IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

REPORTABLE: YES

Case no: **2264/2024**

In the matter between:

AFRIFORUM NPC	Applicant
and	
NGWATHE LOCAL MUNICIPALITY	1st Respondent
MUNICIPAL MANAGER,	
NGWATHE LOCAL MUNICIPALITY	2nd Respondent
MUNICIPAL COUNCIL,	
NGWATHE LOCAL MUNICIPALITY	3rd Respondent
FEZILE DABI DISTRICT MUNICIPALITY	4th Respondent
PREMIER, FREE STATE PROVINCE	5th Respondent
EXECUTIVE COUNCIL, FREE STATE PROVINCE	6th Respondent
MEC FOR COOPERATIVE GOVERNANCE AND	
TRADITIONAL AFFAIRS, FREE STATE PROVINCE	7th Respondent
MEC FOR FINANCE, FREE STATE PROVINCE	8th Respondent
MEC FOR ECONOMIC, SMALL BUSINESS DEVELOPMENT,	
TOURISM AND ENVIRONMENTAL AFFAIRS,	
FREE STATE PROVINCE	9th Respondent
THE NATIONAL COUNCIL OF PROVINCES	10th Respondent
MINISTER OF COOPERATIVE GOVERNANCE AND	
TRADITIONAL AFFAIRS	11th Respondent
MINISTER OF FINANCE	12th Respondent
MINISTER OF WATER AND SANITATION	13th Respondent
MINISTER OF FORESTRY, FISHERIES	
AND THE ENVIRONMENT	14th Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	15th Respondent

Neutral Citation: *Afriforum NPC v Ngwathe Local Municipality and 14 Others* (2264/2024) [2025] ZAFSHC 184 (20 June 2025)

Coram: Daffue J
Heard: 05 December 2024
Delivered: 20 June 2025

This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 12H00 on 20 JUNE 2025.

Summary: Dysfunctional municipality – declaratory order granted that it is in breach of its constitutional obligations towards residents – the Executive Council of the Free State Province directed to intervene in the affairs of the municipality and *inter alia* to dissolve the municipal council and appoint an administrator – structural interdict granted.

ORDER

1. That it be declared that:

1.1. the first respondent, the Ngwathe Local Municipality, is in breach of its constitutional, legislative and regulatory obligations towards its residents;

1.2. the conduct of the first respondent, in failing to –

1.2.1. ensure the provision of services to its community in a sustainable manner;

1.2.2. promote a safe and healthy environment for its community;

1.2.3. adequately structure and manage its administration, budgeting and planning processes;

1.2.4. give priority to the basic needs of its community; and

1.2.5. promote the social and economic development of its community,

– is inconsistent with the Constitution and in breach of sections 152(1) and 153(a) thereof, and is invalid;

1.3. the jurisdictional facts supporting mandatory Provincial intervention in the affairs of the first respondent in terms of section 139 (4) and (5) of the Constitution, read with sections 138 to 147 of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA), are present and have consistently been present in the past;

1.4. the failure of the fifth to ninth respondents to carry out their mandate in terms of section 139 of the Constitution and the MFMA effectively and to intervene and resolve the issues of the first respondent is inconsistent with the Constitution and invalid;

1.5. the jurisdictional facts for mandatory Provincial intervention in the affairs of the first respondent, including dissolution of its municipal council in terms of sections 139 (4) and (5) read with sections 138 to 147 of the MFMA are now present and have consistently been present in the past as a result of the failure of both the first, as well as the fifth to ninth respondents, to ensure that the first respondent meets its constitutional and statutory obligations.

2. The fifth to ninth respondents are directed forthwith to intervene in the affairs of the first respondent in terms of the aforementioned provisions of the Constitution and the MFMA by exercising the powers conferred by sections 139(4) and (5) of the

Constitution and they are specifically directed to, in terms of the provisions of section 139(5)(a) and (b):

2.1. implement a recovery plan, aimed at securing the first respondent's ability to meet its obligations to provide basic services and to meet its financial commitments;

2.2. dissolve the third respondent and appoint an administrator until a newly elected municipal council has been declared elected;

2.3. approve a temporary budget or revenue-raising measures, or any other measures intended to give effect to the aforesaid recovery plan, to provide for the continued functionality of the first respondent.

3. The fifth to ninth respondents shall report to this court, under oath and in writing, every three (3) months from the date of this order being handed down on their progress in the implementation of this order, as well as the prospects of the first respondent being able to execute its own functions.

4. The first to ninth respondents shall jointly and severally pay the costs of this application on an attorney and client scale.

JUDGMENT

Daffue J:

Introduction

[1] 'The people of the Free State deserve better.' This is not a quote from a member of the judiciary, criticising another arm of the State. The Deputy Minister of Cooperative Governance and Traditional Affairs (COGTA) of the Republic of South Africa, Dr Namane Dickson Masemola concluded his speech delivered on 3 December 2024 at the Free State Local Government Summit in these words.[1]

[2] The Honourable Deputy Minister continued as follows:[2]

'… As the sphere of government closest to the people, municipalities are meant to embody the principles of governance, responsiveness, and accountability. Yet, the reality paints a troubling picture of governance systems in disarray. Municipal Councils are failing in their

[1] Extract of a speech delivered on 3 December 2024 at the Free State Local Government Summit by the Deputy Minister of Cooperative Governance and Traditional Affairs, Republic of South Africa, Dr Namane Dickson Masemola.

[2] *Ibid.*

critical mandate to provide leadership and enforce accountability. They are not delivering on their primary responsibility that is ensuring essential services reach the communities they serve. …

Across the province, our communities are walking through sewage daily, a glaring health hazard and a blatant violation of the constitutional principles that demand a safe and healthy environment for all. It is a crisis that speaks not only to service delivery failures but to a disregard for human dignity. …

The sewer spillages, unfinished projects, and corruption that have become synonymous with some municipalities in this province must end. The time for complacency is over. …'

[3] The aforesaid speech came to my attention after I had reserved judgment. The parties confirmed on request that I could take judicial cognisance thereof.

[4] On 19 November 2024 the South African Human Rights Commission, Free State Provincial Office (SAHRC) officially released a report of its enquiry into service delivery at local government level in the Free State Province.[3] The report documents the challenges faced by local municipalities in the Free State Province. Several negative findings were made against the 18 local municipalities as well as the Mangaung Metropolitan Municipality and the Free State Department of Cooperative Governance and Traditional Affairs (COGTA). It is unnecessary to deal with the findings, save to mention that many findings are encapsulated in the evidence tendered in these application papers consisting of 1221 pages. It is appropriate to repeat the aforesaid words of Dr Namane Dickson Masemola:

'The people of the Free State deserve better.'

