

01 July 2019

To: The Municipal Council  
eThekweni Local Municipality  
c/o: Speaker of the Council  
Cllr William Mapena  
Per: E-mail ([william.mapena@durban.gov.za](mailto:william.mapena@durban.gov.za))

And to: The Municipal Manager  
eThekweni Local Municipality  
Mr Siphon Nzuza  
Per: E-mail ([siphon.nzuza@durban.gov.za](mailto:siphon.nzuza@durban.gov.za))

CC: The Acting Mayor  
eThekweni Local Municipality  
Cllr Fawzia Peer  
Per: E-mail ([fawzia.peer@durban.gov.za](mailto:fawzia.peer@durban.gov.za))

Dear Sirs,

**ALLEGED IMPROPER CONDUCT AND BREACH OF THE CODE OF CONDUCT BY MAYOR GUMEDE, CLLR MTHEMBU AND OFFICIALS ROBERT ABBU AND SANDILE NGCOBO OF ETHEKWINI MUNICIPALITY**

**OUR REF: L4/DA/03**

**YOUR REF: UNKNOWN**

1. The abovementioned matter as well as previous correspondence exchanged on the topic refers. Said correspondence is attached for ease of reference.
2. In correspondence received from the Speaker, dated 23 May 2019, we were advised, amongst other, that –
  - 2.1 The Municipal Council did not in any way contribute or cause the investigation which led to the charges and arrest of the Mayor, Ms Z Gumede (Gumede).
  - 2.2 The HAWKS are currently investigating the matter and that the Council has been instructed not to “*interfere or do anything which might jeopardise the investigation.*”
  - 2.3 Save for being arrested, the Office of the Speaker does not possess any information “*upon which a reasonable suspicion can be formed that there has been a breach of the Code of Conduct... or otherwise any legal duty or standard.*”
  - 2.4 The Office of the Speaker cannot engage on the topic.
  - 2.5 Caution should be exercised against the temptation to interfere with the criminal investigations and the law enforcement authority should be allowed to conduct their investigations without perceived pressure.
3. In response to the above and on the topics of possible interference in criminal investigations and a lack of information we submit that –
  - 3.1 The taking of disciplinary steps against a councillor does not automatically amount to an interference in a criminal investigation.
  - 3.2 It is our submission that the law makes provision for civil and criminal proceedings to run concurrently without causing a conflict or intrusion on each other.
  - 3.3 Although the processes may be similar, the burden of proof in civil and criminal proceedings are vastly different as well as the subsequent consequences.

- 3.4 A criminal conviction in itself does not amount to breach of a civil code and *vice versa* – thus two independent enquiries are required.
- 3.5 Further, and as indicated in our previous correspondence, there is at least a warranted reasonable suspicion of the breach of the Code of Conduct for councillors.
- 3.6 It would further seem that the Speaker has misunderstood our requests. We did not intend to request the Speaker to exercise any authority but rather the Council as prescribed by the Systems Act.
4. There is enough material available, that is both public and confidential, available to the Council for it to undertake its oversight function, with regards to Gumede and her co-accused, Mr Mondli Mthembu, an Executive Committee Councillor and Chairperson of the Human Settlements and Infrastructure Committee. This material includes:
  - 4.1 A charge sheet implicating Gumede, Mthembu and the remaining 10 co-accused in their alleged illegal role in the awarding of a R208-million waste management tender. This charge sheet has been presented to the Durban Specialised Commercial Crime Court.
  - 4.2 A supporting affidavit by the HAWKS investigating officer Lt-Col Ngoako Mphaki handed to the same court during Gumede and Mthembu's bail application on 14 May 2019.
  - 4.3 An internal report compiled by the city's Head of the City Integrity and Investigations Unit. The report was compiled by forensic accountancy firm Integrity Forensic Solutions (IFS) on behalf of the integrity unit. This report, which in the possession of the City, underpins the criminal investigation.
5. The affidavit (See 4.2), which gives a summary of the evidence at hand, points to certain allegations which could be in breach of the Code of Conduct for Councillors<sup>1</sup> such as:
  - 5.1 Members of the Bid Specifications Committee (BSC), the Bid Evaluation Committee (BEC) and the Bid Adjudication Committee (BAC) would be instructed by Gumede and Mthembu on which companies to award tenders to while sitting in on these committees, leaving the SCM committees dysfunctional;
  - 5.2 Gumede and Mthembu consistently interfered in the operational functions and duties of the employees at "all levels of the administration...by inducing said employees to committing various unlawful acts".
  - 5.3 Mthembu called the four implicated suppliers into City Hall and ordered them to sub-contract "the illegal portion of the contract to other suppliers identified" by Mthembu, thus directly interfering and ignoring SCM protocol.
  - 5.4 Gumede incited a march on 16 April 2019 to Durban City Hall requesting the removal of the City Manager from office "on the grounds he refuses to take orders from the mayor to make irregular payments" in respect of the questionable tender.
6. We reiterate that the Council has a legislative<sup>2</sup> duty to act in the best interest of the community, which include but is not limited to, taking the appropriate steps against councillors and officials suspected of unethical and improper conduct.

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<sup>1</sup> Municipal Systems Act, 2000, Schedule 1, Paragraph 11.

<sup>2</sup> Municipal Systems Act, 2000, Schedule 1, Paragraph 14.

7. We urge the Council to take the necessary steps to protect and act in the best interest of the community with regards to not only Gumedede as our initial engagement with the Speaker requested, but also Mthembu as well as the implicated city officials Robert Abbu (Durban Solid Waste: Deputy Head of Strategic and New Developments) and Sandile Ngcobo (Deputy Head of Supply Chain Management Unit.)
8. The officials face multiple counts of fraud and corruption as listed in the charge sheet. An excerpt of what they are charged for includes:
  - 8.1 They “deliberately or, in a grossly negligent manner provide false or misleading information” that claimed they had “engaged in a lawful procurement process for refuse collection, street cleaning and illegal dumping for various townships” within the city jurisdiction, thereby “improperly causing benefit [to] the entities” being criminally charged alongside them.
9. The said officials could have committed financial misconduct<sup>3</sup> and the law requires the city to take appropriate steps followed with appropriate sanction.
10. In taking steps the Council must also account to the public as to what course of oversight it has or will implement.
11. The failure to act will amount to a dereliction of duty on Council’s part and we reserve the right to approach and exercise our rights in all legal forums for the community’s best interests to prevail.
12. We trust you find above in order and eagerly await your response.

Yours Faithfully,



**Tim Tyrrell**

**Provincial Manager**

**OUTA KZN**

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<sup>3</sup> Municipal Finance Management Act, Chapter 15, Paragraph 171(1)(2)(3)(4) and 172(1)(2)(3)