The following panel members were appointed per Council resolution C/3/27/02/17 and Section 12(4) of Local Government: Regulations on appointment and conditions of employment of senior managers under notice no.37245:

- The Municipal Manager who will be the chairperson;
- Portfolio Councillor: Finance and Corporate Services, Councillor S Gcabayi
- A Municipal Manager from another municipality

The Acting Municipal Manager from Knysna Municipality, Mr J Douglas, was duly appointed as the Municipal Manager from another municipality.

Section 1: Office of the Municipal Manager

A total of 45 applications were received as well as 2 late applications. The shortlisting process was conducted by the Panel Members, and the criteria applied took into consideration equity, previous experience and qualifications. One (1) Female candidate who met the criteria was shortlisted.

Four (4) candidates were invited to attend the competency assessment and interview process for the Head: Corporate Services post. One (1) candidate withdrew from the process and therefore 3 candidates attended the process.

The competency assessments were conducted by an Independent Service Provider, namely Gijima (appointment of Services provider was conducted as prescribed by Department of Cooperative Governance hereafter referred as COGTA under Circular 4 of 2016). Competency assessments were scheduled by the services providers and took place at the service centers of service providers at their respective stations situated closest to the candidates.

The Trade Unions were invited to the shortlisting and interview sessions, and attended as observers.

The panel applied their minds and scored the candidates against a preset standard and set of questions.

The Selection Process was attended by:

- The Municipal Manager, Mr T Ndlovu (The Chairperson)
- The Portfolio Councillor: Finance and Corporate Services, Councillor S Gcabayi
- The Acting Municipal Manager, Mr J Douglas (Knysna Municipality)
- Mr H Kitsi – IMATU (Observer)
- Ms M Nel – SAMWU (Observer)

Recommended by the Municipal Manager

1. That Council appoints Ms V Mbelani as Head: Corporate Services for Bitou Local Municipality.
2. That an offer of employment be extended to Ms V Mbelani and that the Municipal Manager be authorized to negotiate a contract of employment with the candidate, taking into regard the market value of the post, as well as affordability, statutory requirements and other pre-conditions.
3. That, should the preferred candidate reject the offer of employment or refrain to agree to a contract of employment within 30 days of the council's resolution, the recruitment and selection results may be revisited according to Council's resolution.

Section 1: Office of the Municipal Manager

4. That a written report regarding the appointment in (1) above be submitted to the MEC for local government in the province regarding the appointment process and outcome within 14 days of Council's decision.
5. That the concurrence of the MEC for local government in the province be obtained for the appointment of the Head: Corporate Services



**SELECTION REPORT
HEAD: CORPORATE
SERVICES (NOTICE NR 28
AND ERRATUM NOTICE
53 OF 2017)**

CONFIDENTIAL



**10 APRIL 2017
BITOU MUNICIPALITY**

SELECTION REPORT – HEAD: CORPORATE SERVICES

1. PURPOSE OF THE REPORT

The purpose of the report is to note the process and outcomes of the evaluation and selection processes for the position of Head: Corporate Services in Compliance with Section 30(5)(c) of the Municipal Structures Act (Act 117 of 1998) and to provide guidelines for the appointment in the advertised vacancy

2. APPLICANTS FOR THE POSITION

A total of 45 applicants were received for the position as advertised in the press. (See Longlist – Annexure A)

3. THE SELECTION COMMITTEE

The Selection Process was attended by:

Panel Members

Municipal Manager, T Ndlovu (Chairperson)
Portfolio Councillor: Finance and Corporate Services, S Gcabayi
Acting Municipal Manager, J Douglas (Knysna Municipality)
Mr D Baartman – IMATU (Observer)
Ms M Nel – SAMWU (Observer)

Secretarial Services

Senior Manager: Human Resource Management, T Wildeman
HR Clerk: C Rass

The scores of the Panel members were taken into consideration. The shortlisting process was conducted by the Panel Members and the observers formed part of the shortlisting process.

4. THE SELECTION PROCESS

4.1 Method of selection

The shortlisted candidates were invited to undergo competency assessments, at the various assessment centers of the Services Provider, Gijima situated closest to the candidate's locality.

The structured interview session was conducted on 10 April 2017 at the Municipal Council Chambers in Plettenberg Bay.

The selection processes consisted of the following two components:

➤ **Competency Assessment (40% weighting)**

Competency assessments was conducted by an Independent Service Provider, namely Gijima (appointment of Services provider was conducted as prescribed by Department of Cooperative Governance hereafter referred as COGTA under Circular 4 of 2016).

➤ **Structured Interview (60% weighting)**

9 questions was administered, totaling 45 points.

The scores derived from the above processes were combined to arrive at an aggregate score that depicts the qualifying candidates from which the Selection Authority may consider its final appointment in conjunction with the preferential scoring for designated groups or other valid factors as may be contained in the Selection Policy of Council. It should be noted that all measures were taken to ensure an objective assessment.

4.2 Head: Corporate Services

A total of four (4) candidates were invited to attend the assessment and interview process for the Head Corporate Services post.

One (1) candidate withdrew from the process and therefore 3 candidates attended the process. (See Section B – Shortlist)

5. OUTCOME OF ASSESSMENT AND INTERVIEW PROCESS

At the commencement of the selection process the Selection Committee adopted a selection procedure for the appointment of the Head: Corporate Services, i.e. weighting criteria to be applied and aggregated to derive at final scoring.

The qualifying outcome of the 2 processes can be summarized as follows:

5.1 Assessment Summary – Head Corporate Services

5.1.1 Outcomes of structured interview

APPLICANT	PERCENTAGE
Ms VJ Mbelani	71%
Mr F Cotani	65%
Mr L Ngoqo	58%

5.1.2 Outcomes of Competency assessment

APPLICANT	ACHIEVEMENT LEVEL
Mr F Cotani	Competent
Ms VJ Mbelani	Basic
Mr L Ngoqo	Basic

6. RECOMMENDATION BY THE MUNICIPAL MANAGER

It is recommended that;

- 6.1 Council appoints Ms V Mbelani as Head Corporate Services for Bitou Local Municipality, taking into consideration that she performed the best in the structured interview, the equity statistics of Senior Management at present and female representation in Senior Management Positions.
- 6.2 An offer of employment be extended to Ms V Mbelani and that the Municipal Manager is authorized to negotiate a contract of employment with the candidate, taking into regard the market value of the post, as well as affordability, statutory requirements and other pre-conditions.
- 6.3 Should the preferred candidate reject the offer of employment or refrain to agree to a contract of employment within 30 days of the council's resolution, the recruitment and selection results may be revisited according to Council's resolution.
- 6.4 That it be noted that final employment is dependent on the following as per Circular 19 of 2011:

A municipal council must, within 14 days of the date of appointment of the Senior Manager, furnish a report to the MEC. The report contemplated above must provide the following information:
 - Details of the advertisement, including date of issue and the name of newspapers in which the advert was published, including proof of the advertisement, and a copy of the advertisement;
 - Council resolution approving the short listing and interview panels (such panels to be compliant with section 180 (8) of the Constitution);
 - Minutes of shortlisting meeting;
 - Minutes of interview, including scoring;
 - Recommendations of the interview panel made to the executive committee;

- In the event that the interview panel constituted of all members of the executive committee, the indicate and provide recommendation;
- Recommendation of the executive committee to the municipal council in terms of section 30(5)(c);
- Council resolution appointing successful candidate;
- Curriculum vitae of successful candidate, including qualifications;
- Confirmation by the candidates that he/she does not hold political office as defined in terms of the Amendment Act, as at the date of the appointment;
- Any other information relevant to the appointment

6.5 The Selection Panel or a representative thereof, as a matter of courtesy inform the unsuccessful candidates formally of the outcome, and thank them for their participation in the process.

7. CONCLUSION

All individuals that took part in the selection process are thanked for their time and effort in contributing to making this critical appointment a reality.


T. NDLOVU
 MUNICIPAL MANAGER

SHORT LIST

REF NO

DATE OF INTERVIEW

ADVERTISED IN

CANDIDATES SHORT LISTED

HEAD CORPORATE SERVICES

NOTICE NR 28 of 2017

10 APRIL 2017

SUNDAY TIMES AND RAPPORT (12 FEBRUARY 2017)

4

Employment Equity target

OCCUPATIONAL LEVEL	MALE						FEMALE						GRAND TOTAL
	AFRICAN	COLOUR	INDIA N	WHIT E	DISABLE D	TOTAL	AFRICAN	COLOUR	INDIA N	WHIT E	DISABLE D	TOTAL	
Economically Active Profile (Province)	15.0%	24.0%	0.7%	9.3%		49%	15.0%	25.0%	0.7%	10.0%		51%	100%
TOP MANAGEMENT	1	0	0	1	0	2	1	0	0	0	0	1	3
% Representation for Occupational Level per designated category	33.3%	0.0%	0.0%	33.3%	0.0%	67%	33.3%	0.0%	0.0%	0.0%	0.0%	33%	100.00 %
% Representation iro total labour turn over per designated category	0.58%	0.00%	0.00%	3.70%	0.00%	0.58 %	1.02%	0.00%	0.00%	0.00%	0.00%	0.51 %	1%
TARGET	-18%	24%	1%	-24%	0%	-18%	-18%	25%	1%	10%	0%	18%	

SURNAME, NAME, ID, RACE, GENDER, LANGUAGES, DR. LICENSE	ADDRESS CONTACT DETAILS & EMAIL ADDRESS	PROFESSIONAL REGISTRATION & MEMBERSHIP	QUALIFICATIONS	CURRENT EMPLOYMENT	EXPERIENCE	REFERENCES	COMMENTS
23. ISAACS Obakeng Johannes [REDACTED] African, Male Afrikaans, English Thswana Driver's license C1	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Member of the Institute of municipal personnel practitioners of South Africa Membership number IMP215	2011 Post graduate diploma in advanced labour law University of Johannesburg 1998 – 2001 ND Human resources management Peninsula Technicon COURSES 2013 Certificate municipal financial management local government sector education training authority NOF level 6 2011 – 2012 Certificate municipal finance management Certificate executive leadership municipal development programme Certificate project development and management course Community based development training 2008 Certificate conciliation & arbitration workshop CBA Training 2006 Certificate legal compliance in the	2014 till present Municipal manager Khal – ma Municipality: profader	2014 Deputy director – project management Human settlement and traditional affairs 2008-2014 Director corporate services Tsatsabane local municipality postmasburg 2007 – 2008 Head labour relations health and safety employee assistance/wellness programme Khara hats municipality Agent for domestic workers Golda Consultancy	Clir. Pasquale van heerden Mayor-Hlal – Ma municipality [REDACTED] [REDACTED] [REDACTED] Ms.iketso Mogadi Chief Director Department cooperative governance human settlements and traditional affairs [REDACTED] [REDACTED] Clir. Elroy Phate Mayor: Tsatsabane local municipality [REDACTED] [REDACTED] Rev. M.M. Moselane – municipal manager Tsatsabane municipality [REDACTED] [REDACTED] [REDACTED] Mr Roy Matsibala	

			appointment & promotion process workshop 2007 Certificate advanced law of evidence workshop CBA training		Manager human resources South African local government association [REDACTED] mashaba@salga.org.za 3	
25. COTANI Fezekile Gideon [REDACTED] African, Male English Driver's license code EB	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	No membership	2016 CPMD University of fort hare 2005 Bachelor of public administration with honours Stellenbosch 1993 Post graduate diploma in organization and management University of cape town 1992 Bachelor of arts degree University of cape town	2012 Director corporate services Blue crane route municipality	2002 – 2012 Sub council manager City of cape City of cape town 1995 – 2002 Area coordinator Economic development City of cape town 1994 – 1995 Business development officer Independent finance center	Mr Thabiso Kaas Municipal manager Blue crane route municipality [REDACTED] Mrs Mpho Ndoni Regional Director Human Settlement Serarah Baartman district [REDACTED] Mr Mvelo Nicola Chairperson national lotteries commission distribution agency [REDACTED] Mr Maxwell Fuzani Senior advisor to the minister sports and recreation RSA [REDACTED] Mr Johan Viljoen Director Amakhala emoyeni windfarm [REDACTED]

29. MBELANI Vuyokazi [REDACTED] African, Female CODE EB	[REDACTED]	No membership	1990 Bachelor of social science University of cape town COURSES 2013 Course in performance management and evaluation Arms audit consultants 2009 Course in finance University of Stellenbosch 2009 Course in corporate governance Atroteth 2007 Course in salary structuring by mouton & associates 1995 Course in monitoring and evaluation in regent College in london Course in local government management University of birminham	2015 to date CEO Prospero consultancy	2013 – 2014 Municipal manager IEC Municipal electoral officer Ngqushwa 2013 Acting municipal Manager 2012 – 2013 Director specialist operation clean audit as municipal oversight committees Eastern cape department of local government & traditional affairs 2011 – 2012 Seconded as acting municipal manager Amahlali municipality 2011 Assistant director monitoring and evaluation Eastern cape department of local government & traditional affairs 2008 Head of department Amathola district municipality 2007 - 2008 Director corporate services Ugu district municipality in KZN	Councillor solomzi Mayor of ngqushwa [REDACTED] [REDACTED] mayor of king dalendyebo councillor [REDACTED] [REDACTED] Clr MABUYA MPAC Chairperson Ndyandeni municipality [REDACTED] Clr Pasika Nonshizaeb Chairperson MPAC King sabata Dalendyebo Municipality [REDACTED] Chief Whip Clr Noluza Mlahleli amahlathi municipality [REDACTED] Clr Yusi Nshuba Or tambo [REDACTED] Happy kwetana Chief department of rural and agriculture [REDACTED]
--	------------	---------------	--	---	--	--

							Dr Winston Plaatjies Chairperson of Ngqushwa audit committee [REDACTED] Khaya Ngqula [REDACTED]	
36. NGOQO Lonwabo Mwliwana Ronald [REDACTED] African, Male English ,Xhosa Driver's license code 8	[REDACTED]	No membership	2001 LLB 1994 – 2001 B Juris COURSES 2004 – 2005 Municipal executive development programme	2012 to date Municipal manger Sundays river valley municipality	2008 – 2012 Municipal manager Bitou local municipality 2004 – 2008 Director corporate services Eden district municipality 1998 – 2004 MEO Bitou municipality Independent electoral commission 2002 – 2004 Human resources manager Kouga municipality 2000 – 2002 Acting human resources manager 1997 – 2000 Assistant town secretary Jeffreys bay traditional local council 1995 – 1996 Student assistant Vista university PE	Jama Vumazonke Municipality Baviaans Municipality [REDACTED] [REDACTED] Adv Luvuyotern Bono Advocate Eastern cape council [REDACTED] Lulama Mvimbi Former Mayor Bitou local municipality [REDACTED]		

Annexure 10.6



East London Branch

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Docex 1, East London

www.drakefo.co.za



Drake Flemmer & Orsmond
Attorneys

Our Ref: R JARDINE/mk/M467

Your Ref:

Date: 01 March 2017

TO WHOM IT MAY CONCERN

RE: VUYOKAZI MBELANI

I have been requested by Ms Vuyokazi Mbelani to provide her with a letter giving details of the Labour dispute between herself and the Ngqushwa Municipality in 2014/15.

I confirm that there were two (2) disputes referred to the South African Local Bargaining Council (SALGBC). Two awards were issued, one of which was in favour of Ms Mbelani. Both awards were ultimately referred on review to the Labour Court in Port Elizabeth. In the end the parties entered into a confidential Settlement Agreement which, *inter alia*, terminated the relationship between the parties.

I trust that this may be of assistance to you. I am unfortunately precluded from disclosing the details of the Settlement Agreement due to the confidentiality clause contained in the Agreement.

