

MEC MAILE ON ACTIONS TAKEN AGAINST THE FORMER SPEAKER OF THE CITY OF JOHANNESBURG AND THE CURRENT SPEAKER OF THE CITY OF TSHWANE

Thursday, 23 January 2020

Morning everyone and welcome.

This press briefing has been convened with regards to issues pertaining to the conduct of two elected public representatives in two of our Metros in the province, namely the City of Johannesburg and the City of Tshwane respectively. Based on sound legal advice solicited on the conduct of former Speaker of Johannesburg Cllr Vasco da Gama and current Speaker of the City of Tshwane Cllr Katlego Mathebe, a final determination on the unbecoming conduct of both Councillor Da Gama and Councillor Mathebe has now been made.

At the end of November 2019, we invited the former Speaker of the City of Johannesburg, Cllr Vasco Da Gama to, within seven (7) days of receipt of our invite, make written representations to us regarding serious allegations levelled against him and to further give reasons as to why he should not be suspended or removed as a councillor.

The said timeframe has long lapsed and only after a reminder did the former Speaker respond. However, the response by the former Speaker did not deal with factual and substantive issues raised in the letter we sent him. This recalcitrant attitude on his part once again displayed his total disregard for meaningful engagement. It is the same type of conduct that deprived the municipal council of the City of Johannesburg of the opportunity to deliberate and decide on whether or not to seek an independent legal opinion on the question of what constitutes a majority of votes to elect a new executive mayor for the City.

On the other hand, in early December 2019, a request was made to the current Speaker of the City of Tshwane to explain herself as to why she failed to fulfill her statutory duties by failing to preside over the Council meeting held on 5 December 2019. The Speaker responded that she recused herself from the council meeting because it was going to deal with a motion of no confidence against her and as a result, she felt conflicted. Her response is glaringly silent on what made her to suddenly have these "feelings of conflict". We deemed her response as unacceptable because she was well aware way before the council meeting of the motion of no confidence against her and the feelings of conflict should have then arisen before, and not on 5 December 2019 in the council meeting.

We strongly hold a view that her explanation does not, to say the least, make sense, not unless it was a deliberate act on her part to vitiate the council proceedings in order to prevent the motion against her being carried. It is our carefully considered view that in doing so, the Speaker placed her personal interest (to remain Speaker by any means necessary), above the interest of the municipality and by extension the residents of the City.

Had she acted appropriately, and genuinely felt conflicted, she would have taken the necessary steps before the council meeting by ensuring that systems and mechanisms were in place for the proceedings of the council meeting to be conducted without any disturbance. It is worth mentioning that another special council meeting was held on 16 January 2020, where amongst others, another motion of no confidence against the Speaker was supposed to be tabled, instead the council proceedings descended into chaos and total collapse of the said scheduled meeting.

Accordingly, an official letter was dispatched to the Speaker to request a detailed and comprehensive report on the underlying circumstances that led to council proceedings to be marred by chaos and walk-outs by other parties represented. Such a report has not been forthcoming from the Speaker despite a reminder. Notwithstanding her failure to respond, another letter was dispatched requesting a meeting with the Speaker to afford her the indulgence and opportunity to provide a detailed oral account of what happened during the proceedings.

Unfortunately, such a request was declined with an explanation devoid of substance and total disregard of the decorum of her Office. We received a belated response from the Speaker on 22 January 2020. However, her response still failed to address the important substantive issues raised in our previous letters.

Given the above exposition on the two matters, the MEC responsible for CoGTA in any province is enjoined by the Constitution and various legislation to take decisive action against unbecoming behavior by any elected public representative within the sphere of Local Government. The decision should be located and understood within the context of ensuring that public officials are held accountable and face serious consequences for their despicable actions. This is so, especially if such conduct undermines the tenets of cooperative governance as enshrined in the Supreme Law of the Land (“the Constitution”)

Section 151(2) of the Constitution of the Republic of South Africa Act No. 8 of 1996 (“the Constitution”), dictates that the executive and legislative authority of a municipality is vested in its municipal council, and not the Speaker. Section 160(8) of the Constitution further dictates that:

“(8) Members of a Municipal Council are entitled to participate in its proceedings and those of its committees in a manner that—

- (a) allows parties and interests reflected within the Council to be fairly represented;
- (b) is consistent with democracy; and
- (c) may be regulated by national legislation” [own emphasis]

The former Speaker of the City of Johannesburg’s conduct on 27 November 2019 can therefore be succinctly described, without any doubt, as a serious contravention of not only Item 2 of the Code of Conduct for Councillors as embedded in Schedule 1 to the Local Government: Municipal Systems Act, No. 32 of 2000, as amended (“the Code”), but of the constitutional dictates as alluded to above. As such, it would be

fair and just, to reasonably consider the former Speaker to be a “constitutional delinquent”.

In the circumstances, having followed the letter of the law informed by the gravity of the breach, we accordingly invoked our powers in terms of item 14(6)(a) of the Code of Conduct for Councillors as embedded in Schedule 1 to the Local Government: Municipal Systems Act No. 32 of 2000, as amended, and suspended the former Speaker of the CoJ as a Councillor for a period of three (3) months without pay, effective from the date of receipt of our letter.

