

Mr Ombali Sebola

The Municipal Manager: Knysna Municipality

**BY EMAIL:** [mm@knysna.gov.za](mailto:mm@knysna.gov.za); [astrydom@knysna.gov.za](mailto:astrydom@knysna.gov.za); [knysna@knysna.gov.za](mailto:knysna@knysna.gov.za)

30 June 2023

Dear Sir

**RE: RECOVERY OF IRREGULAR EXPENDITURE INCURRED BY THE PAYMENT OF SALARIES**

1. We refer to the above, and to our previous communication in this regard, to which we note that we did not receive the courtesy of a reply.
2. As you are aware, on 7 June 2023 Slingers J in the Western Cape High Court found that:
  - 2.1 the resolution taken by the Council of Knysna Municipality on 14 February 2023 and on 11 May 2023 to appoint Londiwe Sotshede (“Sotshede”) as the acting chief financial officer of the Knysna Municipality is declared unlawful, *ultra vires*, and null and void.
  - 2.2 the resolution taken by the Council of Knysna Municipality on 15 March 2023 to appoint Luvuyo Loliwe (“Loliwe”) as the acting director: corporate services of the Knysna Municipality is declared to be unlawful, *ultra vires*, and null and void.
3. In addition, Judge Slingers stated that it was not disputed that Sotshede did not have the required qualifications for the position (NQF8) and Loliwe did not have the 7 years of managerial experience required by the Regulations.
4. We reiterate our position set out in our previous correspondence to you that, in light of the fact that the Judge found that these resolutions taken by the Knysna Council to re-appoint both Sotshede and Loliwe were “null and void”, it follows that no appointment was in fact made on those dates, and no remuneration should have been paid.

5. The payment of remuneration to Sotshede and Loliwe as a consequence of the resolutions taken by Council as set out in paragraph 2 above, accordingly constitutes irregular expenditure as defined in the Local Government Municipal Finance Management Act 56 of 2003.
6. We confirm that we had intended to bring an urgent High Court application last week to prevent a further salary payment taking place in the June 2023 salary run but, after taking legal advice, we decided that that would have occasioned unnecessary legal fees and a waste of Knysna taxpayers' money, as it would only have dealt with a small percentage of the remuneration paid to Sotshede and Loliwe. We have opted, instead, to pursue the recovery of all remuneration paid as a consequence of the unlawful resolutions taken by Council referred to above. Should it emerge that Sotshede and Loliwe were in fact paid at the end of June 2023, we will take steps in terms of Section 173 of the MFMA which clearly states that it is an offence if you failed to take reasonable steps to prevent that irregular expenditure.
7. In addition, it is clear that the decision of the Knysna Council to appoint both Sotshede and Loliwe at the maximum scale in terms of the Notice of Upper Limits of Remuneration packages payable to municipal managers and managers reporting directly to Municipal Managers, issued in terms of the Municipal Systems Act, is clearly unlawful. Sotshede did not have the experience, qualifications or competency to occupy the position and Loliwe had did not have the experience required to obtain the maximum scale. At best both should have been remunerated at the minimum level. It therefore follows that with regard to all payments to them from the inception of their contracts with the Municipality (Sotshede from 12 August 2022 and Loliwe from 15 September 2022), the difference between the maximum scale of the upper limits and the minimum scale must be recovered from those dates until the dates whereby the court declared their appointments to be null and void.
8. You are accordingly requested to take the steps, as set out in Knysna Municipality's Unauthorised, Irregular, Fruitless and Wasteful Policy, to recover the remuneration paid to Sotshede and Loliwe as a consequence of the aforesaid unlawful resolutions taken by the Knysna Council.

9. You are requested to initiate the process in accordance with Knysna Municipality's Unauthorised, Irregular, Fruitless and Wasteful Policy and to ensure that the matter serves before the next meeting of the Municipal Public Accounts Committee (MPAC) scheduled for July 2023.
  
10. Should the recovery of this remuneration not appear on the agenda of the next meeting of MPAC, we reserve our rights to approach the High Court to compel you to take the required steps to recover the irregular expenditure, in which event this letter and previous communications will be used in support of a request for a personal costs order to be made against you.

Yours sincerely,

Michelle Wasserman

ActionSA Provincial Chairperson: Western Cape

*(Unsigned as sent electronically)*