Yours faithfully

RICHARD JARDINE

Email: miriamk@drakefo.co.za

DIRECTORS:

Terence Robin Mathie (BProc); Bongani Qangule (BJuris, BProc, LLB); Richard Keith Jardine (BA LLB);
Angus James Pringle (BA LLB); Tanya Aletta Coetzee (BProc); Ingrid Gaertner (BJuris LLB);
Sonja Nel (BCom LLB); Terence Shaun Mathie (LLB)

ASSOCIATES:

Yanga Mazwi (BCom LLB); Samantha Lee-Ann Vockerodt (B.Proc); Siyabonga Joko (BCom LLB);

CANDIDATE ATTORNEYS:

Nicole Martin (LLB); Akhona George (LLB); Sazi Ntuli (BA LLB);
Lonwabo Ndawanda (LLB); Kefentse Lellala (BCom (Honours) (LLB)

OTHER BRANCHES:

King William's Town: Unit 10B, Sutton Square, 8 Queens Road
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B-BBEE status Level 2 Contributor

Reg No. 2001/016491/21 | Vat No. 4420151575

phatshoanehenne
CPO, P.O. Box 1111, 1111

Annexure 10.7





CONTRACT OF EMPLOYMENT

Made and entered into by and between:

THE MUNICIPALITY OF BITOU LOCAL MUNICIPALITY

("the Municipality")

Represented by the Municipal Manager

duly authorised

THABO COLLIN NDLOVU

Id number [REDACTED]

And

VUYOKAZI JEAN-FORTUNE MBELANI

Id number [REDACTED]

("the Employee")

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CLAUSE	INDEX DETAILS	PAGE
1.	PARTIES	
2.	INTERPRETATION	
3.	APPOINTMENT AND DURATION	
4.	CONDITIONS PRECEDENT	
5.	OTHER BUSINESS INTEREST	
6.	PLACE OF WORK	
7.	HOURS	
8.	REMUNERATION	
9.	PERFORMANCE MANAGEMENT AND PERFORMANCE EVALUATION	
10.	PENSION & MEDICAL AID	
11.	CONDITIONS OF SERVICE, HUMAN RESOURCE POLICIES AND PROCEDURES	
12.	MOTOR VEHICLE AND TRAVEL	
13.	DEDUCTIONS FROM SALARY	
14.	LEAVE	
15.	PRECAUTIONARY SUSPENSION	
16.	DUTIES AND RESPONSIBILITIES	
17.	TERMINATION	
18.	GRIEVANCES	
19.	DISPUTE RESOLUTION	
20.	CONFIDENTIALITY AND ACCESS TO STRATEGIC INFORMATION	
21.	NON-SOLICITATION	
22.	GOOD FAITH	
23.	DOMICILIUM AND NOTICES	
24.	GENERAL PROVISIONS	

Annexures:

Annexure A	-	Duties and Responsibilities
Annexure B	-	Code of Conduct for Municipal Staff Members
Annexure C	-	Probation Criteria

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PARTIES

- 1.1 This employment contract is concluded between the Bitou Municipality, a Municipality established in terms of Section 12 of the Local Government: Municipal Structures Act 117 of 1998, as the Municipality, on the one hand, duly represented by Mr Thabo Ndlovu in his capacity as Municipal Manager and
- 1.2 Miss Vuyokazi Jean-Fortunel Mbelani I.D. [REDACTED] hereinafter referred to as "the Executive", on the other hand.
- 1.3 The parties as set out in 1.1 and 1.2 above hereby record their agreement in writing.

2. INTERPRETATION

In this agreement, unless the context clearly indicates a contrary intention:

- 2.1 The headnotes are for reference purposes only and shall not affect the interpretation of any part thereof.
- 2.2 The singular includes the plural and *vice versa*.
- 2.3 A reference to one gender includes the other genders.
- 2.4 Words and expressions defined in the Local Government: Municipal Structures Act 117 of 1998 and Local Government: Municipal Systems Act 32 of 2000 shall be given those defined meanings when used in this agreement.
- 2.5 The following words bear the meanings set out below and cognate expressions bear a like meaning –

"Agreement" shall mean the contract of employment, its annexures and any policies of the Municipality which may apply in terms hereof;

"BCEA" shall mean the Basic Conditions of Employment Act 75 of 1997;

"Constitution" shall mean the Constitution of the Republic of South Africa, Act, 108, of 1996,

"Disciplinary Regulations" shall mean the Local Government Disciplinary Regulations for Senior Managers, published under GN 334 of 21 April 2011;

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"Executive" shall mean employee

"LRA" shall mean the Labour Relations Act, 66 of 1995;

"Municipal Finance Management Act" shall mean the Local Government: Municipal Finance Management Act, 56 of 2003 as amended from time to time;

"Municipality" shall mean the Municipality of Bitou;

"Operational requirements" shall mean requirements based on the economic, technological, structural or similar needs of the Municipality, as defined in section 213 of the *LRA* and as contemplated in section 189 of the Act, and not requirements related to a change in control of the Municipality. Without limiting the generality of the afore going, "operational requirements" includes requirements resulting from the application by the Municipality of the *Systems Act* and the *Structures Act*;

"parties" shall mean the parties to this Agreement;

"Performance Regulations" shall mean the Municipal Performance the Regulations for Municipal Managers and Managers directly accountable to the Municipal Manager promulgated under the *Systems Act*, (GN R 805 of 01 August 2006) as may be amended from time to time;

"Structures Act" shall mean the Local Government: Municipal Structures Act, 118 of 1998, as amended;

"Systems Act" shall mean the Local Government: Municipal Systems Act, 32 of 2000, as amended and

"TCOE" shall mean Total Cost of Employment.

3. APPOINTMENT AND DURATION

3.1 The Municipality hereby employs the Employee on a five year term contract and the Executive hereby accepts employment as Head of Department: Corporate Services subject to:

- 3.1.1 the terms and conditions contained in this *Agreement*;
- 3.1.2 the provisions of the *Systems Act*
- 3.1.3 the provision of Municipal Finance Management Act;
- 3.1.4 the achievement and completion of the prescribed Minimum Competency qualifications before 03 September 2018, or such date as required by the Regulations on Minimum Competency Levels, and

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3.1.5 A probationary period as referred to clause 3.5

- 3.2 Notwithstanding the date of signature hereof, this Agreement, and the appointment referred to in 3.1, employment shall commence and shall in all respects be deemed to have commenced, with effect from 1 May 2017, and shall terminate automatically on 30 April 2022.
- 3.3 It is specifically recorded that the Employer agrees that it may, extend or renew the employment contract of the Executive for a further five (5) years on the same terms and conditions, however there is no expectation, whether reasonable, legitimate or otherwise, that this Agreement will be renewed or extended beyond the period referred to in clause 3.2.
- 3.4 The failure to renew or extend the period referred to in clauses 3.1 and 3.2 above shall not constitute a dismissal of the Executive and the Executive shall not be entitled to any additional remuneration or compensation in respect of the completion of such period, save as provided for in this Agreement. However, should the current contract be terminated pre-maturely before its expiration date for any other reason other than validly provided for in the LRA e.g. misconduct, incapacity etc. the Executive shall then be entitled to compensation for the remainder period of this Agreement.

3.5 Probation

- 3.5.1 Notwithstanding the provisions of clause 3.1, the Executive will serve an initial probation of 6 (six) months starting from the date of employment commences or the Executive starts in the new job.
- 3.5.2 During the probation period the Municipality will assess the Executive's performance and suitability for the job and role against the criteria contained in Annexure C of this contract.
- 3.5.3 Any time during or after the completion of the probation period, the Municipality may –
- 3.5.3.1 Confirm the employment if –
- (i) The Executive performance has been satisfactorily during the probation period;
 - (ii) The Executive has complied with the conditions of his or her probationary appointment; and
 - (iii) Has met the criteria set out in Annexure C hereto; or
- 3.5.3.2 Subject to requesting and considering representations from the Executive
- 3.5.3.2.1 extend the probation period for up to six months or

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3.5.3.2.2 terminate the employment contract in accordance with the provision of the LRA

4. CONDITIONS PRECEDENT

4.1 The Executive's employment is further subject to compliance with the following terms:-

4.1.1 Submission of proof of academic and professional qualifications

4.1.2 The signing of a performance agreement as contemplated by Section 57 of the *Systems Act* ("the performance agreement") within sixty (60) days after appointment as Executive and thereafter annually for the duration of this Agreement within one month after the beginning of each financial year (In each instance "the relevant date") failing which the appointment lapses: Provided that upon good cause shown by the Executive to the satisfaction of the Municipality, the appointment shall not lapse.

4.1.3 the Code of Conduct as stipulated in Schedule 2 of the *Systems Act* (Annexure B)

4.1.4 the declaration by the Executive, within 60 (sixty) days of the signature hereof, and thereafter on the relevant dates to the Speaker of any and all his/her interests as required by section 5A of the Code of Conduct for Municipal Staff Members. Such declaration to be made in writing and in the prescribed form.

4.2 The municipality and the Executive undertake to conduct themselves in good faith in their dealings with each other and in a manner which will enable the performance agreement to be finalised and signed by the relevant date as required by Section 57 of the *Systems Act*.

5. OTHER BUSINESS INTERESTS

5.1 During the subsistence of this agreement, the employee shall devote all his time and attention during working hours to the administration and affairs of the Municipality and shall not be engaged either directly or indirectly in any other

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form of business without the prior written consent, or resolution where necessary, of the Municipality.

6. PLACE OF WORK

The Executive's ordinary place of work shall be the Bitou Municipality in Plettenberg Bay. The Executive's place of work includes the Municipality's area of jurisdiction, but he or she may be required to perform other duties or work related to the functions of the Municipality at other places that may reasonably be required by the Municipality.

7. OFFICIAL WORKING HOURS

- 7.1. The Executive shall work such hours and days in accordance with the operational needs and requirements of the Municipality, which will not be less than 40 hours per week from Monday to Friday.
- 7.2. The Executive must place the whole of his or her time at the disposal of the Municipality and it will be required of the Executive to work overtime, when reasonably required to do so in fulfilment of his or her duties.
- 7.3. The Executive will not qualify for overtime remuneration.

8. REMUNERATION

- 8.1 The Executive shall, with effect from the commencement date, be entitled to an annual remuneration package with a value of R 878 063.00 (Eight Hundred and Seventy Eight Thousand and Sixty Three Rand) per annum
- 8.2 It is recorded and agreed that-
 - 8.2.1 The remuneration package referred to in 8.1 above is based on the TCOE of the Executive and is inclusive of all benefits.
 - 8.2.2 the precise allocation of the Executive's remuneration package to cash component allowances and other benefits shall be determined by agreement between the parties.
 - 8.2.3 the cash component of the remuneration package shall be paid to the Executive on a monthly basis.

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- 8.2.4 The Executive's all-inclusive annual remuneration package shall be adjusted annually, based on the national SALGA adjustment.

9. PERFORMANCE MANAGEMENT AND PERFORMANCE EVALUATION

The Executive is obliged to participate in the performance management system of the Municipality and is subject to performance evaluations as prescribed in the *Performance Regulations* and performance agreement. The Executive will receive, qualify for or be entitled to receive a performance bonus as reward for or in recognition of outstanding performance in terms of the performance agreement.

10. PENSION AND MEDICAL AID

The Executive is entitled to make his own suitable arrangements for medical aid cover and retirement funding within the framework of applicable legislation pertaining to retirement arrangements.

11. CONDITIONS OF SERVICE, HUMAN RESOURCE POLICIES AND PROCEDURES

- 11.1 The human resource policies and procedures as reflected in the policy framework approved by the Municipality as may be amended from time to time, shall govern the employment of the Executive.
- 11.2 It is the duty of the Executive to familiarise himself with the human resource policies and procedures and any changes which may be made thereto from time to time.
- 11.3 If there is any conflict between the human resources policies and procedures and this Agreement, then the terms of this Agreement shall prevail.
- 11.4 The Employer must, in addition to the remuneration of the employee referred to in clause 8.1 pay in respect of mobile telephone facilities an amount of R3 500.00 (Three Thousand Five Hundred Rand) and R 1 500.00 (One Thousand Five Hundred Rand) per month for data bundles, according to such conditions as form part of the Council's policy on availability of cellular phones and data bundles to employees. The amount shall be revised annually, on the first day of July of each succeeding year, by the prevailing consumer price index at the time.

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12. MOTOR VEHICLE AND TRAVEL

12.1 The Executive shall be required to utilise his own motor vehicle when he is required to travel for purposes relating to his employment and may therefore structure his total cost of employment to provide for a car allowance for tax purposes.

13. DEDUCTIONS FROM SALARY

The Municipality may make deductions from the Executive's monthly all-inclusive remuneration package, subject to the provisions of the *BCEA*.

14. LEAVE

14.1 The Executive will be entitled to 24 working days' annual leave with full pay for every calendar year ("the leave cycle"). If the Executive is appointed after the commencement of an annual leave cycle, he is entitled to annual vacation leave on a pro rata basis determined as a fraction of the entitlement. Leave must be taken at a time which is convenient to the Municipality within the leave cycle.

14.2 The Executive must take at least 10 (ten) working days consecutive within a twelve month period. The remaining leave days, if any, must be taken no later than the end of June of the year following the relevant leave cycle, where after unused leave credits shall be forfeited.

14.3 The Executive will be entitled to 36 (thirty six) working days paid sick leave over a 3 (three) year period, calculated from the commencement of his employment ("the sick leave cycle"). A maximum of one day's paid sick leave for every 26 days worked may be taken in the first 6 (six) months of the Executive's employment. Sick leave, over and above the Executive's entitlement, may only be granted at the Municipality's discretion. If the Executive is absent from work for more than 2 (two) consecutive days or on more than 2 (two) occasions during an 8 (eight) week

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period, he will be required to produce a medical certificate in order to qualify for paid sick leave. If the Executive becomes permanently unable, in the reasonable opinion of the Municipality, to perform his duties adequately by reason of ill health or incapacity, the Municipality may terminate his employment. Any absence from work should be reported to the Municipality as soon as reasonably possible.

The Executive consents to medical examinations sought by the Municipality at its cost and access by the Municipality to his medical records where it is perceived by the Municipality that he is not able to perform his functions on account of ill health, injury or disability.

14.4. The Executive shall be entitled to a maximum of 5 (five) working days family responsibility leave per calendar year which can be used for birth, illness or death of a close family member

14.5. The Municipality may grant the Executive special leave with or without pay for a reasonable number of working days with prior approval in terms of the relevant special leave policy or by decision of council.

15. PRECAUTIONARY SUSPENSION

The Municipality may in terms of and subject to the provisions of section 6 of the *Disciplinary Regulations* suspend the Executive.

16. DUTIES AND RESPONSIBILITIES

The duties and responsibilities of the Executive are set out in Annexure A to this agreement which constitutes an integral part of this agreement.

17. TERMINATION

17.1 The employment contract will terminate -

17.1.1 automatically on expiry of the term referred to in the contract, if not extended.