The parties

[5] The applicant is Afriforum NPC (Afriforum), a non-profit company duly incorporated in terms of the Company Laws of the Republic of South Africa. It is a civil rights organisation, alleging that its main purpose is to promote and advocate for democracy, constitutional and human rights broadly, more specifically with the emphasis on civil and socio-economic rights, particularly the right to service delivery. It has various community structures countrywide and plays an active role in ensuring better service delivery by municipalities in particular. It regards itself also as a local community organisation as mentioned in s 152 of the Constitution read with ss 16 and 17 of the Local Government: Municipal Systems Act 32 of 2000 (the Systems

[3] The report is available on the official website of the SAHRC.

Act) and the sections in the Systems Act dealing with the provision of services (sections 76 – 80 under the heading, Part 2: provision of services).

[6] The first four respondents are referred to as the Municipal respondents. They are the Ngwathe Local Municipality (Ngwathe), the municipal manager of that municipality, the municipal council of that municipality, as well as the Fezile Dabi District Municipality, cited as first, second, third and fourth respondents respectively.

[7] The fifth respondent is the Premier of the Free State Province. The sixth respondent is the Executive Council of the Free State Province. The seventh respondent is the MEC for COGTA, Free State Province. The eighth respondent is the MEC for Finance, Free State Province and the ninth respondent is the MEC for Economic, Small Business Development, Tourism and Environmental Affairs, Free State Province. They are referred to as the Provincial respondents.

[8] The tenth respondent is the National Council of Provinces who abides the decision of the court. It did not take part in the proceedings.

[9] The eleventh to fourteenth respondents are respectively the National Ministers of COGTA, Finance, Water and Sanitation and Forestry, Fisheries and the Environment. The President of the Republic of South Africa is cited as the fifteenth respondent.

The relief claimed

[10] The relief sought is contained in four pages of the Notice of Motion. It is unnecessary to quote the notice of motion. The applicant seeks a declaratory order *inter alia* to the effect that (a) Ngwathe is in breach of its constitutional, legislative and regulatory obligations towards its residents, (b) jurisdictional facts supporting mandatory Provincial intervention in the affairs of Ngwathe are present, and (c) the failure of the Provincial respondents to carry out their mandate in terms of s 139 of the Constitution and sections 138 to 147 of the MFMA effectively and to intervene and resolve Ngwathe's issues is inconsistent with the Constitution and invalid. Consequently, an order is sought that the Provincial respondents be directed to forthwith intervene in Ngwathe's affairs by exercising the powers conferred by ss 139(4) and (5) of the Constitution.

[11] The applicant also seeks an order that it be permitted to use its expertise to assist with Ngwathe's administration in certain respects. A structural interdict is also sought in terms whereof the Provincial respondents be ordered to report to the court every three months under oath and in writing on their progress in the implementation of the order as well as the prospects of Ngwathe being able to execute its own functions. Finally, costs are sought against the first to the ninth respondents, jointly and severally, such costs to be paid on an attorney and client scale.

The opposition

[12] The application is opposed by all the respondents, except the National Council of Provinces, who abides the decision of the court. The basis of the opposition will be dealt with later herein. The Municipal and Provincial respondents to a certain extent deny several facts presented by the applicant in support of its case that Ngwathe is in a crisis. The attempt to create factual disputes will be dealt with later herein.

[13] It is appropriate to mention at this stage that the Municipal respondents' counsel submitted that, instead of granting an order of intervention in terms of s 139 of the Constitution, a more suitable and appropriate remedy is available in the circumstances. According to him, a fact/topic specific and separate substantive supervisory interdict, dealing specifically with the alleged non-compliance and calling upon Ngwathe to report to the court on how it intends to address and remedy the non-compliance could be issued. The court should intervene and issue orders intended to bring about an end to non-compliance, so he argued, only if Ngwathe does not come up with satisfactory remedies.

[14] Counsel for the Provincial and National respondents, excluding the Minister of Finance, submitted that the MEC of COCTA has always been fulfilling its support and monitoring obligations to ensure that Ngwathe is able to meet its constitutional obligations and therefore, mandatory intervention by the Provincial respondents was not warranted. I shall deal later in more detail with this submission, but reiterate that the MEC neither filed an answering affidavit, nor a confirmatory affidavit in support of the HOD's affidavit. Clearly, the MEC in such capacity was called upon to deal with the applicant's allegations.

[15] The Minister of Finance's counsel, although relying on the principle of subsidiarity, submitted that the Minister does not oppose the merits of the applicant's case, namely that the mandatory requirements for intervention in terms of s 139 of the Constitution have been established. Consequently, the Minister abides the court's findings in this regard. The point was made that, if warranted, the constitutional obligation rests on the Province to invoke intervention provisions.

The applicant's locus standi

[16] The Municipal respondents deny the applicant's *locus standi*, but only on the basis of their denial of a lack of service delivery, or that the constitutional rights of their residents are being infringed. The HOD for COCTA, responding on behalf of the MEC, did not deal with the applicant's standing and it must be accepted that its standing is conceded. The Minister of Finance denies that the applicant has standing, suggesting that it seeks 'self-interest remedial relief'.

[17] I am satisfied that the applicant has standing in terms of s 38(d) and (e) of the Constitution to bring the application. There can be no doubt that it is a local community-based organisation as provided for in ss 17(2) and 76(b)(iv) of the Systems Act read with s 19(3) of the Local Government: Municipal Structures Act 117 of 1998 (the Structures Act). It is also actively engaged in community organisation and participation as provided for in s 152(1)(e) of the Constitution, read with various sections of the Systems Act. It is obvious that the applicant's primary goal as a non-profit organisation is to vindicate the constitutional rights of its members who are residents of Ngwathe.[4] Surely, it cannot be expected of the proverbial aunt Emily, ntati Sibusiso, or Joe Soap to institute these kind of applications in their own names. The residents are entitled to be represented by an organisation such as the applicant.

Mootness and ripeness

[4] *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* 1996 (1) SA 984 (CC) para 165, *Highveldridge Residents Concerned Party v Highveldridge Transitional Local Council and Others* 2002 (6) SA 66 (T), *Afriforum and Another v University of the Free State* 2018 (2) SA 185 (CC) para 26, and *Unemployed People's Movement v Eastern Cape Premier & Others* 2020 (3) SA 562 (ECG).

