



a world class African city

City of Johannesburg
Office of the City Manager

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Braamfontein

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South Africa
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06 MAY 2021

ATTENTION: MR KABELO PHILEMON LUCAS MALAO

POSTAL ADDRESS: 116 LOUIS AVENUE
MENLYN SQUARE OFFICE PARK

EMAIL ADDRESS: kmalaoinc@gmail.com



Dear Mr Malao

REQUEST FOR RECORDS OF PUBLIC BODY IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT 2 of 2000 ("PAIA")

1. We refer to your request for access for records of a Public Body dated 26 February 2021 ("the Request"). In terms of the Request, you sought the following information:
 - 1.1. Sefotle Modiba's disciplinary charge sheet;
 - 1.2. Any SAPS case number or listing against Sefotle Modiba;
 - 1.3. Committee's resolution to appoint Investec;
 - 1.4. Tender advertisement that led to the appointment of Investec;
 - 1.5. The name of person who opened the following account numbers: 1 400-200961-500, 1400-200961-450 and 1400-200961-451;
 - 1.6. Supply chain process to appoint Investec;
 - 1.7. Record of bidders;
 - 1.8. Confirmatory affidavits by the mayor confirming knowledge of the accounts;
 - 1.9. SARS Documents regarding the above accounts;

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- 1.10. CIPC documents submitted to Investec when opening of the above clients;
- 1.11. Mayoral committee resolution to appoint Investec as the service provider;
- 1.12. Newspaper advert which led to Investec being appointed; and
- 1.13. Details of who is authorized to open bank accounts and the name of the person who opened these accounts.



RESPONSE TO THE PAIA REQUEST

2. In response to your request, we confirm that the City is able to provide you with the following record:
A copy of Sefolle Modiba's disciplinary charge sheet.
3. The City does not have any record of a SAPS case number.

THE REMAINING REQUESTED RECORD:

4. Section 7 of PAIA provides that the Act does not apply for a record of a Public Body or a Private Body, If - (a) that record is requested for a criminal or civil proceeding, (b) so requested after the commencement of such criminal or civil proceedings, as the case may be.
5. In accordance with section 7 of PAIA, the City cannot provide you with a response to the records listed in paragraph 1.3 to 1.13 above, the information requested is directly linked to the pending civil litigation between *K Malao Inc v Investec Bank Limited and 3 Others*, under case number 60617/2020 in the High Court of South Africa, Local Gauteng Division, Pretoria.
6. Based on the provisions of Section 7, and the pending litigation mentioned above, which relates to the information requested, the City cannot provide you with the records listed in paragraph 1.3 to 1.13 herein.

Yours faithfully;

Thembisa Zwane

Deputy Director: Public Access to Information



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(electronic signature)



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IN THE DISCIPLINARY HEARING

In the matter between:

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Employer

and

SEFOTLE MODIBA

Employee

NOTICE OF MISCONDUCT AND CHARGE SHEET



1 DETAILS OF THE EMPLOYEE

Name & Surname: Sefotle Modiba

SAP Number: 30073762

Designation: Director Treasury

Department: Group Finance

2 NOTICE OF MISCONDUCT

KINDLY TAKE NOTICE THAT this charge sheet is issued in terms of, *inter alia*, clause 7 of South African Local Government Bargaining Council: Disciplinary Procedure Collective Agreement entered into between the South African Local Government Association, Independent Municipal and Allied Trade Union and South African



Municipal Workers Union (“**Collective Agreement**”) dated 6 February 2018, read with Schedule 2 of the Code of Conduct for Municipal Staff Members to the Local Government: Municipal Systems Act, 32 of 2000 (“**the Code**”).

KINDLY TAKE NOTICE FURTHER THAT you are required to be present at a Disciplinary Hearing and remain in attendance throughout on the date(s) of the hearing, at the time and venue set out below, to answer to the allegations of misconduct against you as more fully set out below.



KINDLY TAKE NOTICE FURTHER THAT the Disciplinary Hearing will be conducted based on the charges contained herein.

3 DETAILS OF HEARING

Date: To be determined

Time: To be determined

Venue: To be determined

Prosecutor: Mbuleli Kolisi

Presiding Officer: To be determined

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4 YOUR RIGHTS

KINDLY TAKE NOTICE FURTHER THAT you have the right to:

- 4.1 Consult your trade union, if any.
 - 4.2 Prior to the commencement of the hearing, submit a written reply to the Prosecutor, or give verbal evidence at the enquiry or both.
 - 4.3 To represent yourself or to be represented by a fellow employee; or a member, office bearer, or official of your trade union.
 - 4.4 To have the assistance of an interpreter.
 - 4.5 Make an opening statement, give evidence and either personally or through your representative, call witnesses, submit any documentation or exhibit, cross-examine any witnesses called by the Employer, inspect any documentation and exhibit and to make closing arguments.
 - 4.6 A fair procedure and to have any mitigation circumstances considered in the event of a guilty finding.
- 5 **KINDLY TAKE NOTICE FURTHER THAT** should you fail to attend the Disciplinary Hearing, the Disciplinary Hearing may proceed in your absence and an adverse finding may be made in your absence.