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- 17.1.2 In the case of breach of or non-compliance with this agreement or, where applicable the performance agreement.
- 17.1.3 at the Executive's initiative, If the Executive gives the Municipality two (2) months' notice of termination in writing; or
- 17.1.4 at the Municipality's initiative, If the Municipality terminates the Executive's appointment for reasons relating to misconduct, incapacity, incompatibility, unacceptable performance or the operational requirements of the municipality or for any other reason recognized by law as sufficient, on one(1) calendar months' notice of termination in writing.
- 17.2 The Municipality will be entitled to terminate the Executive employment contract for any sufficient reason recognized by law, provided that where applicable the Municipality must comply with the provisions of the *Disciplinary Regulations*.
- 17.3 Should the Executive accept a nomination as candidate for election as a member of a Municipal Council, Provincial Legislature or Parliament, he or she shall be deemed to have voluntarily terminated his or her services with the Municipality with effect from the date which he or she is issued a certificate in terms of section 31(3) of the Electoral Act, 1998 (Act No 73 of 1998) or Section 64 of the Local Government: Municipal Electoral Act, (Act No. 27 of 2000), stating that he or she is nominated as a permanent delegate to the National Council of Provinces as contemplated in section 61(2)(b) of the *Constitution*.
- 17.4 In the event that the Executive's employment is terminated summarily, the monthly remuneration payable to the Executive shall be deemed to have accrued on a day-to-day basis and the Executive shall accordingly only be entitled to the said salary up to the date of such termination.
- 17.5 It is specifically agreed that neither party will breach, nor be deemed or considered to have breached, any provision of this agreement in the event that this agreement is terminated in terms of clause 17.4.
- 17.6 In the event of termination of this agreement the Municipality –

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- 17.6.1 reserves the right to pay the Executive's salary in lieu of notice, where applicable;
- 17.6.2 may require the Executive to perform no duties;
- 17.6.3 may require the Executive to remain away from the Municipality's premises;
- 17.6.4 may require the Executive to perform such duties as the Municipality may require, provided that such duties fall within the Executive's job profile.
- 17.6.5 the Municipality reserves the right at any time during the currency of this contract to terminate this contract for any reason it considers good and sufficient and must pay the employee the full balance of the remuneration and benefits for the unexpired portion of the contract, in which event this will constitute a full, sufficient and final discharge of all of the Municipality's obligations to the Employee in terms of this contract at law.

17.7 For the avoidance of doubt, the Executive shall remain an employee of the Municipality during any notice period and shall continue to be bound by the terms of this agreement during any such period.

18. GRIEVANCES

The Executive may lodge a complaint or grievance concerning an act or omission of the Municipality with the municipal council in accordance with applicable procedures and time frames.

19. DISPUTE RESOLUTION

19.1 Any dispute, question or difference arising at any time between the parties to this agreement with regard to any of the matters set out in this employment agreement or arising out of the interpretation of this Agreement, shall be submitted to and decided by arbitration in terms of the expedited rules of the Arbitration Foundation of Southern Africa, or its successor, by an arbitrator as

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agreed to by the parties, and failing agreement appointed by the Foundation.

19.2 The provisions of clause 19.1 shall not apply to any dispute:

19.2.1 referred to in clause 4.2;

19.2.2 arising from the application by the Municipality of the provisions of clause 17, in which case any dispute shall be dealt with in accordance with the Disciplinary Regulations as may be amended from time to time.

19.3 Notwithstanding anything that set out hereinabove; should either party wish to approach a court, on an urgent basis, for urgent interdictory relief relating to the implementation, termination, or any other aspect of this contract, they shall be entitled to do so.

20. CONFIDENTIALITY AND ACCESS TO STRATEGIC INFORMATION

20.1 In the interest of the protection and maintenance of the Municipality's trade secrets (which for purposes hereof means the Municipality's goodwill, technical and business know-how, trade secrets, confidential information and the Municipality's intangible assets in general), the Executive undertakes that, except as required by the terms and nature of his employment with the Municipality or by law, that

20.1.1 he or she shall not during his employment by the Municipality or at any time thereafter, either himself or herself utilise and/or directly or indirectly divulge and/or disclose to any third party any of the Municipality's trade secrets;

20.1.2 he or she shall treat as confidential all trade secrets which a third party has in terms of any contract made available to the Municipality and which has become known to the Executive in the course of his duties under this agreement, and not divulge to other third parties any information regarding such trade secrets contrary to the terms of the aforesaid contract;

20.1.3 any documents or records (including written instructions, drawings, notes or memoranda) relating to the trade secrets of the Municipality

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which are made by the Executive or which come into his possession during the period of his employment with the Municipality shall be deemed to be the property of the Municipality, and shall be surrendered to the Municipality on demand, and in any event on the termination of the Executive's employment by the Municipality, and the Executive shall not retain any copies thereof or extracts therefrom.

20.2 The provisions of clause 20.1 shall not apply to trade secrets –

20.2.1 which become part of the public domain prior to the date of disclosure;

20.2.2 which have lawfully come in to the possession of the Executive on a non-confidential basis from a source other than the Municipality, its councillors or employees having the legal right to disclose such information.

21. NON-SOLICITATION

The Executive will not, directly or indirectly, within a period of two years from the date of termination of employment hereunder solicit or attempt to solicit any employees any employee of the Municipality to terminate such employee's employment with the municipality.

22. GOOD FAITH

In the implementation of this agreement, the parties undertake to observe the utmost good faith and they warrant in their dealing with each other that they shall neither do anything nor refrain from doing anything which might prejudice or detract from the rights, assets or interests of the other of them.

23. DOMICILIUM AND NOTICES

23.1 The parties hereby chose *domicilium citandi et executandi* for all purposes in connection with this agreement as follows:-

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communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

24. GENERAL PROVISIONS

- 24.1 This document and the performance agreement constitute the sole record of the agreements between the parties.
- 24.2 No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 24.3 No addition to, variation or agreed cancellation of this agreement shall be of any force and effect unless in writing and signed by or on behalf of the parties.
- 24.4 No extension of time or indulgence which either party ("the grantor") may grant to the other ("the grantee") shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which may arise in the future.

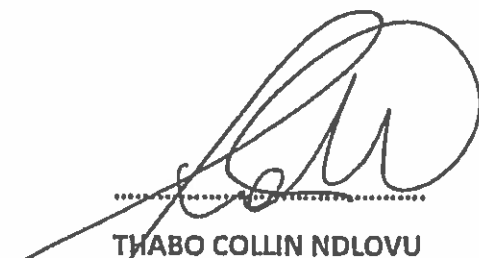
RETTEMBERG
THUS DONE AND SIGNED at BAY on this the 15 day of MAY 2017,

As WITNESSES:


.....

For and on behalf of the Municipality


.....


.....
THABO COLLIN NDLOVU

THUS DONE AND SIGNED at Plet Bay on this the 15 day of May 2017, in the presence of the undersigned witnesses.

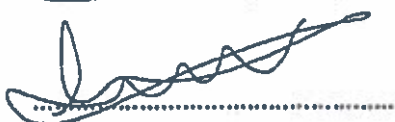


AS WITNESSES:

1.



2.



For and on behalf of the Executive


VUYOKAZI JEAN-FORTUNE MBELANITCW P
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Annexure 10.8





Person dealing with the matter
Municipal Manager

30 August 2018

Mr. Peter Allwright
[REDACTED]
[REDACTED]
[REDACTED]

E-mail [REDACTED]

Dear Sir

**LETTER OF CONFIRMATION: DISMISSAL OF FORMER MUNICIPAL MANAGER
MS.VUYOKAZI MBELANI**

We refer to the above matter and further wish to confirm as per our records that Ms. Mbelani was previously employed as the Municipal Manager at this Municipality from 01 February 2013 and was subsequently dismissed on 09 December 2014, after she was found guilty of gross misconduct at a disciplinary tribunal.

The matter was referred to the SALGBC for "unfair dismissal" and the Commissioner ruled in her favour on procedural fairness (ordered compensation) and found in our favour on substantive fairness. She subsequently referred the matter to the Labour Court for a review of the arbitration award but the parties settled the matter and the application was withdrawn before it could be finalized by the Court.

Attached hereto is the charge sheet, outcome of the disciplinary hearing, dismissal letter as well as the settlement agreement in respect of the review application.

We hope you find these in order.

Sincerely



M. Mpahlwa (Mrs)
Municipal Manager

Annexure 10.9





27 January 2015

THE HONOURABLE MEC – MR. XASA
DEPARTMENT OF LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS
TYAMZASHE BUILDING
PHALO AVENUE
PRIVATE BAG X 0035
BISHO

DISMISSAL OF NGQUSHWA MUNICIPALITY'S MUNICIPAL MANAGER

Dear Honourable MEC

We hereby wish to advise your good office that on 09 December 2014, the Municipal Manager Miss Vuyokazi Mbelani, was dismissed after a disciplinary process was concluded. The charges related to Irregular, Wasteful and Unauthorized expenditure, failure to follow proper SCM procurement process, Fraud and misrepresentation, amongst others.

The position is now vacant and the Executive Manager: Corporate Services is currently acting as the Municipal Manager. The post has since been advertised.

Please find herein enclosed the letter of dismissal, charge sheet and the Presiding Officer's decision.

We hope you find this order.

Yours sincerely;


NC MAZWAYI
ACTING MUNICIPAL MANAGER

Annexure 10.10



**IN THE DISCIPLINARY HEARING, HELD AT COUNCIL CHAMBERS,
NGQUSHWA MUNICIPALITY, PEDDIE**

In the matter between:

NGQUSHWA MUNICIPALITY

EMPLOYER

and

VUYOKAZI MBELANI

EMPLOYEE

SENTENCE

INTRODUCTION

The employer submitted the following:

1. Ms Mbelani ("the employee") was found guilty of misconduct pursuant the ruling of the disciplinary hearing handed down on the 20th November 2014.
2. The employee is a senior manager as defined in the local government ("disciplinary regulations for senior managers, 2010"). In terms of the aforesaid regulations a senior manager is defined as a municipal manager referred to in Section 82 (1) of the Local Government; Municipal Structures Act, 1988 (Act no 117 of 1998); or a manager referred to in Section 56 of the Act.
3. The municipal manager ("Ms Vuyokazi Mbelani") is the accounting officer of the municipality for the purposes and according to the provisions of the Municipal Finances Management Act. As an accounting officer, must therefore exercise functions and powers assigned to an accounting officer in terms of the

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act. Amongst other she must provide guidance and advice on compliance with the act to:

3.1 Comply with certain fiduciary responsibilities.

4. The municipal manager must:

4.1 Act with fidelity, honesty, integrity and in the best interest of the municipality in managing its financial affairs;

4.2 Seek within the sphere of influence of the accounting officer, to prevent any prejudice to the financial interests of the municipality. An accounting officer may not act in a way that is inconsistent with the duties assigned to accounting officers of municipalities in terms of the Municipal Finances Management Act or use the position of privileges of, or confidential information obtained as accounting officer for personal gain or to improperly benefit another person.

4.3 The accounting officer must ensure that the resources of the municipality are used effectively, efficiently and economically.

4.4 Must ensure that full and proper financial records and affairs of the municipality are kept in accordance with prescribed norms and standards.

4.5 Must have and maintain effective, efficient and transparent system of financial and risk management control. It must have internal audit operating in accordance with prescribed norms and standards.

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- 4.6 Ensure that unauthorised, irregular, fruitless and wasteful expenditure and other losses are prevented.
- 4.7 Must ensure that disciplinary or where appropriate criminal proceedings are instituted against any official of the municipality who has allegedly committed an act of financial misconduct or an offence in terms of the Municipal Finances Management Act.
5. Pursuant to the guilt finding by the chairperson of the hearing, parties were requested to mail respective heads of argument in mitigation and aggravation. Both the employer and employee filed heads of argument. The chairperson requested to deliver the sentence by mail to respective parties in the event there were no further submissions to be made. The employer confirmed that the arrangement was in order. The employer did not respond and was put on terms that in the event she did not respond by 13h00 on the 03/12/2014, it would be assumed that it had no further submission to make.
6. On the 04/12/2014, an e- mail was sent to both parties advising as per the initial agreement that the sentence would be handed down on the 05/12/2014. It was further confirmed that because the chairperson did not receive any objection to the suggestion of delivering sentence through e- mail, same would be transmitted by e- mail on the 05/12/2014 rather than the chairperson travelling to Peddie to hand down sentence.
7. On the 05/12/2014 at approximately at 07h30 in the morning, the chairperson received through e-mail, supplementary heads of argument in mitigation from

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the employee. This necessitated a change of dates for handing down judgement to the 09/12/2014. Both parties were advised accordingly.

8. The employee in mitigation referred to the following:

- (i) Code of Good practice, clause 3 (4), (5) and (6) dealing with dismissal. She submitted that it is not appropriate to dismiss an employee for a first offence, except if the misconduct was serious and makes continued employment relationship intolerable.
- (ii) It submitted that when deciding whether or not to impose the penalty of dismissal, the employer should consider factors such as employee's circumstances, (including length of service, previous disciplinary record and personal circumstances) nature of the job and circumstances of the infringement.
- (iii) Employer should apply the penalty of dismissal consistently.

9. The employee's personal circumstances were submitted as follows: She is a 46 year's old, unmarried with a fifteen year old child. She was responsible for two children whose parents were unemployed. Her parents were both ill and she was obliged to supplement their pension. Her qualifications were listed as a bachelor's degree in Social Science from Cape Town University and a number of requisite local government courses. She has worked as a senior manager on local government since 2004.

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10. In paragraph 5 – 39, the employee besides requesting consideration for the nature of her job, and the circumstances of the infringement, she alleged that she was not afforded a fair hearing. She submitted that the disciplinary regulations were not followed and these apply to all municipalities and senior manager. If a municipal manager is suspended, disciplinary hearing must commence within (3) month after the date of suspension, failing which the suspension will automatically lapse. She alleged that the three months referred to may not be extended by council.
11. The employee raised other procedural points and processes not adhered to before commencement of the hearing. It alleged gross procedural irregularities and withholding of information. It claimed that it has raised objections at the enquiry and made it clear that she was not in a position to proceed. It however acknowledged that it proceeded with the hearing dealing with the evidence of the first witness of the employer.
12. Most of the allegations regarding alleged Irregularities were dealt with in the reasons leading to the guilty verdict. The employee took part in the hearing after an agreement was reached that the employer will not lead evidence on the forensic report. She had alleged that she did not consult on the forensic report. The evidence regarding this report was to be led on the 23/10/2014 when the employee would have consulted properly about it. On the 21/10/2014, the employer led evidence of the speaker, Mr Jowela. There was no objection and the employee cross-examined the witness.
13. The employee filed further supplementary heads of argument in mitigation referring the chairperson to the labour court case of SAMWU obo JACOBS

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VS CITY OF CAPE TOWN (2014) 10 BLIR 1011 (LC). It was held in this case that proceeding with disciplinary hearing outside the peremptory three months and without having obtained condonation, the city was in breach of the code and therefore the hearing was invalid and of no force and effect.

14. The employer filed its heads in aggravation highlighting the following:

- (i) The charged employee was a senior manager as defined in the disciplinary regulations and an accounting officer in terms of the Municipal Financial Management Act. The introduction by the employer gave an overview of the duties of the municipal manager.
- (ii) It submitted that the tasks on the municipal manger required duty of utmost good faith and integrity.
- (iii) The accounting officer had a duty to take all reasonable steps to ensure that the municipality has and maintains a management, accounting and information system that accounts for the assets and liabilities of the municipality.
- (iv) The employee was found guilty of serious offences that included fraud and theft of public funds. She was at the time in position of trust and responsibility to protect municipality and government.
- (v) She abused her position and the knowledge of the challenges that usually beset public administration. There was no justification or theft of state money when she was contracted with huge salary income. The

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country at the time is experiencing various public protests marches by the public demanding basic service delivery.

- (vi) The money stolen could have been used for other public amenities. The lie by the employee to both municipality and the Department of Local Government that she was not paid for January 2014 was unjustified. She went further and misled the MEC for local government in her resignation letter.
- (vii) She was trusted by the employer and government. Her secondment and subsequent extensions of her contract leading to her appointment confirmed the high level of trust enjoyed by her. The trust has been irretrievable broken down and that there exist no reasonable prospects of a normal employer and employee relationship. The appropriate sanction is dismissal in accordance with the provisions of rule 12 (10) of the regulations.
- (viii) It was submitted that as a matter of legal principle, employees are required to devote their energies to advancing their employers interests. Conduct in which employees intentionally place themselves in situations where their own interest conflict with those of the employer therefore renders the employment relationship intolerable and justifies dismissal from employment.
- (ix) The conduct of the employee during the hearing demonstrated high degree of arrogance. The wilful disrespect and behaviour was

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consistent with of one with no regard for the employer and the public at large.

(x) In respect of all the charges faced by the employee, she should be dismissed, whether those charges (fourteen) 14 in all are read separately or in totality. The investigation forensic report submitted by independent forensic auditors, Umnombo Forensic, on its own is sufficient for the dismissal of the municipal manager Ms Mbelani.

