



Tel: 042 – 243 6400
Fax: 042 – 243 2250
Website: www.bcrm.gov.za
E-mail: mmanager@bcrm.gov.za
marej@bcrm.gov.za
nigeld@bcrm.gov.za
rozannef@bcrm.gov.za

Office of the Municipal Manager

Our Reference / Enquiries:
10/1/2

MEDIA RELEASE : REMOVAL OF MUNICIPAL ASSETS BY SHERIFF

MUNICIPAL WORKERS RETIREMENT FUND / BLUE CRANE ROUTE MUNICIPALITY

INTRODUCTION:

1. It is by now general knowledge that the local Sheriff, Mr J L Leshosi removed municipal assets on 30 April 2024 and 2 May 2024 and the purpose hereof is to provide a background relating to the incident.
2. The removal took place pursuant to a warrant of execution against property issued by the Makhanda High Court in case no : 3016 / 19 wherein the Municipal Workers Retirement Fund (*the Fund*) required the municipality to make payment of an amount of R3 805 608.68 in respect of capital and R30 052 166.09 in respect of interest.
3. Judgment against the municipality was obtained on 26 November 2019 and appealed to the Full Bench on Makhanda and ultimately to the Supreme Court of Appeal (SCA) and the appeals were finally dismissed on 10 August 2023.

BACKGROUND:

4. In summary the Pension Fund claims an amount in respect of pension monies which accrued interest and, according to the Fund, should have been paid over to them by the municipality.
5. During the period 2007 until 2013 the Pension Fund advised the municipality of an increased amount to be paid. The municipality refused to make such payment and made ordinary payments on the ground that the Pension Fund Rules required consent by the employer, before an increase in deductions can be made.
6. This was not done and that was the reason why the municipality did not adhere to payment of the R3.8 million plus interest.
7. Upon receipt of the Court Papers during 2019 the municipality appointed Attorney Chris Baker of Gqeberha to defend the matter.
8. However, a notice to defend was not served and filed and default judgment was obtained against the municipality.

9. The municipality thereafter appointed Pagdens Incorporated Attorneys of Gqeberha to act on it's behalf and an application to rescind the default judgment was made, unsuccessfully.
10. Appeals followed thereafter to the Full Bench and ultimately the Supreme Court of Appeal in Bloemfontein, unsuccessfully as the Court dismissed such application for rescission.
11. The municipality, throughout the proceedings, negotiated with the Fund and the real problem in respect of payment was the exorbitant and unreasonable interest rate at which the Pension Fund required payment.
12. Currently, the Pension Fund requires payment of an amount of R30 million as interest despite the capital only being R3.8 million.
13. The interest amounts to more than 10 times the capital amount. This is utterly unreasonable, and the municipal Councillors have a constitutional duty to protect the municipality, it's assets and employees against unreasonable claims.
14. The issue of the Pension Fund claim was not secretly handled but was discussed in various council meetings, the latest council meeting in which the issue was discussed was on Tuesday 30 April 2024 when all Councillors of various parties (ANC, DA and EFF) were present and they unanimously voted in favour of payment of the amount of R3.8 million in respect of the capital and an amount of R8.4 million in respect of the interest which was calculated by the municipality's current Attorneys of Record, Lionel Trichardt & Associates and the calculation was made by an Actuary, Mr Simon Kroon of Makhanda, in consultation with Senior Counsel.
15. In the event that the current calculation is correct, the municipality would save an exorbitant amount of R22 million in respect of interest.
16. A Senior Counsel's opinion was obtained which was in line with the municipals argument that interest of R30 million was incorrectly calculated and was an exorbitant and unreasonable amount of interest.
17. Various letters were written by the municipal's current Attorneys, after they received instructions in February 2024 advising the Funds Attorneys that their calculations were patently wrong.
18. The amount of R3.8 million was already paid in respect of capital to the Fund on 25 March 2024 leaving only the amount of interest to be paid as being in dispute.
19. Although negotiations were ongoing, the Fund instructed the Sheriff to proceed, to remove the attached goods from the municipal premises.
20. On 2 May 2024 the municipal attorneys issued an urgent application in the Makhanda High Court Case No : 1827 / 2024 to stay the warrant of execution which would mean that the goods removed should be returned to the municipality and for the Court to make a declaration or determination in respect of interest ie. whether R8.4 million should be paid in respect of interest or, on the version of the Fund they are entitled to R30 million.
21. As stated, all Councillors and employees were aware of the litigation process and when the current Municipal Manager commenced his employment at the municipality, on 1 January 2023, litigation proceedings were already at an advanced stage.

22. In respect of the current High Court Application, the Fund, if they oppose the Application, are required to file their Opposing Affidavits by no later than Monday 6 May 2024 at 10h00 and the matter to be argued in the Makhanda High Court on Tuesday 7 May 2024 at 09h30.

23. Meanwhile the interest amount as calculated by the municipality of R8.4 million are processed and paid on Friday 3 May 2024.

CONCLUSION :

24. It is clear from the abovementioned explanation that :

24.1 the Retirement Fund claim and litigation process against the municipality was transparent and discussed in Council;

24.2 the municipality was duly authorised and in fact obliged to defend the unfair litigation in respect of the interest calculation, in the public interest;

24.3 the current Municipal Manager and other Senior Managers are not to be blamed for the current state of affairs but were obliged to defend the municipality's interest ie. paying R8.4 million instead of R30 million.

25. The municipality are preparing for the Court sitting and will update employees and the community on the outcome thereof.

Yours faithfully



MUNICIPAL MANAGER :

MZWANDILE PATRICK NINI

03 MAY 2024