[18] It is appropriate to briefly deal with the doctrines of mootness and ripeness. It is common cause that the local government elections in this country took place during the latter part of 2021 and that councillors for the new municipal councils were elected thereafter. None of the parties, and especially the Minister of Finance, denied this in the affidavits. However, the Minister's counsel decided to deal with these two issues, *ie* mootness and ripeness, in the heads of argument on the basis that by-elections were held in August 2024 and pursuant thereto, a new municipal council had been appointed for Ngwathe. In terms of the argument the applicant's premise for dissolution of the municipal council has become moot as the old council does not exist anymore. The ripeness argument was based on the same alleged facts. The submission is factually incorrect. The applicant's counsel pointed out that in 2024 a by-election was held in one ward only whilst the municipal council consists of 19 wards. Consequently, the Minister's counsel did not proceed with this line of argument during oral submissions. I am satisfied that the arguments pertaining to mootness and ripeness were not properly made and these are rejected. Ngwathe's municipal council has been in office since 2021 and has been given more than enough opportunity to ensure that Ngwathe complies with its constitutional obligations.

Subsidiarity

[19] The Minister of Finance's counsel submitted that the applicant should be non-suited based on the principle of subsidiarity. It is alleged that the applicant pleaded its case backwards by relying firstly on the Constitution and only thereafter on the MFMA. I do not agree as is clearly evident from paragraphs 1.3 and 1.5 of the notice of motion as well as the context of the founding affidavit. The court is *inter alia* requested to declare that the jurisdictional facts supporting mandatory Provincial intervention in the affairs of Ngwathe in terms of *inter alia* ss 138-147 of the MFMA are present and have consistently been present in the past.

The constitutional status of Ngwathe as a municipality

[20] Section 151 of the Constitution provides for the establishment and status of municipalities. The executive and legislative authority of a municipality is vested in its municipal council. Sub-sections 151(3) and (4) read as follows:

'(3) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.
(4) The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.'[5]

[21] I accept that the applicant seeks a drastic remedy insofar as it also seeks the dissolution of Ngwathe's municipal council. I shall therefore consider herein later whether the municipal council lived up to the standards required of it.

The crises in Ngwathe

[22] As mentioned, the papers are voluminous, consisting of over 1200 pages. The heads of argument of counsel are in excess of 120 pages. I do not intend to deal with all the allegations and counter-allegations in respect of factual issues or legal aspects relied upon by the parties as I do not intend to write a 100-page judgment. Many of the facts before the court cannot really be denied convincingly. Bearing in mind that factual disputes have been raised by the respondents, it is appropriate to consider the test as enunciated in *Plascon-Evans*[6] to be applied in opposed motion procedure. I also appreciate as the Supreme Court of Appeal stated in *National*

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[5] See also ss 2, 3 and 4 of the Systems Act; s 4 reads as follows:
'4 Rights and duties of municipal councils
(1) The council of a municipality has the right to-
(a) govern on its own initiative the local government affairs of the local community;
(b) exercise the municipality's executive and legislative authority, and to do so without improper interference; and
(c) finance the affairs of the municipality by-
(i) charging fees for services; and
(ii) imposing surcharges on fees, rates on property and, to the extent authorised by national legislation, other taxes, levies and duties.
(2) The council of a municipality, within the municipality's financial and administrative capacity and having regard to practical considerations, has the duty to-
(a) exercise the municipality's executive and legislative authority and use the resources of the municipality in the best interests of the local community;
(b) provide, without favour or prejudice, democratic and accountable government;
(c) encourage the involvement of the local community;
(d) strive to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner;
(e) consult the local community about-
(i) the level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider; and
(ii) the available options for service delivery;
(f) give members of the local community equitable access to the municipal services to which they are entitled;
(g) promote and undertake development in the municipality;
(h) promote gender equity in the exercise of the municipality's executive and legislative authority;
(i) promote a safe and healthy environment in the municipality; and
(j) contribute, together with other organs of state, to the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution.
(3) A municipality must in the exercise of its executive and legislative authority respect the rights of citizens and those of other persons protected by the Bill of Rights.' (emphasis added)

[6] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (AD) at 634F-635C.

Director of Public Prosecutions v Zuma[7] that opposed motion procedure is not suited to resolve factual disputes. However, respondents often forget that they have a duty to present their opposition clearly and unequivocally and fail to heed the warning in *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another.*[8] I shall show herein that the respondents who tried to deal with the facts deposed to by the applicant in an attempt to raise disputes of fact did not seriously and unambiguously address the issues they intend to dispute. They failed to properly engage with the facts they dispute and to reflect the disputes fully and accurately in the answering affidavits.

[23] There is no substantive evidence in the answering affidavit of the Provincial respondents that the MEC of COCTA or any other of these Provincial respondents took any corrective action whatsoever in respect of Ngwathe's non-compliance with its constitutional obligations. In fact, it is common cause that Ngwathe is dysfunctional as is apparent from these respondents' own papers. The minutes of the MIG Forum meeting held on 25 August 2023 attached as annexure G3 to their answering affidavit serves as proof of the dire straits in which Ngwathe finds itself. The applicant dealt in minute detail with this in paragraph 16 of the replying affidavit. Paragraph 7.3.2 of the minutes records that in the State of Local Government Report of 2021 (updated in 2022) the National and Provincial COCTA Departments regarded Ngwathe as one of the seven dysfunctional municipalities in the Free State Province. A ministerial visit was scheduled for September 2023 to address this, but there is no evidence what transpired at such meeting, if it in fact did take place. More will be said about the crises hereunder.

Intervention in terms of sections 139(4) and (5) of the Constitution

[24] The various counsel on behalf of the respective parties made contradictory submissions indicating their differences of opinion as to the applicability of intervention in Ngwathe's afffairs. It is appropriate to quote the relevant sub-sections of s 139:

'139. Provincial intervention in local government

1. When a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including-

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[7] *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) para 26.
[8] *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) para 13.

a. issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations;

b. assuming responsibility for the relevant obligation in that municipality to the extent necessary to-

i. maintain essential national standards or meet established minimum standards for the rendering of a service;

ii. prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or

iii. maintain economic unity; or

c. dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.

2. . . .

3. . . .

4. If a municipality cannot or does not fulfil an obligation in terms of the Constitution or legislation to approve a budget or any revenue-raising measures to give effect to the budget, the relevant provincial executive must intervene by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, including dissolving the Municipal Council and-

a. appointing an administrator until a newly elected Municipal Council has been declared elected; and

b. approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.