15. The conduct of the municipal manager caused turmoil and instability in the municipality's administration and seriously prejudiced the municipality in the execution of its functions and powers.
16. In determining the appropriate sanction, the chairperson took into account the harm and prejudice to the employer. The misconduct exposed the employer to huge financial prejudice and fraud. It incurred huge financial costs which it could not recover. The employee abused her position of seniority and trust. The misconduct was intentional with intention to defraud. The offence as submitted by the employer justified dismissal.
17. The misconduct affected the heart of the trust relationship between the municipal manager and the municipality and as such made continued employment relationship intolerable. Dismissal in the circumstances does not induce a "sense of shock". Clearly the evidence points to dishonesty on the part of the municipal manger.

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18. The municipal manager had a short period of service with Ngqushwa Municipality. She was seconded from the Department of Local Government in 2013. She was formally employed in September 2013. She was thereafter suspended in June 2014. She had tenure of nine (9) months with the municipality. In this short period with the municipality to be charged and found guilty of fourteen (14) charges was an aggravating factor on its own.
19. Fairness of dismissal has to be determined based on facts and circumstances of each case. There should be proper balancing of employer and employees interests. The employer led evidence in the hearing fully about employees dishonestly.
20. Evidence of breakdown of relationship was led. The employee disregarded council. She would later advise colleagues that she had power invested to her by council and as such did not need council's approval when dealing with contracts exceeding 10 million rands. This clearly was not correct. She blatantly refused advice regarding council's approval of contracts exceeding 10 million rands. The chief financial officer went to an extent of borrowing a document for approval in order to assist the municipal manager but she refused and rejected the CFO's efforts. This is clearly not a case of borderline misconduct. Dishonesty, fraud and desire to serve selfish interests were clearly demonstrated by the employee.
21. Employees must be allowed to plead in mitigation and those factors must be seriously considered. Mitigation is those factors and circumstances in favour of the employee not procedural points raised as an afterthought. Points raised by employee regarding procedures should have been raised before the

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commencement of the hearing. They should have been placed on record so as to declare a dispute. This has not happened. The employer led cogent evidence on the destruction of employment relationship even on its heads of argument. Mitigating factors or circumstances are those factors or circumstances that lessen the impact of a crime or mistake. The seriousness of the offence far outweigh the employees' circumstances in mitigation.

22. If the misconduct is serious, as is in this case, and is of such gravity that it makes a continued employment relationship intolerable, it was appropriate to dismiss the employee for the first offence. In mitigation in favour of the employee may include, length of service, how close to retirement is the employee, does she show remorse and if so to what degree and whether she pleaded guilty or confessed. None of the above apply favourably to the employee. In aggravation, seriousness of the offence seen in the light of the employee's service, position in the municipality, to what degree did any element of trust exist in the relationship. There were no extenuating circumstances in the form of coercion by others herein. It is fair to arrive at a decision of dismissal which is effected for a fair reason herein. The seriousness of the offence outweighed the employee's circumstances in mitigation and dismissal was fair in the circumstances. The employer has led evidence about the reason why the sanction of dismissal must be imposed. The continued employment of the employee made intolerable because relationship that existed between the parties deteriorated beyond repair.

23. The decision to dismiss would be reasonable in the circumstances. The guidelines set down by the Constitutional Court in SIDUMO VS RUSTENBURG

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PLATINUM MINES AND OTHERS (2007) ZA CC 22 are applied herein. The Constitutional Court in Ngaka Modiri Molema District Municipality and Chairperson, North West Provincial Executive Committee and others 2014 ZA cc 31 stated that:

Municipalities are the face of government to the communities they are to serve. If they fail in their executive obligation to provide services to the people, and if exceptional circumstances warrant it, the constitution provides that the provincial executive dissolve the municipal council. It was held that the court may not ignore the plight of those people who are not parties to the proceedings and whose interests lie at the heart of the matter, namely the people and communities who reside within the area of jurisdiction of the municipality. The moral is that, it's not about the individuals concerned but the larger interest of community at large.

24. The procedural points and processes complained of at this late hour in mitigation were not raised before. There was no dispute before the chairperson regarding time frames within which council had to institute disciplinary proceedings. If there were any the employee properly represented by a senior attorney acquiesced herself with the procession of the disciplinary case. She has never objected as a result of this issue. She proceeded with the disciplinary case and went on even cross-examining the first witness of the employer, Mr Jowela. She can't now in mitigation stage raise procedural points which should have been raised in limine. The procedure followed from inception of the disciplinary hearing, address on absence in the hearing, subsequent procession without employee, conduct disregarding the hearing to the

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completion was fair and the employee could not at this late stage submit that these self created challenges were mitigating factors. How could these be in his favour when she was the cause of her demise. She instructed the legal representative not to attend the hearing when he was the one that sought a postponement for the second time.

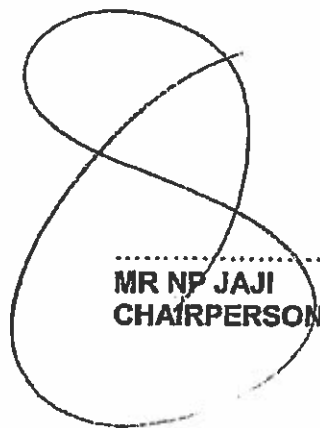
25. The charges faced by the employee are serious. Their nature and the position of the employee within the municipality renders the employment relationship intolerable. There is total breakdown of trust. The municipal manager cannot be trusted to handle financial affairs of the employer as an accounting officer. How could she allow the loading of an incorrect salary of the municipal manager in the system? How can she be trusted when she unilaterally arranged for herself a tax reduction scheme by deliberately allow herself to be charged tax on low income salary? The only sanction that would be just and fair when taking both parties interest was dismissal. The forensic report on its own gave a damning report to the person of the employee. The evidence of the speaker, supply chain management and Chief Financial Officer all gave uncontested evidence against the employee. The chairperson upon proper balancing of interests is confident that interests of justice dictate that the municipal manager be dismissed forthwith.
26. Cumulatively, the municipal manager is dismissed as a result of being found guilty of all charges preferred against her rendering continuation of normal trust employer /employee relationship impossible.

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ORDER:

The municipal manger, Ms V Mbelani is hereby dismissed from employment of Ngqushwa Municipality with effect from the date of sentence (09/12/2014).



.....
MR NP JAJI
CHAIRPERSON

M. V

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IN THE DISCIPLINARY HEARING OF: -

NGQUSHWA LOCAL MUNICIPALITY

THE EMPLOYER

And

VUYOKAZI MBELANI

THE EMPLOYEE

NOTICE OF DISCIPLINARY HEARING

1. You, Vuyokazi Mbelani is hereby noticed to attend a disciplinary hearing in terms of regulation 8 scheduled as follows:

Date : 21 October 2014

Time : 09:30 am

Venue : Ngqushwa local municipality chamber

Charges : refer to the attached charge sheet (annexure "D")

2. Your attention is drawn to the following:

- (a) You have the right to be represented by a fellow employee or any other suitably qualified person, provided that any costs incurred will be borne by you;
- (b) If you or your representative should fail to attend the hearing at the scheduled time and venue, the hearing may proceed in your absence;
- (c) You will be required to plead to the charges set out against you in the charge sheet, annexure D hereto;

- (d) The municipality will call witness and adduce evidence, orally or by way of documents, and you or your representative will have the right to cross-examine the witnesses called on behalf of the municipality, subject to the rights of any such witnesses;
- (e) You have the right to present your case and to call witnesses and adduce evidence, orally or by way of documents;
- (f) The proceedings will be conducted in English, and should you require an interpreter, you must inform the evidence leader in writing thereof, within 5 days of the date of receipt thereof;
- (g) Your attention is specifically drawn to the fact that the municipal council has appointed Mvuzo Notyesi, whose email address: [REDACTED] and physical address for purposes of these proceedings is the office of the acting Municipal manager, Ngqushwa and contact numbers [REDACTED] or cell [REDACTED] and Patrick Ndumiso Jaji to act as the presiding officer in the hearing;
- (h) Any request for further particulars or access to documentation or copies thereof must be directed to the person leading evidence, in writing, within 7 days of the date of receipt of the charge sheet;
- (i) Any request for a postponement fully motivated with sufficient reasons and particularity must be directed to the person leading the evidence, in writing, forthwith but not later than 7 days after the date of receipt of this charge sheet;
- (j) Your attention is further drawn to the provisions of the labour relations Act, 1995 (Act No 66 of 1995), as well as the code of conduct contained in schedule 2 to the local government : Municipal Systems Act, 2000 (Act, NO. 3 of 2000) which provisions will, where applicable , apply to the hearing;

(k) Kindly note that the municipality reserves the right to amend the charges or add new charges, at any stage before you plead to the charges; and

(l) Should you require any additional information AS indicated before, you are welcome to contact the person leading evidence at the following contact details.

Name : Mvuzo Notyesi

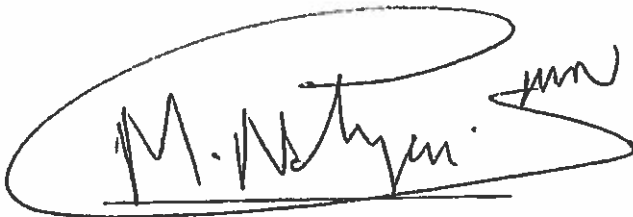
Address : Acting Municipal Manager's office

Ngqushwa local municipality

Email : [REDACTED]

Telephone: [REDACTED]

THUS DONE AND SIGNED AT NGQUSHWA LOCAL MUNICIPALITY ON THIS 3RD OF OCTOBER 2014.

A handwritten signature in black ink, appearing to read 'M. Notyesi', is enclosed within a large, hand-drawn oval. To the right of the oval, there are several small, illegible handwritten marks.

Mvuzo Notyesi

Evidence leader

I confirm notification of the abovementioned disciplinary hearing and further confirm that I will attend the disciplinary hearing:

Vuyokazi Mbelani

Date

I hereby confirm that the above named senior manager received this notification but refused to acknowledge receipt of or confirm that he or she will attend the disciplinary hearing.

Witness

Date

IN THE DISCIPLINARY HEARING OF: -

ANNEXURE "D"

NGQUSHWA LOCAL MUNICIPALITY

THE EMPLOYER

And

VUYOKAZI MBELANI

THE EMPLOYEE

CHARGE SHEET

You, Vuyokazi Mbelani, (*hereinafter referred to as "the municipal manager"*) of the Ngqushwa local municipality (*hereinafter referred to as "the municipal council"*), is hereby charged with misconduct as follows:

Charge 1: Gross dishonesty

That you are guilty of misconduct by intentional failing to resign from the department of local government and traditional affairs, and continue to be so employed even at the time of accepting the appointment and signing contract as the municipal manager of Ngqushwa Local Municipality and thereby causing yourself without consent or approval of either of the employers to be under double employment.

In that:-

On 11 September 2013 and 4 October 2013 respectively, you signed both the letter of acceptance and the contract of employment as municipal manager of Ngqushwa Local Municipality thereby binding yourself as an employee of Ngqushwa Local Municipality, and whilst so bound as such, you remained employed and receiving salaries from the Department of Local Government and Traditional Affairs until 13 April 2014, being the date when you tendered your letter of resignation and by your actions which were not approved by either of

the employers, you failed to disclose material facts to the respective employers and thus breaching your duty to comply with the standards of trust, honesty and candour required of you as a senior manager and accounting officer of the municipality.

Charge 2: Receiving two salaries simultaneously:-

That you are guilty of misconduct by intentionally and wrongfully receiving two salaries simultaneously from both the Department of Local Government and Traditional Affairs and the Ngqushwa local municipality during the period starting from 11 September 2013 up to and including 31 March 2014 as you neglected to resign from the department of local government after your appointment as a municipal manager thereby unduly and unjustly enriching yourself at the direct prejudice of the respective employers and the department of local government.

Charge 3: Misrepresentation

That you are guilty of misconduct by misrepresenting facts to the department OF Local Government in your resignation letter dated 14th April 2014, sent via email wherein, you inform the Department that the reason for you not to tender your resignation was because the Council had not and at the time you penned your letter still not fully accepted your appointment, when in fact you know that your letter and contract of employment were respectively signed by you and the Council on 11th September 2014 and 4th October 2014 and thereby concluding all formalities of your employment with Ngqushwa Local Municipality.

Charge 4: Fraud

That you are guilty of misconduct by fraudulently receiving a salary which was frozen by the Department of Local Government and Traditional Affairs during the period of January 2014.

In that:-

You fraudulently received a gross salary of R101 568.58 in January 2014 from Ngqushwa Local Municipality and a further sum of R52 587.85, which was deposited in your account by the department of local government on 24 February 2014 upon your presentation to the department that you did not receive your full payment from the municipality, despite having received full salary from the municipality on 15 January and end of January 2014 respectively.

Charge 5: Financial misconduct

That you are guilty of misconduct by committing an act of financial misconduct in that during the period 11 September 2013 up to and including 31 March 2014 you manipulated the payroll system and caused to be paid top up salaries instead of full municipal manager salary in accordance with your letter of appointment.

Charge 6: Tax avoidance

That you are guilty of misconduct by intentional creating a scheme of splitting your salaries during the period 11 September 2013 up to and including 31 March 2014 and thereby receiving tax relief benefits as your salary would be calculated at lower income resulting in lower fixed portion and variable portion of tax.

Charge 7: Contravention of section 2 (b) of the code for staff.

That you are guilty of misconduct by contravening section 2(b) of the code of conduct for the municipal staff members which requires that:-

"staff members must at all times loyally execute the lawful policies of the municipal council" In that during the period 11th September 2013 up to and including 31 March 2014 you dishonestly used your influence as a municipal manager and caused the municipality not to load your correct payroll system resulting in you being paid a top-up salary instead of a full municipal manager salary as per your appointment letter.

Charge 8: Failure to table audit report and audit action plan to council

That you are guilty of misconduct by failing in your draft annual report submitted to the council on 31 January 2014 to include audit report and audit action plan including continuous failures thereafter to submit such audit report and audit action plan.

Charge 9: Failure to inform council regarding procurement of goods exceeding 10 million rand in accordance with procurement policy.

That you are guilty of misconduct by entering into a credit agreement exceeding 10 million on behalf of the municipality with Laman financial services for the supply of plant without informing the council and following procurement policy.

Charge 10: Unauthorised absence from council meetings

That you are guilty of misconduct by absenting yourself without council approval from the council meetings of:

13 February 2014

02 May 2014

28 May 2014

11 June 2014

13 June 2014

24 June 2014

Charge 11: Failure to Implement council resolutions

That you are guilty of misconduct by intentional or wilful failing to implement lawful council resolutions which include the following resolutions:

10.1. resolution to prepare and maintain a secured council resolution register in order to enable the council to facilitate oversight in implementation of all its resolutions, you failed to caused that council register to be made;

10.2. resolution taken on 9 April 2014 for you to prepare a strike report which reflects the financial implications which include:

- a. Legal cost to labour court;
- b. Cost of appointing a service provider for job evaluation;

You failed to implement the above resolution of 9th April 201

10.3. you failed to implement council resolution of 28th May 2014 in terms whereof you were instructed by the council to furnish a detailed report on job evaluation and 2.5% notch increase and instead you wilfully ignored all the above resolutions and council instructions; and

10.4 failure to implement the resolution regarding the development and signing of employment and performance contract for Ms N. Mazwayi and you intentionally ignored this resolution.