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DETAILS OF ALLEGED MISCONDUCT

A. CHARGE 1: FAILURE TO ACT IN THE BEST INTERESTS OF CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY AND THEREBY BREACHING ITEM 2(d) OF THE CODE, alternatively GROSS DERELICTION OF DUTIES, further alternatively GROSS NEGLIGENCE AND BREACHING ITEM 2(b) OF THE CODE

6 Count 1

6.1 You have allegedly caused or allowed the City of Johannesburg Metropolitan Municipality (“the CoJ”) to incur unbudgeted and/or unnecessary costs, and/or fruitless and wasteful expenditure, in that-



6.1.1 during June 2016, you motivated for and/or supported the withdrawal of an amount of R300 000 000.00 from the CoJ Sinking Fund at a cost of R477 534.00 to the CoJ; and/or

6.1.2 during June 2017, you motivated and/or supported the withdrawal of R1 100 000 000.00 from the CoJ Sinking Fund at a cost of R6 270 000.00 (VAT Inc.) to the CoJ; and/or

6.1.3 during December 2017, you motivated for and/or supported the withdrawal of an amount of R1 200 000 000.00 from the CoJ Sinking Fund at a cost of R6 801 232.98 (VAT Inc.) to the CoJ.

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6.2 Your motivation for the withdrawal of the amount of R1 200 000 000.00 to test the readiness of the Regiments Fund Managers (Pty) Ltd ("Regiments") was, without a justified cause and did not make any business or commercial sense, for the following reasons-

6.2.1 Regiments had been managing the Sinking Funds on behalf of the CoJ since the year 2006, and thus, it was completely unnecessary and irrational to conduct in any test for the readiness of Regiments; and/or



6.2.2 the CoJ: Treasury Policy does not make any provision for withdrawal of funds to test the readiness of the Fund Managers; and/or

6.2.3 the terms of reference dated 6 December 2010 for ring fenced accounts do not make provision for the withdrawal of Sinking Funds for purposes of testing the readiness of the fund managers.

7 Count 2

7.1 During May 2018, you authorised and/or caused a payment to be made in the sum of R250 000 000.00, as a scheduled contribution, into the CoJ Sinking Fund and in doing so failed to act in the best interest of the COJ, despite the following-

7.1.1 the contrary and/or different view held by the majority of the finance team officials and other senior executives who

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attended a meeting wherein the issue of the payment, or non-payment thereof, was discussed. The view held by the majority of the officials present at the meeting held on [to provide and insert date] was that the any payment of the mentioned scheduled amount would have a negative impact on the cash flow and liquidity position of the CoJ and thus should not be paid, however, you still proceeded and made, or caused such payment to be made; and/or

7.1.2 the CoJ had previously missed scheduled payment(s) and such non-payment has never resulted in any negative publicity against the CoJ nor did it result in a breach of the PMA; and/or



7.1.3 the CoJ would have been able to make the scheduled payment at a later stage when its cash flow position had improved and had become favourable.

8 Count 3

8.1 At all material times between the years 2013 to 2018, you had been aware, or ought to have been aware or known, that the CoJ had not claimed input VAT in the amount of approximately R9 400 000.00 based on various tax invoices submitted by Regiments and paid by COJ. Despite such knowledge, you never claimed, or caused to be claimed, the necessary input VAT, and such failure resulted in the negative financial prejudice to the CoJ.

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9 Count 4

9.1 During February 2011, you had allegedly approved and/or caused to be authorised payment of Regiments' invoices for management and/or period out performance fees, without independently verifying the accuracy thereof, whilst you were under an obligation to conduct such verification before any approval, or authorisation, of payment.

10 Count 5



10.1 For the duration of the use of services of Regiments as the Fund Managers on behalf of the CoJ, including the duration of your employment within the CoJ: Treasury Department, you have allegedly failed to regularly review and approve credit limits and/or instruments under the management of Regiments in the CoJ Sinking Fund, and thereby, exposed the CoJ to risk.

10.2 In terms of clause 3.5.2 of the CoJ: Treasury Policy, it is required that credit limits should be formally reviewed at least annually and that compliance with credit limits should be monitored at least daily and that the transactions exceeding the limits should be reported to the Treasurer.

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11 Count 6

11.1 Since the appointment of Regiments, including the duration of your employment within the CoJ: Treasury Department, you allegedly failed to exercise adequate oversight on the derivative trades taken out by Regiments with Nedbank Limited and it would appear that-

11.1.1 no comparative quotations were obtained for derivative trades concluded with Nedbank Limited; and/or

11.1.2 no independent assessment of the extensive derivatives and the associated costs in the form of interest rate hedges were ever conducted, or done; and/or

11.1.3 Regiments has had a vested interest in placing business with Nedbank Limited, as they were entitled to a fee on the basis of the Fee/Commission Agreement concluded between Regiments and Nedbank Limited, dated 25 May 2009.