5. If a municipality, as result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the relevant provincial executive must-

a. impose a recovery plan aimed at securing the municipality's ability to meet its obligations to provide basic services or its financial commitments, which-

i. is to be prepared in accordance with national legislation; and

ii. binds the municipality in the exercise of its legislative and executive authority, but only to the extent necessary to solve the crisis in its financial affairs; and

b. dissolve the Municipal Council, if the municipality cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery plan, and-

i. appoint an administrator until a newly elected Municipal Council has been declared elected; and

ii. approve a temporary budget or revenue-raising measures or any other measures giving effect to the recovery plan to provide for the continued functioning of the municipality; or
c. if the Municipal Council is not dissolved in terms of paragraph (b), assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not otherwise implement the recovery plan.' (emphasis added)

[25] I shall return to s 139 in a moment, but it is appropriate to quote ss 138 and 140(1), (2) and (3) of the MFMA. S 138 reads as follows:
'138 Criteria for determining serious financial problems
When determining for the purposes of section 137 the seriousness of a financial problem, all relevant facts must be considered, and the following factors, singly or in combination, may indicate a serious financial problem:
(a) The municipality has failed to make payments as and when due;
(b) the municipality has defaulted on financial obligations for financial reasons;
(c) the actual current expenditure of the municipality has exceeded the sum of its actual current revenue plus available surpluses for at least two consecutive financial years;
(d) the municipality had an operating deficit in excess of five per cent of revenue in the most recent financial year for which financial information is available;
(e) the municipality is more than 60 days late in submitting its annual financial statements to the Auditor-General in accordance with section 126;
(f) the Auditor-General has withheld an opinion or issued a disclaimer due to inadequacies in the financial statements or records of the municipality, or has issued an opinion which identifies a serious financial problem in the municipality;
(g) any of the above conditions exists in a municipal entity under the municipality's sole control, or in a municipal entity for whose debts the municipality may be responsible, and the municipality has failed to intervene effectively; or
(h) any other material condition exists which indicates that the municipality, or a municipal entity under the municipality's sole control, is likely to be unable for financial reasons to meet its obligations.' (emphasis added)

[26] Section 140(1, (2) and (3) read as follows:
'(1) When determining whether the conditions for a mandatory intervention referred to in section 139 are met, all relevant facts must be considered.
(2) The following factors, singly or in combination, may indicate that a municipality is in serious material breach of its obligations to meet its financial commitments:
(a) the municipality has failed to make any payment to a lender or investor as and when due;

(b) the municipality has failed to meet a contractual obligation which provides security in terms of section 48;
(c) the municipality has failed to make any other payment as and when due, which individually or in the aggregate is more than an amount as may be prescribed or, if none is prescribed, more than two per cent of the municipality's budgeted operating expenditure; or
(d) the municipality's failure to meet its financial commitments has impacted, or is likely to impact, on the availability or price of credit to other municipalities.
(3) Any recurring or continuous failure by a municipality to meet its financial commitments which substantially impairs the municipality's ability to procure goods, services or credit on usual commercial terms, may indicate that the municipality is in persistent material breach of its obligations to meet its financial commitments.' (emphasis added)

[27] The Provincial respondents did not consider provincial intervention. Section 136 of the MFMA states what the MEC shall do when becoming aware of a serious financial problem in a municipality. No discretion is allowed. Action must be taken in order to determine whether intervention in terms of s 139 of the Constitution is justified. *Ex facie* the answering affidavit discretionary intervention as provided for in s 137 of the MFMA has not even been considered. This section allows the Provincial Executive to intervene and take appropriate steps including:
'(a) assessing the seriousness of the financial problem in the municipality;
(b) seeking solutions to resolve the financial problem in a way that would be sustainable and would build the municipality's capacity to manage its own financial affairs;
(c) determining whether the financial problem, singly or in combination with other problems, is sufficiently serious or sustained that the municipality would benefit from a financial recovery plan and, if so, requesting any suitably qualified person-
(i) to prepare an appropriate financial recovery plan for the municipality;
(ii) to recommend appropriate changes to the municipality's budget and revenue-raising measures that will give effect to the recovery plan; and
(iii) to submit the recovery plan and any recommendations referred to in subparagraphs (i) and (ii) to the MEC for local government in the province within a period determined by the MEC; and
(d) consulting the mayor of the municipality to obtain the municipality's co-operation in resolving the financial problem, and if applicable, implementing the financial recovery plan.'

[28] Mandatory provincial intervention provided for in s 139 of the MFMA was also not considered. I quote sub-sec (1):
'139 Mandatory provincial interventions arising from financial crises

(1) If a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the provincial executive must promptly-

(a) request the Municipal Financial Recovery Service-

(i) to determine the reasons for the crisis in its financial affairs;

(ii) to assess the municipality's financial state;

(iii) to prepare an appropriate recovery plan for the municipality;

(iv) to recommend appropriate changes to the municipality's budget and revenue-raising measures that will give effect to the recovery plan; and

(v) to submit to the MEC for finance in the province-

(aa) the determination and assessment referred to in subparagraphs (i) and (ii) as a matter of urgency; and

(bb) the recovery plan and recommendations referred to in subparagraphs (iii) and (iv) within a period, not to exceed 90 days, determined by the MEC for finance; and

(b) consult the mayor of the municipality to obtain the municipality's co-operation in implementing the recovery plan, including the approval of a budget and legislative measures giving effect to the recovery plan.'

Evaluation of the crises and the parties' submissions

[29] I recorded earlier that I do not intend to deal with all allegations of lack of service delivery and/or maladministration. I shall restrict myself to the more serious issues and those that are either common cause, or have not been engaged seriously in an attempt to show a real and *bona fide* dispute.

Managerial and financial crises

[30] The magnitude of Ngwathe's financial problems has been admitted by its municipal manager who confirmed that it will not be 'remedied over a short period of time.' It owes Eskom in excess of R2 billion and although R69 million in respect of interest has been written off, the magnitude of this debt is not appreciated by the respondents. Furthermore, it owes millions of Rands to other service providers. It is common cause that it has been paying service providers late as a result of which fruitless and wasteful expenditure relating to interest charged on late payments have been incurred.