Charge 12: Irregular and unauthorised expenditure

That you are guilty of misconduct by appointing the below mentioned service providers without following proper procurement process and adhering strictly with the procurement, including confirmation of budget thereby making unauthorised expenditure:

NO	Service provider	Contact No	Amount spent to date
1.	V.Mthimkulu	Professional services	1162711,26
2.	Qhayisa Tolobisa	Implementation of corporate Re-engineering strategy	1165180,06
3.	Masnicedane 9999	Professional services	320072,10
4.	PJ Cloete	Legal services	715 6151, 72
5.	Integritas trust t/a Misconduct solution	Physical verification/ headcount	132 691,20
6.	Spentnaz securities	Security services	1280 412, 56
7.	Laman financial services	Hire purchase plant	6036 369,11

8.	Lusinale trading CC t/a otela KMS	Training – councillors	188 230.00
Total			17 441 818.00

Charge 13: Breach of good faith

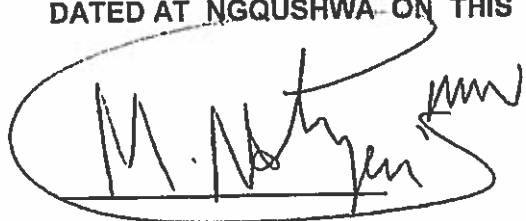
That you are guilty of misconduct by breaching clause 19,1 of your contract of employment which requires that:-

In the implementation of this contract, the parties undertake to observe the utmost good faith and they warrant in their dealings with each other that they will neither do anything nor refrain from doing anything that might prejudice or detract from the rights, assets or interests of each other.

Charge 14: Failure to declare financial interests

That you are guilty of misconduct by failing to declare your financial interests in the department of local government whilst in the employ of Ngqushwa Local Municipality and thereby exposing the municipality to your conflict of interest as you remained employed by the two organs of the state during the period 11 September 2013 up to and including 14 April 2014.

DATED AT NGQUSHWA ON THIS 3RD DAY OF OCTOBER 2014



Mvuzo Notyesi

Officer appointed to lead evidence

Date

Annexure 10.12





Person dealing with the matter
NC Mazwayi

09 December 2014

Attention: Ms. V. Mbelani

Email: [REDACTED]

cc: Mr. Richard Jardine

c/o Drake, Flemmer & Orsmond Attorneys

Email: [REDACTED]

NOTICE OF TERMINATION OF EMPLOYMENT

Pursuant to the disciplinary enquiry held recently, wherein you were found guilty of various instances of serious misconduct, the Presiding Officer subsequently made a dismissal order (which you are in possession of). The Municipality has accepted the sanction in its entirety.

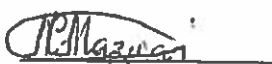
In terms of the Municipal Systems Act: Disciplinary Regulations for Senior Managers, 2010, chapter 12 (3) (a); the Municipality must implement the sanction as imposed by Presiding Officer. Ngqushwa Municipality regrettably accepts the sanction and wishes to confirm that your contract of employment is hereby terminated as of 09 December 2014.

Furthermore, please kindly note that your December salary will reflect this eventuality and that all statutory payments will be made accordingly as will be reflected in your last payslip.

We wish to thank you for your contributions to this Municipality and wish you the best for your future endeavours.

Kindly contact the Human Resources Manager for any HR related queries you may have.

Sincerely,


NC Mazwayi
Acting Municipal Manager

Annexure 10.13



SETTLEMENT AGREEMENT

Entered into between

VUYOKAZI MBELANI

APPLICANT

And

NGQUSHWA MUNICIPALITY

RESPONDENT

Preamble

Whereas the Applicant instituted various proceedings against the Respondent in the South African Local Government Bargaining Council, the Eastern Cape division of the Labour Court, Port Elizabeth, under, *inter alia*, case number P47/15 and in the Peddie Magistrates Court under case number 139/2015;

And

Whereas the Respondent instituted review proceedings against the Applicant;

And

Whereas the parties have held certain discussions concerning the settlement of the said opposing proceedings;

And

Whereas these discussions have resulted in this settlement agreement.

Now therefore the parties record such agreement as follows:

1. Basis of the Agreement

The parties to this Agreement entered into same with the view to bringing about an agreed finalization of this matter and parting of their ways.

The parties to this Agreement entered into same without any admission of liability or of wrong doing on the part of either party.

2. Withdrawal of Reviews and Compliance with Arbitration Award

2.1 The Applicant undertakes to withdraw her review application wherein she sought re-instatement with the Respondent and to supply the Respondent with proof thereof within five working days of this agreement being signed by both parties.

2.2 The Respondent undertakes to withdraw its review application wherein it seeks the Applicant's arbitration award in the South African Local Government Bargaining Council to be set aside and to supply the Applicant with proof thereof within five working days of this agreement being signed by both parties.

2.3 The Respondent undertakes to comply with the arbitration award issued in favour of the Applicant under the South African Local Government Bargaining Council, and to effect payment as per the said arbitration award in the amount of R203 137.16 (two hundred and three thousand one hundred and thirty seven rands and sixteen cents) on or before 29 April 2016 into the bank account of the Applicant's attorneys as contained in clause 3.2 herein below.

3. Payment

3.1 The Respondent hereby agree and undertake to pay the Applicant an amount of R36 000 (three six thousand rands) in lieu of the incorrect deduction made from the salary of the Applicant during the Applicant's employ with the Respondent.

3.2 The amount aforesaid and the amount as per clause 2.3 herein above shall be paid on or before 31 March 2016 into the trust account of the Applicant's attorneys, being:

Drake, Flemmer & Orsmond Inc.

Standard Bank: Code 05 00 21

Account Number: 081 081 650

Ref: MAT19806

Handwritten signatures and initials in the bottom right corner of the page.

4. Order of Court

4.1 The parties agree that, should either party breach any provision of this agreement, this Agreement be made an order of Court, at the instance of either party, in order to facilitate execution and/or enforcement proceedings.

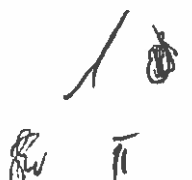
4.2 The parties furthermore agree that an application to make this Agreement an Order of Court can be brought on an Ex Parte basis without notice to the other party and without a return date. The parties by virtue of this agreement consent to such an application.

5. Confidentiality

Apart from the parties being entitled to inform any third party that the matter has become resolved between them, the parties agree that the contents of this Agreement shall be kept confidential as between them unless either party is obliged in terms of law to discover the contents thereof.

6. Full and Final Settlement

This Agreement constitutes the full and final settlement of any and all claims that the parties may have against each other arising out of the employment relationship between them and/or the termination of such employment relationship.

Handwritten signatures and initials are present in the bottom right corner of the page. There are two distinct signatures, one above the other, and some initials or marks below them.

7. The parties undertake to do all such things, perform all such acts and to take all such steps to procure the doing of all such things and the performance of all such acts, as may be necessary or incidental to give effect to the terms, conditions and import of this Settlement Agreement.
8. The parties shall, at all times during the continuance of this Settlement Agreement, observe the principles of good faith towards one another in the performance of their obligations in terms of the Settlement Agreement.
9. In the event that a dispute arises between the parties as to the rights or obligations under this Agreement, or the performance by either party of the obligations of this Agreement, notwithstanding the provisions of clause 4 herein above, the matter shall be resolved by the appropriate Courts. The prevailing party in any dispute that requires resolution by the Courts shall be entitled to recover all costs and expenses on the scale as between attorney and client.
10. This Agreement constitutes the whole Agreement between the parties as the subject matter hereof and no Agreement, Representations or Warranties between the parties other than those set out herein are binding on the parties.

11. No addition to or variation, consensual cancellation or innovation of this agreement and no waiver of any right arising from this agreement to which breach or termination shall be of any force or effect unless reduced to writing and signed by all parties or their duly authorised representatives.
12. No latitude, extension of time or other indulgence which may be given or allowed by any party to any other party in respect to the performance of any obligation hereunder or enforcement of any right arising from this agreement and no single or partial exercise of any right by any party shall operate as a waiver or novation of or otherwise affect any of the other party's rights in terms of or arising from this Agreement, or stop such party from enforcing, at any time without notice, strict and punctual compliance with each and every provision or terms hereof.
13. Each party to this agreement warrants to the other party the power, authority and legal right to sign and perform this agreement and that this agreement has been duly authorised by all necessary actions of its functionaries and constitutes a valid and binding obligation on it in accordance with this agreement.
14. The parties agree and consent to sign as expeditiously as possible all and any necessary documentation, to take all such action in order to give effect to the terms and conditions of this Agreement, and if called upon to do so by the other party.

Handwritten signatures and initials in the bottom right corner of the page. There are four distinct marks: a long diagonal stroke, a circular stamp-like mark, a horizontal line with a diagonal slash, and a stylized signature.

15. The parties hereto agree that each party will pay its own costs occasioned in lieu of all the matters forming the subject matter of this agreement.

16. Suspensive Condition

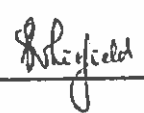
The Applicant accepts and understands that this agreement is, in its entirety, subject to the Ngqushwa Municipal Council accepting and endorsing the contents of this agreement by way of a Council resolution.

THUS DONE AND SIGNED AT EAST LONDON ON THIS 11th DAY
OF APRIL 2016.



On behalf of Applicant, who warrants his/~~her~~ authority hereto

Witnesses:

1. 
2. 

THUS DONE AND SIGNED AT PEDDIE ON THIS.....^{25TH} DAY OF
APRIL..... 2016.

On behalf of Respondent, who
warrants his/her authority hereto

Witnesses:

1.

2.

Annexure 10.14



160
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**MINUTES OF THE SPECIAL COUNCIL MEETING HELD ON FRIDAY
THE 19 SEPTEMBER 2014, COUNCIL CHAMBER, NGQUSHWA
MUNICIPALITY AT 10H15**

MEMBERS OF THE COUNCIL

Councillor S.E. Ndwayana	- Mayor (left at 11h10)
Councillor Z Jowela	- Speaker
Councillor T.M. Dyani	- arrived at 11h15
Councillor S.A. Jali	
Councillor N.N.C Maphekula	
Councillor N. Mtanga	
Councillor M.B. Sethuntsa	
Councillor P. Sithole	
Councillor M.T. Siwisa	- PH: BTO
Councillor T. Tusani	
Councillor M.G. Yolelo	
Councillor G.M. Ntonjane	
Councillor M. Boqwana	
Councillor T.G. Dyibishe	
Councillor M. Faltein	- PH: Technical Services
Councillor N.Y. Ndabazonke	- arrived at 11h15
Councillor A. Ndanda	
Councillor N.W. Tele	- PH: Community Services
Councillor N.C. Gxasheka	
Councillor A. Mtshakazi	
Councillor N.A. Seysman	
Councillor L. Cuka	- PH: Corporate Services

TRADITIONAL LEADERS

Prince G.L. Zitshu
Prince N. Mhlawuli

OFFICIALS OF THE COUNCIL

Mrs. N.C Mazwayi	- HOD: Corporate Services
Mr. S Mnweba	- Acting HOD: Community Services
Mr T. Malingatshoni	- Acting HOD: Technical Services
Ms V. Fonoza	- Acting Chief Financial Officer
Ms L. Mantyl	- Industrial Relations Officer
Ms N. Simani	- Committee Clerk

167

Interviews have been finalized for all three (3) positions. The appointment of the CFO was approved by Council on 28 August 2014, however the Administration is still busy finalizing appointment procedures, as per the COGTA Regulation on the Appointment of Senior Managers. The remaining positions, namely; Community and Technical Services, the interviews were held recently and the recommendations of the panel will be tabled at the next ordinary meeting of Council and the process of appointment will likely take some time.

It is not yet clear when the recruitment and selection process will be finalized, as the process can be unpredictable, due to the procedures that ought to be followed when filling senior positions. It is against this backdrop that we are appealing to Council to consider extending the contracts of the HODs yet again, in order for business continuity to be maintained, whilst the process of filling the positions is being finalized.

Resolved:

- i) That Council notes the report.
- ii) That the contracts of the Acting HODs be extended by a further 3 months, from October until December 2014, however in the event of appointments of any HOD, the contracts will expire automatically.

4.9 NGQUSHWA MUNICIPALITY - FINAL REPORT ON INVESTIGATION INTO THE CONDUCT OF THE MUNICIPAL MANAGER

BACKGROUND

uMnombo Consulting (Pty) Ltd was appointed to conduct an in-depth investigation into the conduct of the Municipal Manager, Ms. Vuyokazi Mbelani. The draft report was tabled to Council on 25 August 2014 but was not discussed as it was not yet finalised. The final report has been concluded and in terms of the Municipal Systems Act-Disciplinary Regulations for Senior Managers, it must be tabled by the Mayor to Council for discussion.

After having considered the report by the Investigator, the Municipal Council must by way of a resolution:-

- Institute disciplinary proceedings against the senior manager.

H.C. L.S.

157

Discussions:

- After the report was presented, Council concurred with the recommendations of the uMnombo report entirely.
- They accepted the findings after the deliberations and agreed to institute disciplinary proceedings against Ms.Mbelani.
- Council agreed that all the offences committed by the Municipal Manager were serious and must be dealt with through an equally serious process.
- Council also added that financial implications of plant were huge and the matter was not taken to Council, a proposal was made to seek a legal opinion in order regarding the contract of plant.
- Council agreed that the matter be dealt with as soon as possible.

Concerns raised:

- The Mayor was not participating fully, it was reminded that the mayor excluded himself on the matter. Council had resolved previously that Portfolio: Head- Corporate Services Cllr Cuka to represent the Mayor in all matters relating to the Municipal Manager's disciplinary issues.

Resolved:

- 1) That Council accepts the report from the independent investigator uMnombo.
- 2) That the allegations of misconduct are of a serious nature.
- 3) That the Municipal Manager be subjected to a disciplinary process, which must be instituted accordingly.
- 4) That the Acting Mayor Councillor Cuka appoints an external Presiding Officer and a Prosecutor to deal with the disciplinary process until its conclusion.
- 5) That a case be opened with the Hawks against the Municipal Manager in respect of the criminal elements in the report.
- 6) That a legal opinion be sought on the plant contract with Laman Financial Services.

ANNOUNCEMENTS

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158

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169

On the 23 October 2014, Minister Fikile Mbalula will be at Ntloko Location Ward 9.

5. **CLOSURE**

The Speaker appreciated that Council had responded by attending the meeting even though it was called in a short notice. He also appreciated participation during discussions and Council had finally come to the conclusion on the matter of misconduct of the municipal manager. Lastly he appreciated the team that was preparing the agenda and advised that it should avoid the situation in future.

The meeting was closed with a short prayer by Ntonjane at 13h15.

.....
COUNCILLOR Z. JOWELA
MUNICIPAL SPEAKER

.....
DATE

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159

Annexure 10.15



"Nk M14"

IN THE DISCIPLINARY HEARING, HELD AT COUNCIL CHAMBERS,
NGQUSHWA MUNICIPALITY, PEDDIE

In the matter between:

NGQUSHWA MUNICIPALITY

EMPLOYER

And

VUYOKAZI MBELANI

EMPLOYEE

OUTCOME

PARTIES PRESENT:

Chairperson:	Mr NP Jaji	
Employee's Representative:	Mr Jardien	
Employer's Representative:	Mr Notyesi	
Others:	Ms Mazwayi	- . Acting Manager
	Ms Mantyi	- Human Resources
	Ms Mani	- Scribe & Human

Resource

A. INTRODUCTION

1. The chairperson welcomed everyone to the hearing and informed the parties that he will be chairing the hearing. The chairperson brought to the attention of the parties that he would have thought that a day before the hearing, parties would have arranged with him to deal with housekeeping

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187

rules. Parties would have been able to demand or exchange any outstanding documents, and perhaps looked at issues of settlement if any and confirming that the matter would proceed without a possibility of a postponement. Mr Jardien advised the chairperson that there was a document that he received on Friday 17 October 2014 and did not consult his client on it. This document related to the forensic report.