The recently inaugurated Speaker of the City has also been informed of this sanction with a directive to implement same without any delay. This sanction has been enforced to send a strong message and set a precedent that no one should ever play partisan politics to the detriment of the electorate or our residents in the Province.

In relation to the current Speaker of Tshwane, in spite of my counsel prior to the meeting of 16 January 2020 and subsequent invite after the collapse of the Council meeting, the Speaker endured with her unbecoming behaviour. The majority of councillors requested a special council sitting for 13 January 2020 in terms of section 29(1) of the Local Government: Municipal Structures Act No. 117 of 1998, as amended (“the Structures Act”). The purpose of this meeting was to once again move a motion of no confidence against the Speaker and other office bearers as the main agenda items. The proposed agenda by the majority of council members was to start with a motion of no confidence against her.

However, at the commencement of the council meeting, a number of points of order and objections were raised by the same majority of council members who called for the special meeting in terms of section 29(1) of the Structures Act. The reasons for these objections were as a result of the Speaker’s unilateral and arbitrary decision of altering the sequence of the agenda items in question. Notwithstanding the litany of objections from the majority of council members, the Speaker deliberately elected to ignore these legitimate objections. This is in spite of the fact that the Councillors pleaded with her to hear them out. The total disregard of the majority of councillors’ pleas by the Speaker, in our view, constitutes a gross abuse of power on her part.

We are reliably informed that the Speaker’s reasoning for the alteration of the sequence of the agenda items is based on Rule 8(3) of the Rules and Orders of the City of Tshwane. We are fully conversant with this rule and accept that it is the Speaker’s prerogative to determine the order of business at a special council meeting. However, this is not an unbridled prerogative. This is so because any exercise of any statutory power requires the functionary of that power to properly apply his or her mind informed by facts before taking a decision. Simply put, such a decision with serious ramifications must pass the rationality test.

The said commission or deliberate omission by the Speaker can best be described as irrational as it cannot be justified and is detached from the facts. Our conclusion amongst others is informed by the sequence of events that led to the collapse of the first Council meeting and subsequent Special Council meeting. Clearly, the Speaker’s

overall conduct was blatantly motivated to collapse the entire council proceedings to safe-guard her self-interest at the expense of the interest of the residents of Tshwane.

We must put on record that we viewed the collapse of the Special Council meeting of 16 January 2020 in a very serious light. In this regard, we therefore requested the Speaker in a letter dated 16 January 2020 to provide us with a comprehensive written report on the collapse of the said council meeting. In addition, we also deemed it appropriate to have an audience with her on 20 January 2020 as per our letter dated 17 January 2020. Regrettably, the Speaker declined our invite without any substantive reasons and also failed to furnish us with a comprehensive report as requested.

The Speaker's overall conduct in both Council meetings and after, leaves much to be desired. The vigour with which she behaved to protect her interest to remain the Speaker at all cost irrespective of the consequences cannot be tolerated anymore. To allow such insidious conduct without any repercussions will no doubt set an untenable precedent that will permit any office bearer to abuse executive and statutory powers bestowed upon them.

The transgressions by the Speaker are by their nature aggravating and warrant her removal from office. Also, the collapse of two Council meetings under her watch directly contributed to fruitless and wasteful expenditure, as the convening of Council requires resources to be spent, which are quite substantial when looked at from a service delivery perspective.

With this in mind, we must act decisively to ensure that it does not become easy and the norm for any councillor to collapse a Council meeting without consequences and as such we would like to see action being taken against all those responsible by holding them personally liable by recouping the loss. This should serve as a deterrent for future contraventions. In the same spirit, we will be meeting with the whips of all parties in Tshwane sometime next week, with the aim of helping them find an amicable manner of engaging each other so that Council can sit, deliberate and take decisions on critical issues that affect the people of Tshwane, because the continuous collapse of Council has a negative impact on service delivery within the municipality, or any other municipality for that matter if this is the case.

In the circumstances, it is our carefully considered opinion that the Speaker has breached Item 2 of the Code of Conduct for Councillors. To that end, we invoked the powers vested in us by item 14(6)(a) of the Code and suspended the Speaker as a Councillor for a period of six (6) months without pay, effective from the date of receipt of our letter.

However, notwithstanding the gravity, we elected to invoke the suspension as a deterrent in line with the spirit of cooperative governance. The Acting City Manager of the City of Tshwane has been informed of this sanction with a directive to take the necessary steps to implement same without any delay.

Our decisions in respect of both Councillors are consistent with the law, and impartial to avoid any accusation of tilting the balance of forces in councils to favour a particular political party. It is imperative to note that these decisions are based on strengthening local government by ensuring those elected into positions of responsibility carry out their work in the best interest of the electorate.

The High Court Judgment in the case of The Unemployed Peoples of the Eastern Cape versus Makana Municipality and Others has underscored the importance of fulfilling the constitutional obligations of government at all levels and consequences of failure by the municipality to deliver basic services to the community.

These decisions will be communicated to EXCO for noting. It is important to underscore that these decisions were taken in the best interest of our nascent democracy, and burying any falsehood being peddled by certain voices that we are abusing our powers for sectarian politics. This is far-fetched and removed from the actual truth supported or backed by undisputable facts.

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