[31] Clearly, Ngwathe's previous municipal manager's findings regarding its liabilities and assets are contradicted by the Auditor General's qualified opinion for

the 2001/2002 financial year. The figures provided by the Auditor General are far more damning. Ngwathe's liabilities exceeded its assets by R1.6 billion in addition to its debt to Eskom of R1.5 billion and the Department of Water and Sanitation (DWS) of R150 million at the time. Irregular expenditure increased from R2.7 million to more than R31 million. Unauthorised expenditure increased from less than R100 million to more than R250 million and fruitless and wasteful expenditure increased from R31 million to R62 million. The Auditor General's qualified opinion for the 2001/2002 financial year has not been denied by Ngwathe, but merely noted.

[32] The applicant's allegations in the founding affidavit that the Auditor General did not receive a response from the erstwhile municipal manager regarding the material irregularities pointed out, has not been denied. In my view this is yet another indication that Ngwathe is not in a position to fulfil its constitutional obligations.

[33] On 20 December 2022 the applicant's attorneys issued a letter of demand which is attached as annexure FA28 to the founding affidavit. This letter was sent to all the respondents cited in this application. Detail of service delivery issues, again repeated in these proceedings, was provided. It was suggested that discretionary Provincial intervention was required. Although this letter was addressed to the Municipal respondents as well, only the HOD of COCTA responded to the 17-page letter setting out several problems pertaining to lack of basic services. I quote the HOD's vague response of 4 January 2023 attached as annexure FA 30 to the founding affidavit:

'1. Your letter dated 20 December 2022 is acknowledged and the contents thereof noted;

2. The Department is in the process of engaging the Department of Water and Sanitation and the Municipality to deal with matters at the Municipality;

3. It is the opinion of the Department that the engagement process should be given an opportunity to come up with plans to resolve the challenges at the Municipality, instead of embarking on costly litigations which the Municipality is in no position to afford;

4. We hope the above is in order.'

Neither the Premier, nor the MEC of COGTA or any of the other addressees (which included the present MEC's, the Premier and National Ministers) deemed it necessary to respond.

[34] A further letter by applicant's attorneys dated 8 September 2023 in similar terms, attached as annexure FA29 to the founding affidavit, did not attract a response from any of the aforesaid addressees. In this letter the financial and budgeting woes of Ngwathe were highlighted. The municipal manager referred to these letters in his answering affidavit and suggested that support has been received from the MEC of COGTA and DWS, but the list of projects referred to by him was not attached as annexure AA30 as alleged. He insists that notwithstanding the financial problems, Ngwathe is 'not in complete disarray without any internal interventions to remedy the position' and intervention by Province was 'not warranted'. Whatever the municipal manager tried to convey in his answering affidavit, it is apparent that, although he may be an ambitious person, his ideas and plans are vague to the extreme and lack critical detail.

[35] The draft budget plan attached as annexure AA2 to the Municipal respondents' affidavit is merely a draft and there is no indication that it has been finally approved.

[36] The ordinary MIG grants allocated to Ngwathe are insufficient to service the massive debt, but in any event, it is common cause that Ntwathe recently did not even spend R5 million of the allocated MIG grants.

[37] The municipal manager stated that people had been employed to attend to illegal connection of electricity, but there is no indication whether this had a positive effect, and if so, on what basis. There is also no indication that these people are in fact qualified to do the work allegedly employed to do.

[38] The municipal manager failed to attach the Integrated Development Plan (IDP) as annexure AA9 to the answering affidavit. In any event, all municipalities are obliged to adopt such plans in the ordinary course as is provided for in s 25 of the Systems Act, read with ss 23 to 24 of that Act. Section 21(1) of the MFMA stipulates that when preparing the annual budget, the mayor of a municipality must take into account the municipality's IDP.

[39] Section 17 of the MFMA deals with the contents of annual budgets and supporting documents. The budget must set out realistically anticipated revenue for

the year and the revenue sources as well as projected expenditure under the different votes. When an annual budget is tabled for consideration by the municipal council it must *inter alia* be accompanied by measurable performance objectives for revenue from each source and for each vote in the budget, taking into account the municipality's IDP and proposed amendments to the IDP following the annual review thereof in terms of s 34 of the Systems Act. I agree with the applicant that the adoption of a rational IDP is an integral and mandatory part of the municipality's budgeting process and nothing out of the ordinary. Consequently, the fact that the IDP is not including as an attachment to the answering affidavit speaks volumes.

[40] Ngwathe's instability appears from the turnover of municipal managers since 2022 and the fact that several people are merely acting in senior positions such as, *inter alia*, that of chief financial officer. Other positions have not been filled which must have a serious effect on service provision. It is disconcerting that neither the mayor, nor any municipal councillor has filed an affidavit in support of the opposition of the application.

[41] Ngwathe's debt collection rate is extremely low, much lower than the norm. But the existing by-laws are not enforced with any degree of consistency. There is no indication when Ngwathe's by-laws would be reviewed as suggested by the municipal manager. No explanation is given for the delay in this regard. Bearing in mind Ngwathe's precarious finances, a review of its by-laws relating to fiscal and credit policies is long overdue. Section 98(1) of the Systems Act is peremptory:

'A municipal council must adopt by-laws to give effect to the municipality's credit control and debt collection policy, its implementation and enforcement.'

[42] The budget for the 2023/2024 financial year has been approved in June 2023. It made no provision for any income to be derived from debt collection and furthermore, the remuneration of political office bearers and that of the municipal manager and other senior managers were not addressed in the budget separately as required. I am satisfied that the adopted revenue-raising measures could clearly not give effect to the budget as provided for in s 139(4) of the Constitution.

[43] As mentioned, the municipal manager relied upon a draft budget funding plan for the 2024/2025 financial year annexed as annexure AA2 to his answering affidavit. The impression created that this is a final budget funding plan is inaccurate. There is

no indication that this draft budget funding plan was finally adopted. Fact of the matter is that the debt collection rate decreased over the years. The annual average collection percentage as admitted in paragraph 5.5.2 of this document is far below the norm. It is revealed in the same paragraph that the lack of service delivery contributes towards the revenue decline. As a result, it is conceded that Ngwathe is unable to pay suppliers and to run its daily operations as expected. This is a concession that mandatory intervention is required.

Water crisis

[44] The allegation that Ngwathe's water supply is checked daily on a two hourly basis cannot be correct. The municipal manager contradicted himself. He also mentioned that Ngwathe obtains samples of water at the treatment works monthly.

[45] There is a dispute as to drinking water shortages and the cleanliness of potable water. It is not necessary to deal in detail with the dispute, save to say that the municipal manager conceded that water shedding processes applied at least until November 2023.