2. It was agreed that the employer would call the speaker as its first witness . This would give the legal representative of the employee enough time to consult on the forensic report. It was further agreed that the employer would only deal with the forensic report on Thursday, the 23 October 2014. Mr Jardien finally accepted that the matter proceed as suggested. The employee through her attorney advised that she would not be comfortable to have observers during the hearing. It was agreed that only the officials that are involved in the case would be allowed to sit in during the hearing.
3. The charges were read by Mr Notyesi, the initiator or the prosecutor representing the municipality. The charges were as per the charge sheet dated 3 October 2014 served on the employee. The initiator sought an amendment regarding charge three (3) being misrepresentation. The amendment was to amend the dates 11 September 2014 and 4 October 2014 to read 11 September 2013 and 4 October 2013 respectively. This amendment was not opposed and accordingly effected. The employee in her plea instructed her attorney that she sought to dispute all the charges preferred against her. She would not give an opening statement.

B. THE EVIDENCE OF MR ZUKISA JOWELA

4. The initiator called the first witness of the employer, Mr Jowela. He is the speaker of the municipality. The speaker was sworn in and stated his position and duties. He establishes and chairs council, guides council, advise council on regulations by SALGA (South African Local Government Association) and Department of Local Government. He performs oversight role and oversee efficiency in terms of Municipal Public Accounts. He chairs council meetings and oversee that resolutions are taken.
5. He knows the employee, the municipal manager as she was initially seconded by the department of local government. She was employed by the municipality in October 2013 as a municipal manager. The item was prepared and council accepted the appointment, Item no 1, being a letter dated 11 September 2013 appointing the municipal manager. The contract was signed by the municipal manager on the 4th October 2013. The said contract was signed and witnessed by both Maliza and Mbangi. The letter of appointment was submitted to council and the contract was not seen by the council.
6. He averred that a Section 56 appointment was done by council. He confirmed that at the face the document, she was employed by the municipality. On the 25 September 2013, a letter of concurrence was received from the MEC of Local Government concurring after council had advised that all the processes, scores and qualification, have been examined and were in order. Council informed the MEC that the recruitment has been followed as per the requirements of the Amended Systems version. Once a letter is issued by the MEC, it completes the process of employment and the process is thereafter final.

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7. Ms Mbelani, the municipal manager(MM) was second to act as a municipal manager from the department of Local Government in 2013 on a period of three (3) months basis. She became acting municipal manager and the terms of reference being administrative recruitment and to advertise the position of municipal manger. Council had a challenge to stabilize the institution. It was her responsibility to pursue the terms and establish the duties. Her acting was extended as she would not be able to pursue the terms of reference within the short space of time. Council resolved to extend the contract up until her permanent employment. She was paid by the department of local government from or during 28 January 2013 to September 2013.
8. Once employed permanently by the municipality on 11 September 2013 she was not supposed to have continued with the other job from the department of local government. The speaker was not aware if she resigned from the department because she did not disclose that to the council. There was no letter from the municipal manager advising council of her resignation. The municipal manager reports directly to the mayor, who in turn has to inform council on any development if the council was to incur the payment of the manager in full. He claimed that on January 2014, council did not know of the municipal manager's top up since the day of her appointment. The administration duties like overseeing all other Section 56 managers and taking of orders from the municipal manager. The staff and middle managers were also within the prerogative of the municipal manager.
9. The speaker stated that on September 2013, Ms Mbelani was accepted by council. At the time she was within the payroll of the municipality.

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190

Clearly, she was no longer a staff of the local government. She was in possession of a letter of appointment, contract of employment as well as concurrence letter from the MEC of local government. The process of recruitment was finalized. Regarding the charge of gross dishonesty, he claimed that she was in the payroll of local government. She asked for a top up. She knew that she was supposed to be paid by Ngqushwa Municipality. She failed to disclose that she was getting double salary. Council accepted her appointment on September 2013 and there was nothing brought before council to show that she was employed by another department. She has never asked for permission from council. He stated that the municipal manager had no right to mislead council.

10. When the municipal manager absented herself from meetings, council had to consider appointing someone if there was no indication from her that a specific person should be appointed. Therefore, council could take an uninformed resolution, and could cause instability because managers cannot represent management without the municipal manager. When dealing with ordinary and special meetings, the municipal manager has to advise the speaker within forty-eight (48) hours of her unavailability. She could do that even via the phone. The office of the speaker has to write and advise that the leave or apology is received and therefore it is accepted. The six meetings being 13 February 2014, 2 May 2014, 28 May 2014, 11 June 2014, 13 June 2014 and 24 June 2014 and absence from these was not approved. Council meetings are the municipal manager's core business. Successive meetings followed each other without approval. The speaker tabled letters to share with council for the purposes of council to make a decision.

11. Resolutions regarding tracking resolutions and implementation. Council needed to check law regarding labour costs after council was advised by speaker of the imminent strike by SAMWU (South African Municipality Workers Union). It took a resolution that everything should be fast tracked accordingly. The municipal manager was tasked to deal with this. The report was not done. She decided to hire Wesley Pretorius, an attorney instead to reflect on legal cost to labour court. Council did not approve the appointment. Council was never given the estimates on quotes regarding costs. The municipal manager was on leave and asked people to act in her absence whenever she came back, she would not take processes forward because she would always say she was not part of the processes. Council instructed the municipal manager to sign the contract of Ms Mazwayi, and till to date she had not done so despite the instructions. Regarding her financial interests, she has never informed council of these interests. Paragraph 19.1 dealt with "Good faith". The salary was due to her and as such unprofessional for her not to disclose it from the department. She misled both council and the department.

12. Council received a petition from councilors regarding the municipal manager. Council meeting, in her presence dealt with the following:

- a. Allegations of not implementing resolutions;
- b. Unavailability of audit plan;
- c. Not informing council about the contract binding the municipality i.e. Laman Contract (procuring of graders and earth moving plants).

Management advised council that a forensic audit company, Umnombo has been appointed to conduct an investigation. A report was commissioned by the appointed company and presented to council which in turn advised

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to proceed with disciplinary measures against the municipal manager. The witness confirmed the document shown to him authored by Umnombo was the report and indeed the correct document. The municipal manager's representative accepted the report for what it is purported to be. The municipal manager did not admit it. The audit action plan is a plan ahead of financial year and observe the audit outcome. The speaker advised that it was very important to adhere to the compliance. He claimed that this was one of the important tools to drive the progress of the municipality. The speaker was concerned because the reports were not done by the municipal manager (audit report and audit action plan).

13. The speaker alleged that the council was never informed of the contract awarded to Laman. The issue of the contract was made confidential to both council and speaker. The municipal manager wrote to the MEC about the conduct of the speaker when the speaker raised issues regarding the contract. Council wanted to know about the contract so that it consider plant management plan. It looked at integrating and addressing problems that might arise if any. The speaker dealt with the oversight role of the management. The purpose of oversight role was to empower officials i.e. does the municipality have money within IDP?; is there a dire need to buy? The question was that the plant (Laman) was not part of IDP and was never budgeted for. The MM (municipal manager) had no right to act unilaterally regarding the contract with Laman. If the municipality had identified a need, the MM would have to ask permission from council, it could not be her decision alone.

Cross – examination

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14. The speaker confirmed that municipalities in South Africa are governed by legislation being the Municipal Systems and Municipal Structures Act. The speaker is the leader of council and is obliged to follow the procedures and rules of council. He mentioned the names of former acting municipal managers i.e. Mrs Zongo, Mr Gwintsa, Mr Sondaba and Mr Mjo. He disputed that all these left after each other. There was only one permanent municipal manager in the list, all others acted for specific period. The speaker disputed that there was political instability during the change of municipality when council preferred disciplinary charges against Mrs Zongo. The supply chain management issues were perceived as maladministration. The municipality had one Section 56 manager when Ms Mbelani took over. She was supposed to have facilitated the process of S 57 managers. She failed in her leadership to undertake such a process.

15. Ms Mbelani contended that the council did not facilitate the process of recruitment. The speaker disagrees and claimed that she was supported. The speaker disputed any level of sabotage. In the municipal troika (Mayor, Chief Whip and Municipal manager) Ms Mbelani claimed to be above. She was getting more than the salary of the municipal manager. Council was never advised that they would be paying top-up. The total cost to company was never brought to council. The advert stipulated negotiations were open. It was argued that the municipal manager from the point of accepting offer, she was supposed to have resigned from the department of local government. Council was not advised that she did not resign because of her outstanding confirmation. There was no dispute in respect of her employment. Council unanimously employed Ms Mbelani. The job of the speaker is to sign not to compile agenda. The municipal manager delegated HR support to work with the speaker. It was put to the speaker that municipal manager was frustrated immediately after her

194

interview. The speaker claimed that the municipal manager was frustrated without reason, her appointment was endorsed.

16. The speaker could not understand for Ms Mbelani to be employed by two institutions. The matter was adjourned to the 22 October 2014 and the speaker was warned that he was under oath.

17. On the 22 October 2014, all the parties were present. Mr Jardien handed in a medical sick certificate from Life Beacon Bay Private Hospital on behalf of Ms Mbelani. Apparently Ms Mbelani fell ill the previous night. He further informed the chairperson that Ms Mbelani was advised on legal matters by an attorney, Mr Cloete. The attorney concerned is in the panel of attorneys of the municipality. Mr Jardien submitted that the municipality would have to release the attorney so that he could consult with him. Mr Notyesi, the initiator had serious problems with the sick certificate. The sick certificate only stated that the patient would be "unfit to attend work or school". Mr Notyesi advised that there was a case on point where it was held by the High Court that a doctor's certificate must specify that as a result of illness, the patient cannot proceed with the disciplinary hearing.

This was the first request for postponement and he had no choice but to agree. He however put on record that the next time such a kind of certificate was handed in, they would subject the patient to the employer's doctor. He reminded the chairperson that on the 21 October 2014, before commencement of proceedings, Ms Mbelani clearly demonstrated that she was not happy to proceed with the hearing. Regarding the request for the release of Mr cloete, Mr Notyesi correctly advised Mr Jardien that the attorney concerned was not an employee of the municipality, so he cannot

be forced by the municipality to be available for consultation. The municipality was willing to assist on the question of subpoena if necessary. It was agreed between the chairperson, Mr Jardien and Mr Notyesi that the 3rd, 4th and 5th was a suitable date to proceed with the matter. Ms Mbelani was not available for the week of the 27th October 2014 as she was attending a course in KwaZulu Natal University. Matter was accordingly postponed to the 3rd November 2014.

18. On the 3rd November 2014, being the agreed date between the parties, the charged employee was not in attendance nor was her legal representative. The time was 11 o'clock. There was no formal request made except that the attorney had written two letters dated 3 November 2014 especially addressed one to the acting municipal manager. In the said letter, he advised that the charged employee was attending a module in University of KZN. The municipality was allegedly fully aware of the course. His instructions were not to attend the hearing and ask for postponement to the 18 November 2014. This letter was not addressed to the chairperson and the initiator on behalf of the municipality. The magnitude of the hearing as against the attendance of a module, clearly has not been considered. The date which was arranged was made pursuant to a formal request for postponement by the charged employee. The annexed email from the University of KZN regarding the module does not even mention Ms Mbelani as an attendee or participant. There was nothing linking the document to her. There is no invitation calling on Ms Mbelani to attend. There is also no information from her part advising the university to excuse her as a result of the hearing. Mr Notyesi argued that the absence was willful and was bordering on contempt. The content of the mail demonstrated their attitude i.e. "client instructed me not to attend". The attorney simply follows instruction and does that. There was no courtesy

19/6

of at least coming to the hearing and seek a postponement as has happened before. There is no justification. There should have been a substantive application for postponement which had to be weighed on its merits.

19. The charge sheet explains the circumstances where the employee and her legal representative fail to attend the hearing; the matter will have to proceed without their presence. Paragraph 2(b) read with 2(1) of the charge sheet makes the above point very clear. The chairperson agreed with the submissions of Mr Notyesi. There was indeed no application for postponement before the chairperson. The charged employee advised the attorney as per an email to the employer's employee (being the acting manager who was not involved in the matter) that he must not attend the hearing. The attorney follows the instruction of his client. The chairperson and the legal representative of the municipality are not advised of this instruction not to attend. The party seeking a postponement must make a case for postponement on application fully motivating the reasons for requesting a postponement especially if a request is made in such a late hour. The presiding officer would have to exercise his/her discretion whether to grant or refuse a postponement. It should be borne in mind that a postponement is an indulgence, it is not there for the taking as Ms Mbelani seems to believe. Clearly the charged employee and the legal representative are not aware of this point. In an application for a postponement, the presiding officer exercises his discretion judiciously. He looks at the balance of convenience, interests of justice etc. The chairperson on the absence of an application for a postponement before him, has nothing to consider.

In an unreported case of *Buckle and Stoop v Rand Water*, Labour Court judgment, case number JS 69/2009: The employees challenged their

dismissal after they were dismissed pursuant to a disciplinary hearing where legal representation was excluded from the process, after it was initially allowed. The court held "two issues arose in respect of procedural fairness. The first is that employees who frustrate their rights to due processes cannot be allowed to be heard to complain about procedural unfairness. The second is that the code of Good Practice does not require an employer to hold a disciplinary hearing that is modeled on a criminal or even civil trial. Where an employer does a full investigation (as was done in this case) and obtains a forensic report, there is nothing unfair in my view if the hearing takes the form of a neutral chairperson interrogating the report and the employees response thereto in a interventionist manner and by granting parties a fair opportunity to question each other on disputed issues. Unfortunately many disciplinary enquiries are allowed to run for months while employees are on suspension with pay because of the fear that employees may claim procedural unfairness if the enquiry was not conducted in a manner as one would conduct a trial"

20. An employer is not obliged to adopt a stringent approach for procedural fairness when conducting a disciplinary hearing. In *Avril & Others (2006) 9 BLLR 833 (LC)*, the court stated that it is not required that an employer conduct a disciplinary enquiry as though it was a criminal trial and that the workplace efficiencies should not be unduly impeded by onerous procedural requirements. The court held on this approach, there is clearly no place for formal disciplinary procedure that incorporate all the accoutrements of a criminal trial, including the leading of witnesses, technical and complex "charge sheets", requests for particulars, the application of rules of evidence, legal arguments and the like. The court confirmed the appropriate test to establish whether sufficient evidence was

198

led, is the balance of probabilities and not reasonable inference drawn from evidence.

21. In the matter of *Ngutshane v Ariviakom (Pty) Ltd t/a Arivia kom and Others (2009)6 BLLR 541 (LC)*, the court held "where an employee's misconduct is manifest, common cause or not in dispute, a less formal process will suffice. An elaborate disciplinary enquiry is not required for every dismissal. The court held that it was not open for an employee to dispute the procedural fairness of a dismissal where the employee was the cause of the procedural unfairness upon which she relies. By refusing to make representation the employee had caused the very procedural unfairness of which she complained. In affording her an opportunity to make representations, the employer complied with its legal obligations to observe "audi alteram partem" principle.

Consequently, the chairperson is of the view that the matter should proceed without the employee and her attorney and in the absence of an application for postponement, fully motivated, the chairperson has nothing to consider.

C. EVIDENCE OF MS LULAMA MADINA

22. Ms Madina was sworn in. She is resident in Beacon Bay, East London. Her current occupation is an internal auditor and a forensic investigator. She has a B.Com, certificate in general audit and internal auditing. She is practicing auditing and is a forensic member of institute of forensic auditing. She has done work for both private and public institutions. She has received instructions from Transnet, Road Accident fund and PAWCAL. She has done work for the department of education,

199

health and various municipalities. She was invited by the municipality to conduct an investigation in the present matter. She compiled a report (forensic) dated 20th August 2014 whilst working in the company Umnombo. The terms of reference were to look at all the allegations against the municipal manager as stipulated in the charge sheet. The procedure followed was:

- a. Meeting with municipality and staff,
- b. Analyzed allegations,
- c. In depth review of documents from municipality,
- d. Interviews with relevant individuals,
- e. Reading documents in detail,
- f. Finally compile a forensic report.

Ms Mbelani was interviewed and offered opportunity to respond to the allegations.

23. The report includes Ms Mbelani's verbal submissions in respect of all allegations. The witness took the hearing through the report dealing with each charge and finding.

