

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GRAHAMSTOWN)**

CASE NO. 2021/2020

ON THIS 09th DAY OF SEPTEMBER 2021

Before The Honourable Justice Brooks J

In the matter between:

EZIHAGWINI STREET COMMITTEE	First Applicant
MARY WATERS HIGH SCHOOL	Second Applicant
And	
MAKANA MUNICIPALITY	First Respondent
MEC, DEPARTMENT OF ECONOMIC DEVELOPMENT ENVIRONMENTAL AFFAIRS AND TOURISM: EASTERN CAPE	Second Respondent
MINISTER FOR ENVIRONMENTAL AFFAIRS MEC, CO OPERATIVE GOVERNMENT AND TRADITIONAL AFFAIRS: EASTERN CAPE	Third Respondent
	Fourth Respondent

DRAFT ORDER

Having heard Adv. Webber for the Applicant and Adv Shangisa SC with Adv Brauns for the First Respondent and having regard to the documents filed of record:-

IT IS HEREBY ORDERED (BY AGREEMENT) THAT:

1. The First Respondent's Bylaws and Waste Management system are declared unconstitutional to the extent that they fail to protect and fulfil the residents' rights to an environment that is not harmful to their health.
2. The first respondent is directed to clean up all the unofficial dumpsites listed in Annexure A hereto, within 14 days of the court order, and to remove the waste to the official municipal dumpsites.
3. The first respondent is directed to hold meetings with the Applicants and the public to identify all other unofficial dumpsites within 30 days of the court, ^{order} and to clean, clear and remove all waste at any dumpsites so identified within 120 calendar of the court order.
4. The first respondent is directed to provide three plastic refuse bags to each household per week within 14 days of the court order.
5. The first respondent is directed to ensure the provision of receptacles around the town within 60 days of the court order.
6. The first respondent is directed to comply with the National Environmental Management: Waste Act 59 of 2008 (NEMWA) and all policies, regulations, and norms and standards issued pursuant to its authority.

7. The first respondent is directed to produce a comprehensive audit assessing the waste management needs in the Makana Municipality within three months of the date of the court order (“ **the Audit**”). The Audit shall clearly identify the role of each Respondent in meeting the Makana Municipality waste management needs and shall determine what measures must be taken to provide the necessary waste management services and to protect the health and well-being of residents and other affected persons. The Audit is to be provided to the applicant’s attorney and the Second and Third Respondents attorneys within three weeks of its completion.

8. The first respondent shall ensure that the waste management needs identified by the audit will be met no later than three months after the date that the audit is completed.

9. The respondents shall report, within six months of this court order, to court and the Applicants attorneys by way of affidavit, delineating the steps takenⁿ to comply with the court order. Such affidavit shall also identify the Respondents plans for the Makana Municipality waste management system in the future, including a plan for creating an official dumpsite on the eastern side of Makhanda, unless the audit finds this unnecessary.

10. The first respondent is directed to review its bylaws[^] ad[^] integrated[^]

management plan and amend same to ensure compliance with all applicable legislation, including NEMWA within 8 months of the date of this Court order.

11. The court shall retain jurisdiction over the matter until it is satisfied that this order has been complied with, or the first respondent ^{has} ~~have~~ provided a satisfactory explanation for why it cannot be complied with.
12. Any of the parties may re-enrol this matter for hearing at any stage, if necessary on duly supplemented papers, for the consideration of any further orders arising out of the orders set out above.
13. The first respondent is ordered to pay the costs of this application.

BY REGISTRAR

Annexure A to the Notice of Motion

A – Dumpsite next to Jehovah’s Witness Church – “Ezihagweni”, Extension 6

B – Dumpsite next to DD Siwisa Primary School

C – Erf 854 Extension 6

D – Vacant lot next to Erf 674, Sani Road, Extension 6

E – Vacant lot opposite Erf 6034, Extension 6

F – Dumpsite across road from Mary Water’s High School’s eastern border

G – Dumpsites to the east and west of TEM Mrwetyana High School