[46] The first Blue Drop Report by the DWS reveals that the applicant is correct in respect of drinking water. That report is attached as annexure FA13 to the founding affidavit. It is stated that the supply systems showed high risk ratings, save in the case of Heilbron, and that Edenville achieved a critical risk rating. Three of the towns within Ngwathe did not have Water Safety Plans.

[47] The respondents have always been in possession of the updated Blue Drop Report issued by the DWS dated 22 November 2023. Although this was available to them, they failed to attach this report to any of the answering affidavits. Consequently, the applicant attached it to the replying affidavit. According to this report Ngwathe's risk rating increased from 37% in 2022 to 42.6% in 2023, demonstrating a further worsening of its water supply systems despite the Municipal respondents' baseless allegations to the contrary. There is no evidence of a detailed corrective action plan as instructed by the DWS. Clearly, nothing substantial is done to deal with the water crisis.

[48] The allegation that 'the water from the Municipality was not contaminated by faecal matter' is false on Ngwathe's own version. This is apparent from the first report in annexure AA11 attached to the municipal manager's answering affidavit, indicating a faecal coliform count of 164 per 100ml which is far in excess of the SANS 241 criteria which requires it to be less than 10 per 100ml. The municipal manager's denial that Ngwathe continually struggles with the supply of clean water is incorrect. Immediately after his denial, he continued to state that Ngwathe 'is improving on and working towards alleviating its drinking water challenges'.

[49] It is outrageous for the municipal manager to state that he, and therefore the Municipal respondents, did not have any knowledge of the Water Master Plan attached as annexure FA12 to the founding affidavit. This plan, dated October 2019, was prepared on behalf of Ngwathe for COCTA, Free State Province. The municipal manager relied on a 2017 edition which is clearly outdated.

Sewage crisis

[50] There appears to be factual disputes about sewage spillage. The evidence presented by the applicant, corroborated by photographs could not seriously be disputed. This is a daily occurrence which has been continuing for several years. Sewage is even flowing into the Vaal River. Several sewage work are dysfunctional and although it is alleged that repairs are being undertaken, it is not understood why emergency measures cannot be undertaken to prevent a serious health problem. The municipal manager conceded that sewage spillage occurs from time to time, but blame power outages and blocked pipelines. There is no indication when or whether the alleged corrective steps will be completed.

[51] The DWS prepared a Green Drop Report in 2023 which *inter alia* dealt with Ngwathe's wastewater treatment works. These have been found to be in a critical state. Ngwathe achieved a Green Drop score of 10% (down from 16% in 2013) which puts it in the 'critical state' category in respect of all five its plants. Ngwathe's failure to deal responsibly with the damning findings in the Green Drop Report is telling and warrants a negative inference. The municipal manager merely referred vaguely to upgrading and to a project to be executed in phases. No detail was provided. He then concluded that 'measures have been taken to control sewage spillage'.

Need for declaratory orders

[52] Section 172(1) of the Constitution stipulates as follows:

'When deciding a constitutional matter within its power, a court –

(a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency.

(b) may make any order that is just and equitable, including – . . .'

[53] I considered the notice of motion and am satisfied that the applicant has shown that a proper case has been made out for the required declaratory orders. Such order shall be made.

Intervention in terms of ss 139(4) and (5) of the Constitution

[54] I am satisfied that Ngwathe's dysfunctionality, including that of its municipal council, is such to constitute exceptional circumstances. The jurisdictional facts supporting mandatory Provincial intervention has been proven. There is no doubt that the Provisional respondents and the MEC of COCTA in particular, failed to act in accordance with s 139(1) of the Constitution, read with ss 136 to 140 of the MFMA. Notwithstanding the fact that it is clear that Ngwathe cannot fulfil its constitutional obligations, the Provisional Executive did not intervene and did not take appropriate steps to ensure fulfilment of such obligations. The Provincial Executive did not issue any directive to the municipal council, stating steps required to meet its obligations. The Provincial Executive also failed to assume responsibility to, for example, maintain essential national standards, or meet established minimum standards for the rendering of services.

[55] The Provincial respondents' version that Ngwathe is and has been supported by them and the National respondents misses the point. That is their constitutional duty as set out in s 154(1) of the Constitution to be complied with by default and in the ordinary course. What is needed is a wholesale intervention, but unfortunately these respondents misconstrue the gravity of Ngwathe's problems.

[56] It is certainly not strange for courts to nowadays grant orders to compel provincial governments to intervene in the affairs of municipalities within their

jurisdiction. Some judgments will be referred to in the next paragraphs to explain the *ratio* for intervention.

[57] In *Premier of the Western Cape and Others v Overberg District Municipality and Others (Overberg)*[9] the Supreme Court of Appeal held that s 139 requires a Province to act proactively in ensuring that local governments are not mismanaged and that it should intervene when the occasion demands it, not belatedly and in a reactionary manner once the situation is virtually beyond repair. As Brand JA put it, provincial governments are required to supervise the affairs of a local governments 'and to intervene when things go awry.'[10] In this case the Provincial Executive was advised that it had no alternative than to dissolve the municipal council. After considering s 139(4) of the Constitution, the learned Justice of Appeal held that because of an error in interpretation by the cabinet (the Provincial Executive), it failed to consider less drastic means other than to dissolve the municipal council.[11] The facts upon which that decision was based, differ from the facts *in casu*.

[58] In *Premier, Gauteng and Others v Democratic Alliance and Others*[12] Mathopo AJ, writing for the majority, stated the following:

'The framers of the Constitution used the word "may" in section 139(1) to not merely confer a discretion, but a power coupled with a duty.'

The Constitutional Court made the point that there is no need for the total collapse of a municipality before intervention by the Provincial Executive as it is sufficient if it is objectively shown that the municipal council has failed to fulfil an executive obligation. As stated, even 'the non-fulfilment of a single executive obligation is sufficient to ground intervention.'[13]

[59] In *Mafube Business Forum and Another v Mafube Local Municipality and Others (Mafube)*[14] Van Rhyn AJ granted an intervention order in terms of s 139(4) and (5) to direct the Free State Province to intervene in the affairs of the Mafube Local Municipality.

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[9] *Premier, Western Cape and Others v Overberg District Municipality and Others* 2011 (4) SA 441 (SCA).
[10] *Ibid* para 1.
[11] *Ibid* para 37.
[12] *Premier, Gauteng and Others v Democratic Alliance and Others* 2022 (1) SA 16 (CC) para 59.
[13] *Ibid* para 75.
[14] *Mafube Business Forum and Another v Mafube Local Municipality and Others* (1969/2021) [2022] ZAFSHC 86 (28 April 2022).