- a. Allegations of receiving the salaries. She was seconded as acting municipal managers from the department of local government and had a specific mandate. The municipality advertised and she was appointed in September 2013. She confirmed getting a salary from the department of local government and a top-up instead of normal salary of the municipal manager. The letter of appointment and cost to company was clear. She lied when she told the department that the municipality did not pay her for January 2014 as well as telling

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189

200

the municipality that the department did not pay her. In February 2014, full salaries from the department and the municipality were paid to her.

Based on analysis concluded, she had conducted an act of financial misconduct for receiving two salaries.

Contravention of Code of Conduct of Municipal staff code. She used her influence and cause the municipality not to load her salary. She also committed gross misconduct when she asked the department of local government to pay her salary whilst the municipality was paying her full salary. The recommendations where that disciplinary charges be preferred against her in terms of the Systems Act.

- b. Failure to prepare and take audit report. The municipal manager is supposed to prepare financial report within nine (9) months after a financial year (Section 21 of municipal finances Act). Amongst other duties of the municipal manager is annual performances, assessment of taxes and explanation of financial statements. She failed to submit the audit report in a council meeting. The annual report in the draft did not include audit report and audit action plan. The reports were never submitted on time but long after the time. The recommendation was that disciplinary charges be preferred against her.

The letter of consent was signed prior awarding Laman, the contract. Laman only provided installments and the number of installments. It provided interests rates at 11 %. It did not provide the capital amount and did not provide the principal debt. There

201

was no deposit and installments amount provided to the municipality. The statements provided to the municipality were just statements showing i.e. Rxx is due. The contract with Laman was signed on 11 December 2013 but on the 12 December 2013, a day after signature of contract payment is effected already. The contract stipulated an amount of R1 661 713.83 to be paid instead of R2 161 632.41 paid. The plant was delivered in February 2014 although paid for on 12 December 2013. The municipality was billed for R2 161 632.41 but only plant worth R812 780.75 was delivered. The municipality was paying thirty seven (37) months instalments instead of thirty six (36) months. The recommendation was for disciplinary charges be preferred against her.

- c. Unauthorized absence at council meetings and non-implementation of council resolutions. The MM failed to comply and contravened municipal structures act. The recommendations were to prefer disciplinary charges against her. She was personally implicated in allegations of irregular and unauthorized expenditure. The recommendation here as well was to prefer disciplinary charges against her. The forensic report compiled by the witness was handed over as Exhibit "B".

- 24. Mr Notyesi asked the witness to clarify other aspects emanating from her report. The issue of tax avoidance came into play. It was alleged that from the 11 September 2013 to March 2014, the MM was splitting her salaries. This scheme of splitting the salary was designed to get a tax relief. When one earning in a lower income bracket, tax rate is charged differently. At the same time when one is in the high income bracket, he/she is charged higher than one at a lower income bracket. She therefore

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191

202

received a tax relief even though she was at a high income bracket. She was taxed at a lower income bracket. It is the responsibility of the MM to ensure proper processes as an accounting officer. She failed to do that because she continued to receive a top-up. The witness rejected the allegation that council did not approve her appointment. She stated that the MM had gone through interview, she was appointed, the appointment accepted and she signed a letter of appointment together with fixed terms of contract. She remained, did not leave the municipality and did not turn down the appointment. She got the MM's salary for January 2014 to April 2014. The assertion that her appointment was not confirmed by council cannot be sustained.

D. EVIDENCE OF MS BONGIWE MATU

25. She was also sworn in. She acted as a supply chain manager from 17 June 2013 to 31 October 2014. She was aware of the policies and procurements of the municipality. She alleged that council need to be consulted if procurement exceeded R10 million. The charge sheet was handed to the witness especially charge 9 (Fraud) "Failure to inform council regarding procurement of goods exceeding 10 million".

The witness submitted that she was aware of the Laman contract but has never seen it. She did not receive any information even though it was claimed that the contract fell under Section 32. She never advertised as the SCM (Supply Chain Management) and were never involved. The MM was dealing with the contract by herself. She was not aware if council was aware and would only assume that they only find out late just like SCM. The documents relating to the contract delivered from CFO of another municipality. The witness stated that in terms of reporting, she maintains

a contract register. The SCM's office report was not correct because they were not part of the process.

26. Regarding the charge of Irregular and Unauthorized expenditure. All the contracts of the concerned service providers were above R200 000. The only contract where they received information and proper processes followed was the contract of PJ Cloete for legal services. All others, SCM was not followed. Contracts were therefore irregular and were reported as such.

E. THE EVIDENCE OF MS VELUSWA MATU

27. She was sworn in. She has been acting as a CFO (Chief financial Officer) from May 2013 to 31 October 2014. She knows the MM (Ms Mbelani). She submitted that after council confirmed and accepted her appointment, she (Ms Mbelani) told them to change all the correspondence to reflect that she was a municipal manager not acting anymore. She advised them that she was getting her salary as an MM and would not resign because of politicians. In January 2014, she requested full salary because she was not paid by the department of local government. According to the CFO it was not proper and correct for the MM to receive a salary from both institutions if she was permanent with the Municipality. She commented and alleged that it was not correct of the municipal manager to say that council did not accept her as the municipality paid her in full. She was actually paid twice. Clearly, this was fraud on her part. Regarding, the charge of financial misconduct, she abused her position as a municipal manager. She got a full salary which was going to invite high tax charge but instead it was low because of the splitting of salaries. The MM did not comply with the code of ethics as she should have resigned with the

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193

department of local government. She refused when advised that policy dictates that council approves contracts exceeding 10 million. She claimed to have power invested by council. The Acting HOD (Head of Department) advised her and the CFO proposed a borrowed document for approval but she refused. She confirmed the contracts as her charge 12 that SCM was not followed. The CFO noted one deviation taken to council, which was a lawful process. This was the legal services contract with PJ Cloete, all others were irregular. The municipality paid even though the plants were not received in full. She did not declare her financial interest. The employer closed its case.

F. CLOSING ARGUMENT

28. Mr Notyesi put on record before proceeding with closing arguments the following:

- a. Subsequent to the hearing on the 3rd November 2014, a letter was dispatched to Ms Mbelani's attorney. The letter was read to the record. It was thereafter emailed to the legal representative and proof of receipt was available. It was sent at 15:47 and handed in as "Exhibit C".
- b. Subsequent to the mails, a sms was sent to Mr Jardien informing him and the notice part of the sms was read on record.
- c. Mr Jardien responded and the response was read to the record.

There was no indication whether they would attend today (4 November 2014). At 09:30, the employer was handed an email from Mr Jardien which again was read on record. The mail is handed in and marked Exhibit "D". Both the employee and the legal representative are aware of the

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proceedings and have elected not to attend. There was a determination not to attend neither to seek a postponement nor to proceed. If any postponement was sought, it had to be made at the hearing. There was no application today (4th November 2014) for postponement. The absence is willful and a total disregard of the hearing. There was nothing preventing the employer to proceed with closing arguments. Employer is allowed to proceed with closing arguments as a result of failure by the employee to avail themselves either to proceed or seek a postponement. There is want and dearth of information for the chairperson to consider relating to a postponement.

29. Mr Notyesi contended that the genesis of the entire matter dated back to 11th September 2013. This is the date when Ms Mbelani was appointed as a municipal manager of Ngqushwa Municipality. She was issued with a letter of appointment inclusive of duration, conditions and salary applicable. She signed the letter of appointment on 11 September 2013. Ms Mbelani accepted and confirmed her appointment. The mayor and Ms Mbelanni signed the contract of employment on 4 October 2013. The contract was clear that employer was employing the employee on a fixed contract and employee accepted. The contract was effective from 11 September 2013 regardless of date signature. The MEC of local government signed a concurrence letter on the 13 November 2013. In the letter the MEC agreed with the appointment and therefore agree with council's decision to appoint M Mbelani. The contention by Ms Mbelani that council did not accept her appointment, clearly was a lie. The employer has therefore established its case in respect of charge 1 and 2. Ms Mbelani was duty bound to have only accepted a salary from the municipality. In January 2014 she misrepresented facts i.e. received money from municipality and misled the department that she was not

paid. She went to the municipality and said the same thing. Clearly, there was fraudulent intent because she was paid twice. The employer has established charges 3 and 4 as well. She had everything confirming her appointment but clearly misrepresented that the council did not accept her appointment.

30. Regarding charged 5 and 6: She was an accounting officer. How could she allow herself to take salaries which are not in accordance with her letter of appointment. She approved her payment. These charges have been established by the employer. The forensic investigator, regarding charge 6, showed the scheme of splitting salaries intended to receive tax relief benefit. She would pay small portion of tax as compared to the high tax consistent with her salary. The employer established this case as well. Mr Notyesi submitted that the charge in 7 (contravention of staff code) was established as well. The MM allowed her payload to be loaded incorrectly contrary to her letter of appointment.

31. The forensic report dealt in detail with evidence relating to charges 8 and 9. The CFO brought to her attention (that she needed council resolution) to enter into contract but she refused. The contract was signed the same day and on the following day its paid large amounts. This was another example of fraud. Mr Notyesi wondered how was it possible that Ms Mbelani still not charged for these transgressions. The charge is established as well. The charge regarding unauthorized absence in meetings was established. There was no leave granted to her so she was absent without leave. The charge is also established. The forensic report dealt extensively with charge of failure to implement council resolutions, charge 11.. This charge is also established. The SCM and the forensic report dealt with evidence concerning charge 12, which was irregular and unauthorized expenditure. The charge is established as well.

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195

The charge of breach of good faith is also established. The entire conduct breached the obligation of good faith. The MM continued to receive work and salary from another institution. The charge of failure to declare financial interests is also clearly established. On what basis did she receive two salaries from two institutions? Who was she accountable to? Mr Notyesi submitted that all the charges on balance of probabilities, the employer has proved. The employer asked the chairperson to find Ms Mbelani guilty on all the charges preferred against her.

F. FINDING

32. The evidence of the employer's witness is uncontested. There is no reason to gainsay it. The forensic report compiled by independent witness who is an expert in her field is accepted in full by the chairperson. The demeanor of the witnesses was good, they gave honest answers, conceded when necessary and admitted when they were unaware of facts. Consequently therefore on evidence before the chairperson, Ms Mbelani is guilty as charged.

NP JAJI
CHAIRPERSON

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Annexure 10.16



From:

To:0437221555

28/01/2015 10:06

#089 P.002/011

**ARBITRATION IN THE SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING COUNCIL**

In the arbitration between;

VUYOKAZI MBELANI

Applicant

And

**NGQUSHWA LOCAL
MUNICIPALITY**

Respondent

ARBITRATION AWARD

Case Number: ECD081409
Date/s of arbitration: 17 November 2014
Date of award: 20 January 2015

Head Note: The Applicant established the existence of an
unfair labour practice.

MARTIN LE R. KOORTS
Panelist / Arbitrator



DETAILS OF THE HEARING AND REPRESENTATION

This matter was set down for hearing on 17 November 2014 at the offices of the Ngqushwa Municipality in Peddie.

The Applicant, Ms V. Mbelani was represented by Mr. R. Jardine an attorney of the firm Drake, Flemmer & Orsmond Incorporated.

Mr M. Notyesi, an attorney from the firm Mvuzo Notyesi Incorporated represented the Respondent in this matter.

ISSUE TO BE DECIDED

The issue to be decided is whether the Respondent committed an unfair labour practice within the meaning of Section 186(2) (b) of the Labour Relations Act, and if so, is the Applicant entitled to any relief.

BACKGROUND TO THE MATTER

At the hearing held on 17 November 2014 it was agreed by the parties that they will only submit written arguments and submissions for my consideration by 8 December 2014 in order that I determine the matter. Extension was granted up to 8 January 2015. I have now received all the documentation as agreed in order to determine the matter.

The Applicant referred an unfair labour practice dispute in terms of Section 186 (2)(b) of the Labour Relations Act, which states the following:

"Unfair labour practice" means any unfair act or omission that arises between an employer and an employee involving— the unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee; . . .

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From:

To:0437221555

28/01/2015 10:06

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The Applicant was the Municipal Manager of Ngqushwa Municipality and is employed at a total cost to the Municipality of R1 218 823.00 per annum.

The Applicant, as Municipal Manager, is subject to the Local Government: Disciplinary Regulations for Senior Managers, 2010 which was gazetted on 21 April 2011.

At a special Council meeting held on 13 June 2014, a proposal was made in the Respondent's Council that the Applicant be placed on precautionary suspension for a period of three (3) months. It was resolved at the said Council meeting that the Applicant be suspended.

On 24 June 2014, the Respondent's Council held an ordinary council meeting in terms of which the Applicant's suspension was suspended / uplifted as the Respondent did not comply with the Local Government: Disciplinary Regulations for Senior Managers, 2010.

At the same ordinary council meeting, a report was tabled and in terms of the report the following were resolved:

That the Applicant be suspended from duty with full pay and related benefits;

That the Applicant be granted special leave until the matter is resolved.

The Respondent subsequent to the council meeting sent the Applicant a letter dated 24 June 2014 uplifting the precautionary suspension. It further stated that the Applicant be placed on special leave of absence pending the making of submissions in terms of clause 6(2) of the Disciplinary Regulations for Senior Managers. The letter was signed Councillor Cuka.

The Applicant was granted seven (7) days to make written submissions in terms of Section 6(2) of the Regulations.

Submissions were made by the Applicant, and it was decided by the Respondent that the Applicant be placed on precautionary suspension. The said suspension letter was dated 04 July 2014 and received by the Applicant on 10 July 2014.



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ANALYSIS

Both the Applicant and the Respondent's representative deals with lawfulness in its submissions, which is an issue that cannot be determined by the SALGBC. However it is the function of the Arbitrator to determine the issue before the SALGBC, and as the referral clearly indicates an unfair labour practice dispute was referred, this is the issue which will be determined.

Local Government: Disciplinary Regulations for Senior Manager, 2010, stipulates the following:

Purpose and application

2 (1) This Disciplinary Code -

(a) applies to all -

(i) municipalities;

(ii) senior managers; and

(b) is intended to -

(i) provide an internal mechanism for management of misconduct;

(ii) establish standard procedures for the management of misconduct;

(iii) support constructive labour relations;

(iv) ensure a common understanding of misconduct and discipline;

(v) promote mutual respect between senior managers and council;

(vi) promote acceptable conduct;

(vii) avert and correct unacceptable conduct; and

(viii) prevent arbitrary or discriminatory actions.

(c) prevails in the event of any inconsistency with any systems and procedures adopted by a municipality in terms of section 67(1) (h) of the Act to the extent that those procedures apply to senior managers.

Principles

3(1) This Disciplinary Code is informed by the following principles:

(a) Discipline-

(i) is fundamentally a corrective measure and not punitive; and

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(ii) must be applied in a prompt, fair, consistent and progressive manner.

(2) This Disciplinary Code is necessary for the efficient delivery of services, and ensure that senior managers -

(a) have a fair hearing in a formal or informal setting;

(b) are timeously informed of allegations of misconduct made against them; and

(c) receive written reasons for any decisions taken against them.

(3) A disciplinary hearing must -

(a) take place in the area of jurisdiction of the municipality; and

(b) be concluded within the shortest possible time.

(4) Except in exceptional circumstances, a disciplinary action may not be taken against a senior manager until a full investigation has been carried out.

Policy

4 (1) If a senior manager is alleged to have committed misconduct, the municipal council must institute disciplinary proceedings in accordance with this Disciplinary Code.

(2) The maintenance of discipline is the responsibility of the municipality.

(3) Discipline must be effected with due regard to -

(a) the Code of Conduct for municipal staff members as contained in Schedule 2 of the Act; and

(b) the Code of Good Practice provided for in Schedule 8 of the Labour Relations Act, 1995 (Act No. 66 of 1995).

(4) The principles of natural justice and fairness must be adhered to notwithstanding criminal or civil action having been instituted.