12 Count 7

12.1 During March 2011, you allegedly approved, or caused to be approved, a R1 000 000 000.00 swap from Nedbank Limited without ensuring that the selection of Nedbank Limited's quotation from the quotations obtained from 3 (three) other banks was based on the total cost to the CoJ in that, before a final decision to appoint was made, credit margin required by the

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banks for COJ credit the cost of Regiments fee/commission was not sought and obtained from all the competing banks and the process lacked transparency, and as result thereof, a fair comparison of prices could not be achieved, or carried out.

13 Count 8

13.1 You allegedly authorised, or allowed, payment of Maitland Group South Africa Limited ("**Maitland**") invoices by the CoJ, despite the fact that the services provided pursuant thereto fell within the scope of responsibility set out in the applicable Portfolio Management Agreement ("**PMA**") and should not have been charged for and billed to the CoJ separately. The costs for the limited services rendered by Maitland ought to have been billed, charged to and recovered from Regiments. Instead, you allowed Regiments to pass on, recoup, or recover, from the CoJ the costs invoiced by Maitland to Regiments; and/or.



13.2 You authorised, and/or allowed, the payment of Maitland invoice in the sum of R45 600.00 (VAT Inc.) for the transition from Dibanisa to Maitland, despite the CoJ being under no contractual or legal obligation to make such payment.

14 Count 9

14.1 During May 2018, you allegedly failed to inform Regiments of their breach of the provisions of the PMA when you became aware of their failure to provide the CoJ with the funds required for the redemption of the scheduled COJ04.

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15 Count 10

15.1 For the duration of 2009, 2010 – 2013, you further failed to prevent Regiments from double dipping, alternatively, you failed to ensure that Regiments complied with the Local Government: Municipal Finance Management Act, 56 of 2003 (“**MFMA**”): Investment Regulations (“**MFMA Regulations**”), PMA and the CoJ: Treasury Policy dealing with the disclosure of commission and fees earned by Regiments on the CoJ Transactions with Nedbank and Denel.



16 Count 11

16.1 You allegedly caused the CoJ to incur unnecessary costs by continuing to allow the Sinking Fund to hold the CoJ bonds which resulted in Regiments charging the CoJ fees for holding the CoJ bonds in circumstances wherein it made no business or financial sense whatsoever for the Sinking Fund to hold the CoJ bonds.

B. CHARGE 2 MISCONDUCT: ACTING WITHOUT NECESSARY AUTHORITY, alternatively MISREPRESENTATION

17 Count 1

17.1 On or about 5 April 2011, you signed off a R1 000 000 000.00 Nedbank Limited swap deal slip, without the necessary authority to do so, and despite the fact you are/were not an authorised trader. Despite the fact that, at the time when you signed off the

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swap deal slip, you were not an authorised trader, you signed under the designation of an authorised trader.

C. CHARGE 3 GROSS DISHONESTY, ALTERNATIVELY BREACHING ITEM 4(2)(C) OF THE CODE

18 Count 1

18.1 During the period 2010 to 2017, without having obtained prior consent of the CoJ Council, you conducted and engaged in your own private businesses other than the work of the Council and in certain instances you engaged in the following specific acts of misconduct-



- 18.1.1 engaged in private/remunerative work, other than the work of the CoJ, during normal working hours; and/or
- 18.1.2 used the CoJ's property for your own private business and personal use.

D. CHARGE 4: GROSS DISHONESTY IN THAT YOU ALLEGEDLY FAILED TO DECLARE YOUR BUSINESS INTERESTS AND A CONFLICT OF INTEREST

19 On or about September 2013 you jointly tendered for a bid using your consulting business Marang a Medupe in collaboration, or partnership with BnP Capital (Pty) Ltd ("**BnP Capital**") and failed to recuse yourself from conducting the going concern analysis of the A602 tender during October 2015. You failed to declare your conflict of interest in BnP capital in relation to the A602 evaluation process.

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E. CHARGE 5: CONTRAVENTION OF THE STANDARD CONDUCT OF THE COLLECTIVE AGREEMENT

20 You allegedly contravened clauses 1.2.3 and 1.2.5 of the Standard of Conduct of the Collective Agreement in that, in committing the aforementioned acts of misconduct and/or gross misconduct, you have failed to perform your tasks and job responsibilities diligently, carefully and to the best of your ability, conduct yourself with honesty and integrity.



SIGNATURE OF EMPLOYER REPRESENTATIVE

Date: _____

I, **Sefotle Modiba**, hereby acknowledge receipt of the notice (charge sheet) to attend a disciplinary hearing.

SIGNATURE OF EMPLOYEE

Date: _____

Time: _____

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To be completed where the accused employee refuses to sign the above form:

Sefotle Modiba has been informed verbally of the allegations, the disciplinary hearing arrangements, and his rights as set out above.

SIGNATURE OF WITNESS:

NAME: _____

DATE: _____

TIME: _____



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