[60] In *Unemployed People's Movement v Eastern Cape Premier & Others* (*UPM*)[15] the court compelled the provincial government of the Eastern Cape to dissolve the entire municipal council of the Makana local municipality and place it under Provincial administration. The facts in *Mafube* and *UPM* are on par with the facts *in casu*.

[61] I am satisfied that Ngwathe's financial crisis can only be overcome if a recovery plan is prepared in accordance with national legislation as provided for in s 139(5)(a) of the Constitution. This must be done sooner than later in order to prevent a total collapse.

[62] I accept, as stated by Brand JA in *Overberg*, that to dissolve a municipal council could be the most drastic step to be taken, but the seriousness of the situation *in casu* calls for drastic measures. As said earlier, neither the mayor, nor any councillor presented evidence why the municipal council should not be dissolved. I am satisfied that Ngwathe should be placed under administration due to its dismal record of service delivery, its managerial instability, its insolvent status and mounting debt. It is impossible, unlike as the municipal manager tried to explain, for it to dig itself out of this hole without financial, logistical and administrative assistance that could be provided through Provincial intervention.

Structural interdict

[63] I take full cognisance of the doctrine of separation of powers and the criticism by some insofar as courts are prepared to grant structural interdicts to play the role of the proverbial watchdog over another arm of the State. Obviously, judges must be wary of not exceeding the boundaries placed upon the judiciary.

[64] I am satisfied that this is a suitable case where the court should play the role of a watchdog. The history of the Provincial respondents' recalcitrance and unresponsiveness as shown in *inter alia Mafube,*[16] has persuaded me to grant a structural interdict. Just for the record, in *Mafube* it was even necessary for the applicants in the court *a quo* (the appellants on appeal) to approach the court *a quo*

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[15] *Unemployed People's Movement v Eastern Cape Premier & Others* (*UPM*) 2020 (3) SA 562 (ECG).
[16] *Mafube Business Forum and Others v Premier of the Free State Province and Others* (A23/2024) [2025] ZAFSHC 93 (25 March 2025).

for an order that the Premier be found guilty of contempt of court and imprisoned subject to certain conditions. Although the court *a quo* dismissed the application and the full bench on appeal declined to grant a contempt of court order in the specific circumstances, severe criticism was expressed.[17]

[65] I agree with Lowe J, stating the following in *Kenton-On-Sea Ratepayers Association and Others v Ndlambe Local Municipality and Others*:[18]

'. . . The order that I propose to make does not seem to me to threaten the separation of powers in any way; it is made against the background of the intersection between the socioeconomic rights and the particular functional areas of the municipality, and goes towards ensuring that the first respondent provides the basic services within its area of jurisdiction relating to waste management — it in no way infringes on the separation of powers in any objectionable way.'

[66] In *Mwelase and Others v Director-General, Department of Rural Development and Land Reform and Another*[19] the Constitutional Court did not mince its words. I quote:

'And the courts have never sought to supplant government in its task of implementing legislative and other programmes. They simply could not and cannot. They step in only when persuaded by argument and evidence that they have to correct erroneous interpretations of the law, or intervene to protect rights infringed by insufficient and unreasonable conduct in social and economic programmes. In this, the courts undertake no self-appointed role, but seek only to carry out their constitutionally mandated function with appropriate restraint. In Treatment Action Campaign, this court noted that, where the state has failed to give effect to its constitutional duties, the Constitution obliges the court to say so: "Insofar as that constitutes an intrusion into the domain of the Executive, that is an intrusion mandated by the Constitution itself." And in Mohamed, this court noted that to 'stigmatise' a court order "as a breach of the separation of State power as between the Executive and the judiciary is to negate a foundational value of the Republic of South Africa, namely supremacy of the Constitution and the rule of law." In the same vein, the court warned in Doctors for Life, that the bogeyman of separation of powers concerns should not cause courts to shirk from this constitutional responsibility:

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[17] *Ibid* paras 39-41.
[18] *Kenton-On-Sea Ratepayers Association and Others v Ndlambe Local Municipality and Others* 2017 (2) SA 86 (ECG) para 93.
[19] *Mwelase and Others v Director-General, Department of Rural Development and Land Reform and Another* 2019 (6) SA 597 (CC) para 51.

"(W)hile the doctrine of separation of power is an important one in our constitutional democracy, it cannot be used to avoid the obligation of a court to prevent the violation of the Constitution. The right and the duty of this Court to protect the Constitution are derived from the Constitution, and this Court cannot shirk from that duty."' (emphasis added)

[67] The Constitutional Court expressed itself as follows in *Minister of Health and Others v Treatment Action Campaign and Others (No 2)*[20]

'The primary duty of Courts is to the Constitution and the law, "which they must apply impartially and without fear, favour or prejudice". The Constitution requires the State to "respect, protect, promote, and fulfil the rights in the Bill of Rights". Where State policy is challenged as inconsistent with the Constitution, Courts have to consider whether in formulating and implementing such policy the State has given effect to its constitutional obligations. If it should hold in any given case that the State has failed to do so, it is obliged by the Constitution to say so. Insofar as that constitutes an intrusion into the domain of the Executive, that is an intrusion mandated by the Constitution itself. There is also no merit in the argument advanced on behalf of government that a distinction should be drawn between declaratory and mandatory orders against government. Even simple declaratory orders against government or organs of State can affect their policy and may well have budgetary implications. Government is constitutionally bound to give effect to such orders whether or not they affect its policy and has to find the resources to do so. Thus, in the Mpumalanga case, this Court set aside a provincial government's policy decision to terminate the payment of subsidies to certain schools and ordered that payments should continue for several months. Also, in the case of August the Court, in order to afford prisoners the right to vote, directed the Electoral Commission to alter its election policy, planning and regulations, with manifest cost implications.'

[68] In *Minister of Home Affairs v National Institute for Crime Prevention*[21] the Constitutional Court accepted that it was necessary for an order to be issued to supervise the implementation of its order. Another example of the Constitutional Court issuing a mandamus and exercising supervisory jurisdiction to ensure compliance with its order is *Sibiya v Director of Public Prosecutions: Johannesburg.*[22]

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[20] *Minister of Health and Others v Treatment Action Campaign and Others (No 2)* 2002 (5) SA 721 (CC) para 99.
[21] *Minister of Home Affairs v National Institute for Crime Prevention & the Reintegration of Offenders (NICRO) and Others* 2005 (3) SA 280 (CC) paras 79-80.
[22] *Sibiya v Director of Public Prosecutions, Johannesburg & Others* 2005 (5) SA 315 (CC).