(5) Disciplinary procedures may not be dispensed with as a result of criminal, civil or other action having been instituted, or pending the outcome of such action.

Disciplinary procedures

5. (1) Any allegation of misconduct against a senior manager must be brought to the attention of the municipal council.

(2) An allegation referred to in sub-regulation (1) must be tabled by the mayor or the municipal manager, as the case may be, before the municipal council not later than seven [7] days after receipt thereof, failing which the mayor may request the Speaker to convene a special council meeting within seven [7] days to consider the said report.

(3) If the municipal council is satisfied that -


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(2) Before a senior manager may be suspended, he or she must be given an opportunity to make a written representation to the municipal council why he or she should not be suspended, within seven [7] days of being notified of the council's decision to suspend him or her.

(3) The municipal council must consider any representation submitted to it by the senior manager within seven [7] days.

(4) After having considered the matters set out in sub-regulation (1), as well as the senior manager's representations contemplated in sub-regulation (2), the municipal council may suspend the senior manager concerned.

(5) The municipal council must inform -

(a) the senior manager in writing of the reasons for his or her suspension on or before the date on which the senior manager is suspended; and

(b) the Minister and the MEC responsible for local government in the province where such suspension has taken place, must be notified in writing of such suspension and the reasons for such within a period of seven [7] days after such suspension.

(6) (a) If a senior manager is suspended, a disciplinary hearing must commence within three months after the date of suspension, failing which the suspension will automatically lapse.

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

The procedure of suspending a Municipal Manager is clearly set out in the abovementioned regulations.

The purpose of the regulations is to establish standard procedures for the management of misconduct, ensure a common understanding of misconduct and discipline and to avert and correct unacceptable conduct.

The Regulations takes precedent over other procedures, in specific it is pre-emptory in suspension procedures for senior managers.

The Regulations, which is the disciplinary code for Senior Managers, is informed by the principals that it must be applied fairly. Further, it is to ensure that Senior Managers have a fair hearing in a formal or informal setting.

The principals of natural justice and fairness must be adhered to in terms of the policy.



From:

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81

The Applicant's dispute arose on 13 June 2014. which suspension was not in accordance with the Regulations. This conduct renders the suspension procedurally unfair. However, the Respondent uplifted the suspension, and placed the Applicant on special leave. This conduct by the Respondent did not uplift the suspension, as special leave is deemed to be a suspension. In Saloojee v McKenzie NO & others [2005] 3 BLLR 285 (LC) the court held that placing employee on "special leave" pending transfer for disciplinary reasons effectively constituting suspension. The respondent's conduct by placing the applicant on special leave amounts to suspension.

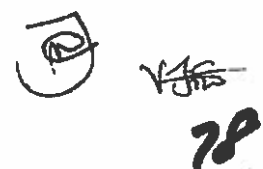
The period from 13 June 2014 to 10 July 2014, the Applicant was on suspension, which was unfair and contrary to Section 186 (2) (b) of the Labour Relations Act. Further, the suspension was only valid for a period of three (3) months in terms of the Regulations, and ceased on or about 09 October 2014.

The period as from 10 October 2014 up and until the hearing of this arbitration the suspension was contrary to the Regulations and unfair.

Due to the three (3) months period having been exceeded, it lapsed automatically in terms of the Regulations. The period may not be extended by Council. In Nyathi v Special Investigating Unit [2011] 12 BLLR 1211 (LC) the court held that Employer extending employee's suspension beyond period stipulated in disciplinary code, the suspension was unlawful and employee entitled to resume work. In this matter the conduct of the respondent was unfair. Accordingly, by keeping the applicant further on suspension, the respondent's conduct was unfair.

The conduct of the respondent was procedurally unfair in suspending the applicant.

It is the Respondent's contention that the Applicant was at all material times suspended with full pay and benefits and there can be no damages suffered by the Applicant. The Applicant contents that it is entitled to relief in terms of the Labour Relations Act.


78

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89

- The adverse effect of the suspension on her dignity, integrity and reputation in the larger community and her family.
- The limited financial prejudice to the Applicant in so far as the suspension was on full pay.
- The serious nature of the allegations against the Applicant.
- The protracted duration of the suspension.
- That the Applicant was demeaned by the manner in which she was treated.

AWARD

The Applicant, Ms V. Mbelani established the existence of an unfair labour practice on the part of the Respondent in that she was unfairly suspended.

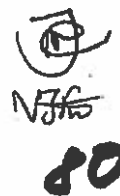
The Respondent, Ngqushwa Municipality, must pay the Applicant, Ms Vuyokazi Mbelani the equivalent of two (2) months pay, comprising:

$$R101568.58 \times 2 = R203137.16$$

The amount of R203137.16 (two hundred and three thousand, one hundred and thirty-seven Rand and sixteen cents) must be paid to the Applicant within twenty-one (21) days of the date of this award.



M Le R. Koorts
Arbitrator



80

Annexure 10.17



**IN THE SOUTH AFRICAN LOCAL GOVERNMENT
BARGAINING COUNCIL HELD IN PORT ELIZABETH**

RULING IN RESPECT OF APPLICATION FOR CONDONATION

CASE NUMBER: ECD011520

In the matter between:

VUYOKAZI MBELANI

APPLICANT

And

NGQUSHWA LOCAL MUNICIPALITY

RESPONDENT

This matter represents an opposed condonation and was determined in terms of Part 1 Rule 9 of the South African Local Government Bargaining Council Rules, on the papers and submissions submitted by the Applicant.

The Applicant referred a dispute about an alleged unfair dismissal to the South African Local Government Bargaining Council ("SALGBC") for Arbitration outside the 30-day time limit specified by the Labour Relations Act no. 66 of 1995 ("the Act").

The Act permits an employee to refer a dispute to Arbitration after the 30-day time limit has expired, provided "good cause" is shown (Section 191 (2) of the Act). In terms of Rule 9(3) of the Rules of the SALGBC an application for condonation must set out the grounds for seeking condonation and must include details of the following: degree of lateness of the referral; the reasons for lateness; the referring party's prospects of succeeding and obtaining relief sought against the other party, any prejudice to the other party and any other relevant factors. Condonation of the failure of a party to comply with statutory time limits is not a formality. An applicant for condonation is required by the Act to show good cause.

It is furthermore important to note that these factors are all interrelated and that an "objective conspectus" of all the facts is needed to decide whether or not condonation must be granted. See in this regard National Union of Mine Workers and Others v Western Holdings Goldmine (1994) 15 ILJ (LAC) and Mziya v Putco Limited DA 17/98 (LAC). Ultimately it is a matter of fairness to both parties. I will now address each of these factors separately.

The Respondent filed their opposing papers on 12 February 2015. A notice of opposition must be filed within 10 days after the application had been delivered. The complete application was served on the Respondent on 26 January 2015.

[Handwritten signature]

The opposing affidavit was thus filed seven ^{??} (7) days out of time. I have considered the reasons provided for this relatively short delay and I am satisfied that they explain satisfactory for the delay. I am also satisfied that the delay was not intentional and there is no prejudice to the Applicant.

The late delivery of the opposing affidavit and documentation is hereby condoned.

1. The length of the delay

The complete Application for Condonation was received by the SALGB on 26 January 2015 from the offices of the Applicant's attorney.

The date of dismissal is recorded as 9 December 2014 in the Applicant's affidavit.

The Applicant states in her affidavit that the matter should have been referred on or before 8 January 2015 which is correct.

The referral is thus [?] around 18 days out of time.

The degree of lateness is fairly serious.

2. Explanation for late referral.

The explanation offered by the Applicant for the delay was in essence that:

- The Applicant signed the referral form which was prepared by her attorney's secretary on 15 December 2014.
- The Applicant's attorney's secretary failed to forward the documentation to the SALGBC within the 30-day time frame.

The Respondent in essence held that:

- It is disputed that the Applicant ever intended to lodge a dispute with the SALGBC
- Mr Jardine's secretary, a professional, would not have been remiss not to file an important document that is relevant to the Applicant's career for a period of 18 days.
- The degree of lateness was serious and the reasons provided are not sufficient to explain for this delay.

I have considered the reason provided by the Applicant for this delay of around 18 days and it is my view that:

[Handwritten initials]

- The reasons provided do not explain adequately for this delay.

The tardiness of a union representative or legal practitioner is not sufficient reason to grant condonation. See Xaviya v African National Congress [2000] 4 BLLR 477 (LC) and also Parker v V3 Consulting Engineers (Pty) Ltd [2000] 21 ILJ 1192 (LC)

The Applicant is required to supply a reasonable and acceptable explanation for the delay. In this regard see Chetty v Law Society 1985 (2) SA 756 (A) at 765A-C and NUM v Western Holdings Gold Mine (1994) 15 ILJ 610 (LAC) at 613E.

It is therefore my conclusion that the Applicant's reason cannot suffice to explain for the delay.

Therefore I find that the Applicant party have not shown the required diligence in pursuing this dispute and has not shown good cause.

Furthermore, in the case of Mzayi vs. PUTCO 1999 LAC, the Labour Appeal Court said as follows with regard to the issue of condonation;

".....without reasonable and acceptable explanations for the delay, the prospects of success are immaterial, and without prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused".

3. The referring parties prospects of success

The onus is with the Applicant to establish prospects of success.

The submissions from the Applicant as well as the Respondent party is extensive and I am not going to repeat all their submissions as it is sufficiently captured in the record.

The Applicant raised a number of procedural issues which was disputed by the Respondent.

The Respondent and Applicant attached extensive documentation to substantiate their respective affidavits. I have considered all the submissions and documentation before me and I find that it is not possible for me to determine procedural fairness only on the papers before me and it can only be established in a proper hearing.

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The Applicant made no submissions with regard to the substantive fairness of her dismissal and neither filed a replying affidavit.

The Respondent listed all the charges against the Applicant and explained these. There are a number of very serious charges against the Applicant.

In the premises I must find that the Applicant failed to address prospects of success with regard to the substantive fairness of her dismissal.

I am therefore not persuaded that the Applicants established good prospects of success, considering also that the onus is with the Applicant to establish prospects of success.

4. The importance of the case

There is nothing to indicate that the matter is unusually important. It is obviously important to both parties.

5. Prejudice resulting from the delay

There were to my view no relevant submissions made by the parties' with regard to potential prejudice. It is therefore my view in the absence of any relevant submissions in this regard, that the parties will not be unduly prejudiced as a result of the delay.

Having considered the above factors, I am of the view that the referring party has not shown good cause. On balance the factors counting against condonation, as they have been analyzed above, clearly outweigh the factors favoring condonation.

The late referral of the dispute is not condoned.

DATED AT PORT ELIZABETH ON 24 FEBRUARY 2015

M. Le R. Koorts

M. Le R. KOORTS
ARBITRATOR

[Handwritten initials]

Annexure 10.18



**IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT PORT ELIZABETH)**

CASE NO : PR-33/15

In the matter between:

VUYOKAZI MBELANI

Applicant

And

SOUTH AFRICAN LOCAL BARGAINING COUNCIL

1st Respondent

COMMISSIONER M. LE. R. KOORTS

2nd Respondent

NGQUSHWA LOCAL MUNICIPALITY

3rd Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that application will be made on behalf of the abovenamed Applicant at a date and time fixed by the Registrar for an Order in the following terms :

- 1) Reviewing, setting aside and/or correcting the Arbitration Award dated 24 February 2015, handed down by the Second Respondent in the arbitration between, Vuyokazi Mbelani and the Nggushwa Local Municipality (under South African Bargaining Council Case No ECD011520).
- 2) Making such Order as this Honourable Court deems appropriate for the further conduct of the proceedings, if any.

- 3) Directing that those of the Respondents opposing any of the relief set forth herein, pay the costs of this application, jointly and severally, the one paying the other to be absolved.
- 4) Granting the Applicant further and/or alternative relief.

TAKE NOTICE FURTHER that the Affidavit of **VUYOKAZI MBELANI** annexed hereto, will be used in support of this application.

TAKE NOTICE FURTHER that the Applicant has appointed the address of her attorneys of record as set out below, as the address at which she will accept notices and service of all documents in these proceedings.

TAKE NOTICE FURTHER that the First and Second Respondents are hereby called upon to dispatch to the Registrar, within ten (10) days after receipt of this Notice of Motion, a written record of the abovementioned proceedings, together with such reasons as are required by Law or desirable to provide, and to notify the Applicant that this has been done.

TAKE NOTICE FURTHER that any of the Respondents wishing to oppose the granting of the Order prayed for in the Notice of Motion must, within ten (10) days after receipt of the Notice of Amendment or Notice that the Applicant stands by her Notice of Motion in terms of Rule 7A of the rules of the Labour Court, deliver an affidavit in answer to the allegations made by the Applicant, failing which the matter may be heard in that party's absence and an Order of costs may be made.

DATED at EAST LONDON on this 2ND day of APRIL 2015.


DRAKE FLEMMER & ORSMOND (E.L.) INC
Applicant's Attorneys
Tewkesbury House
22 St James Road

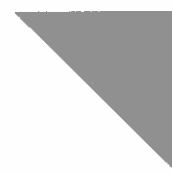
Southernwood
P O Box 44
East London
Tel: 043 - 722 4210
Fax: 043 - 722 1555
(R Jardine/mk/M467)

TO : THE REGISTRAR
LABOUR COURT
PRIVATE BAG X6004
PORT ELIZABETH
6000

REGISTERED LETTER GEREGISTREERDE BRIEF (with an insurance option/met 'n verskeringsopsie)		No _____	Date stamp of delivery Datumstempel van aflewering
Addressed to/Geadresseer aan Commissioner M. le R. S.A.L.C. Council 33 Hough Road Port Elizabeth		Signature of recipient Handtekening van ontvanger RC 034 183 271 ZA CUSTOMER COPY 301022R	Date stamp of delivery Datumstempel van aflewering
Initial of delivery officer Paraaf van aflewingsbeampte	Postcode Poskode	Initial of receiving officer Paraaf van ontvangsbeampte	Initial of receiving officer Paraaf van ontvangsbeampte
Official proof of Identification essential Amptelike bewys van identifikasie noodsaaklik		Please collect at Haal asseblief af by within 30 days of date received at delivery office/ binne 30 dae vanaf datum ontvang by aflewingskantoor	
Macpherson Printers & Stationery		701282	

TO : NGQUSHWA LOCAL MUNICIPALITY
Respondent
ERF 313, MAIN ROAD
PEDDIE
5640
(FAX NO. 040 672 3771 / 086 719 7443)

REGISTERED LETTER GEREGISTREERDE BRIEF (with an insurance option/met 'n verskeringsopsie)		No _____	Date stamp of delivery Datumstempel van aflewering
Addressed to/Geadresseer aan Ngqushwa Local M. ERF 313 Main Road Peddiesburg		Signature of recipient Handtekening van ontvanger RC 034 183 285 ZA CUSTOMER COPY 301022R	Date stamp of delivery Datumstempel van aflewering
Initial of delivery officer Paraaf van aflewingsbeampte	Postcode Poskode	Initial of receiving officer Paraaf van ontvangsbeampte	Initial of receiving officer Paraaf van ontvangsbeampte
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**IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT PORT ELIZABETH)**

CASE NO : PR-33/15

In the matter between:

VUYOKAZI MBELANI

Applicant

And

SOUTH AFRICAN LOCAL BARGAINING COUNCIL

1st Respondent

COMMISSIONER M. LE. R. KOORTS

2nd Respondent

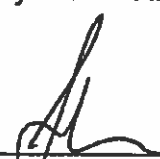
NGQUSHWA LOCAL MUNICIPALITY

3rd Respondent

NOTICE OF WITHDRAWAL

BE PLEASED TO TAKE NOTICE that the Applicant withdraws her Application for Review, with each party agreeing to pay their own costs occasioned thereby.

DATED at EAST LONDON on this 11th day of APRIL 2016.


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PORT ELIZABETH
6000

TO : SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL
33 HEUGH ROAD
WALMER
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