[69] In *Nyathi v MEC for the Department of Health and Another*[23] the Constitutional Court emphasised the fundamental importance of compliance with court orders. In that case the Constitutional Court issued an order to exercise judicial supervision over the State's compliance with outstanding judgment debts.

Participation in local government

[70] Section 152(1) of the Constitution deals with the objects of local government and sub-sec (e) states one such object*, ie* 'to encourage the involvement of communities and community organisations in the matters of local government.' This is echoed in s 16 of the Systems Act, stipulating that a culture of community participation should be developed to enable local community to participate in the affairs of the municipality. Section 17(2) of the Systems Act reads as follows:

'A municipality must establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the municipality, . . .'.

Section 76 of the Systems Act stipulates that a municipality may provide a municipal service in its area or a part of its area through an external mechanism by entering into a service delivery agreement with, *inter alia*, 'a community-based organisation or other non-governmental organisation legally competent to enter into such an agreement.'

[71] In *South African Municipal Workers Union v City of Cape Town and Others (Samwu)*[24] the court found that ss 16 and 17 of the Systems Act foster a 'culture of participatory governance' and that 'the provisions of [ss 16-21] in the Systems Act . . . foster participation by the community as a whole in decision-making processes'.[25]

[72] I accept that the applicant wants to become involved in Ngwathe's administration with the aim to assist the Provincial Executive temporarily with its intervention insofar as its members have expertise and a willingness to participate. The applicant and its members' willingness to assist a commercially insolvent and dysfunctional entity is laudable. I have no doubt that they can make a huge contribution to save Ngwathe from a total collapse, but I would rather err on the side

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[23] *Nyathi v MEC for the Department of Health and Another* 2008 (5) SA 94 (CC) para 92.
[24] *South African Municipal Workers Union v City of Cape Town and Others* 2004 (1) SA 548 (SCA).
[25] *Ibid* paras 10-11; see also *Kungwini Local Municipality v Silver Lakes Home Owners Association and Another* 2008 (6) SA 187 (SCA) para 24; *Meadow Glen Home Owners Association and Others v Tshwane City Metropolitan Municipality and Another* 2015 (2) SA 413 (SCA) para 32; and *Agri Eastern Cape and Others v MEC, Department of Roads and Public Works and Others* 2017 (3) SA 383 (ECG).

of caution and not grant the order sought in order to avoid conflict. Therefore, notwithstanding the authorities referred to, I am of the view that I should refrain from making an order in this regard. In my view, the Provincial Executive should be allowed to intervene and hopefully, with participation and/or assistance by role players such as the National Government, the National Ministers, the President and even the applicant, a complete and successful turnaround strategy could be implemented where actions speak louder than words. The Provincial Executive should be allowed the opportunity to show that it will not drag its feet, but shall comply forthwith with its constitutional obligations, bearing in mind the manner in which I intend to structure this order.[26]

Order

[73] The following order is granted:

1. That it be declared that:

1.1. the first respondent, the Ngwathe Local Municipality, is in breach of its constitutional, legislative and regulatory obligations towards its residents;

1.2. the conduct of the first respondent, in failing to –

1.2.1. ensure the provision of services to its community in a sustainable manner;

1.2.2. promote a safe and healthy environment for its community;

1.2.3. adequately structure and manage its administration, budgeting and planning processes;

1.2.4. give priority to the basic needs of its community; and

1.2.5. promote the social and economic development of its community,

– is inconsistent with the Constitution and in breach of sections 152(1) and 153(a) thereof, and is invalid;

1.3. the jurisdictional facts supporting mandatory Provincial intervention in the affairs of the first respondent in terms of section 139 (4) and (5) of the Constitution, read with sections 138 to 147 of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA), are present and have consistently been present in the past;

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[26] Unfortunately, the Free State Provincial Government failed to comply with the orders granted by Van Rhyn AJ in *Mafube Business Forum and Another v Mafube Local Municipality and Others* (1969/2021) [2022] ZAFSHC 86 (28 April 2022); read *Mafube Business Forum and Others v Premier of the Free State Province and Others* (A23/2024) [2025] ZAFSHC 93 (25 March 2025). It is my sincere hope that it will comply with the order.

1.4. the failure of the fifth to ninth respondents to carry out their mandate in terms of section 139 of the Constitution and the MFMA effectively and to intervene and resolve the issues of the first respondent is inconsistent with the Constitution and invalid;

1.5. the jurisdictional facts for mandatory Provincial intervention in the affairs of the first respondent, including dissolution of its municipal council in terms of sections 139 (4) and (5) read with sections 138 to 147 of the MFMA are now present and have consistently been present in the past as a result of the failure of both the first, as well as the fifth to ninth respondents, to ensure that the first respondent meets its constitutional and statutory obligations.

2. The fifth to ninth respondents are directed forthwith to intervene in the affairs of the first respondent in terms of the aforementioned provisions of the Constitution and the MFMA by exercising the powers conferred by sections 139(4) and (5) of the Constitution and they are specifically directed to, in terms of the provisions of section 139(5)(a) and (b):

2.1. implement a recovery plan, aimed at securing the first respondent's ability to meet its obligations to provide basic services and to meet its financial commitments;

2.2. dissolve the third respondent and appoint an administrator until a newly elected municipal council has been declared elected;

2.3. approve a temporary budget or revenue-raising measures, or any other measures intended to give effect to the aforesaid recovery plan, to provide for the continued functionality of the first respondent.

3. The fifth to ninth respondents shall report to this court, under oath and in writing, every three (3) months from the date of this order being handed down on their progress in the implementation of this order, as well as the prospects of the first respondent being able to execute its own functions.

4. The first to ninth respondents shall jointly and severally pay the costs of this application on an attorney and client scale.

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JP DAFFUE J

JUDGE OF THE HIGH COURT

Appearances

For applicant:	FJ Erasmus SC & P Eilers
Instructed by:	Hurter Spies Inc c/o Hendre Conradie Inc Bloemfontein
For first, second & third respondents:	MC Louw
Instructed by:	Peyper Attorneys Bloemfontein
For fourth to fifteenth respondents, excluding twelfth respondent:	KD Moroka SC & L Tlelai
Instructed by:	State Attorney Bloemfontein
For twelfth respondent:	A Nacerodien
Instructed by:	State Attorney Pretoria