

LITIGATION PROCEDURE MANUAL FOR 2025/2026

FY



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CONTENTS

Topic	Pages
Preamble.....	03
PART A: Vision, Mission and Values.....	03
PART B Definitions.....	04
1. Purpose of the manual	04
2. Scope of Application.....	05
3. Legislative Framework.....	05
4. Steps to be followed.....	05
5. Receipt of Claim by the Municipality.....	06
6. Assignment of Cases.....	06
7. Acknowledgement of the Matter.....	06
8. Preliminary Report.....	07
9. Discovery Documents.....	07
10. Budget of the Claim.....	08
11. Reports.....	08
12. Trial.....	08
13. Final Report.....	09
14. Settlement Authority.....	09
15. Civil Litigation: Defended and Undefended matter.....	09 - 13
16. Information required from official Concerned.....	13
17. Claims against State Officials Following Loss of Treasury.....	14 -15
18. Legal Opinion/s.....	15 -16
19. Criminal Matter/s.....	16 -17
20. Garnish Orders and Emolument Attachment Orders.....	17 -18
21. Administration Orders.....	18
22. Transitional Arrangements/Reviewal of the Manual.....	19

PREAMBLE

WHEREAS Mbhashe Local Municipality has been inundated with lots of litigation cases against it; which some of them dates back as far as 2009;

AND WHEREAS the Mbhashe Local Municipality committed to the progressive realization of the Constitutional mandate, Municipal Finance Management Act's mandate in the provision of Basic Services delivery;

NOW THEREFORE BE IT ENACTED by the Mbhashe Local Municipality the Procedure Manual as follows:

PART A

1. VISION, MISSION AND VALUES OF THE MUNICIPALITY

VISION

A municipality that excels in promoting social cohesion stimulates economic growth and sustainable development.

MISSION

By becoming an effective and efficient municipality with accountable leadership that is able to involve communities in the provision of quality services.

VALUES

We adhere to the following values and ethics that uphold the

Constitution of the Republic of South Africa through:

- Commitment
- Accountability

8. PRELIMINARY REPORT

8.1 The Legal Manager within ten (10) days must consult the Senior Manager of the affected department and further consult the affected employees;

8.1 The office of the Legal Manager must have consultation with the instructed firm in the Panel of Attorneys and where possible be accompanied by the Senior Manager of the affected department or where the Legal Manager deems fit, by the employee assigned by the Senior Manager;

8.2 The report must also be produced during meeting and/ or consultations with relevant directorates regarding the merits of the case;

8.3 The Legal Manager must either make a verbal or written report to both the Municipal Manager and the Senior Manager regarding the merits of the case;

8.4 Such a report will assist the municipality in deciding whether to settle or actively litigate or defend the matter.

9. DISCOVERY OF DOCUMENTS

9.1 The municipality must make sure that all relevant documentations are available when required; Prescripts relating to record management should be followed

9.2 Courts require original documents and it is important that the municipality must keep all the original documents safely;

9.3 All information and/ or documents relating to the matter at hand remain documents or information of the municipality.

10. BUDGET OF THE CLAIM

10.1 terms of the Municipal Finance Management Act (MFMA), Municipality are required to submit financial statements with regard to contingent liabilities. This enables the municipality to know the estimated amount of money or budget, which it can settle either through court order or through settlement between the Parties. Legal Manager in consultation with the CFO and Municipal Manager shall be able to determine the budget of the claim concerned.

11. REPORTS

Legal Manager should request monthly reports from Panel of Attorneys and forward same to the office of the Municipal Manager. The report must clearly inform the Municipality with regards to merits of the case, any shortcomings if any and the recommendation/ s.

12. TRIAL

12.1 Before the trial of the case, Legal Manager should not later than (30) thirty days of the hearing, request the Panel of Attorneys or Counsel handling the matter to provide merit report;

12.2 Such a report shall consist of the following:

12.1.1 Assessment of the merits of the case;

12.1.2 The verdict/ finding value assuming full liability;

12.1.3 List of possible witnesses;

12.1.4 Status of settlement negotiations, if any

defend the matter. This will enable the municipality to settle some fake claims by members of the community.

17. CLAIMS AGAINST STATE OFFICIALS FOLLOWING LOSS OF TREASURY COVER: REFERENCE TO REGULATION 12 OF TREASURY REGULATIONS.

An official of the municipality may during the normal cause and scope of work commit an act or omission, which could attract liability by the Department. This happens when a third party got injured either emotionally or physically as a result thereof. In case the above situation occurred the following should be followed:

- (a) opinion to determine whether the treasury cover has been lost or not;
- (b) Legal opinion should be able determine if the employee lost the Treasury cover or not. Legal manager should also be required to provide for option/ s to be followed if any;
- (c) It should also advice if loss should be recovered from employee or not;
- (d) Panel of Attorney will be instructed to defend the municipality in any case where the employee/ s of the municipality found to be wanting or at the wrong side of the law for something happened while on duty or while executing his her official responsibilities;
- (e) An official/ s should be given an opportunity to make representations why loss should not be recovered

from him or her in case it decided that loss suffered should be recovered from the employee/s;

18. LEGAL OPINION/S

It is the duty of the Legal Manager to furnish the municipality with written legal opinion/s as and when requested in order to meet the municipality' strategic objectives. Therefore, it is upon all officials within the municipality to forward all requests for the drafting of legal opinion/ s to Legal Services for the attention of and for further handling through the office of the Municipal Manager . The request for legal opinion should be in writing and must contain the following information:

- (a) Background information, which must be clear and concise;
- (b) Statement by the official/ s concerned from the relevant Directorate;
- (c) Legal issues to be looked at and the implications thereof;
- (d) Whether the services Of independent expert/ s should be required;
- (e) Clear and concise instruction to legal services is a requirement;
- (f) Private matter/ s should be disregarded/ referred back to official concerned; unless the issue in question is not clear;

- (g) Any other information which in the opinion of the sender will be of assistance should be submitted;
- (h) Upon receipt by the Legal Services, an acknowledgment receipt should within three days be drafted and sent to the sender;
- (i) The timeframe for legal opinion is (07) seven days from the date of the receipt of the request unless the matter is so complex that it needs some form of expertise.

19 CRIMINAL MATTERS

19.1 The Municipal employees who appear at criminal Courts after committing certain criminal offences whilst acting within the cause and scope of their employment will be represented by the Municipality. Municipal employees commit many of the offences by making use of Municipal properties and machineries e.g. Municipal vehicles, assault others, issuing defamatory statement while on duty and or omitted to do what is required while in Municipal property etc.

19.2 In this instances, it needs to be determined whether such official/s has lost treasury cover or not and if he/she does, then the official will pay for the costs of his legal representative out of his or her own pocket and the Municipality will not assist him or her financially;

19.3 Where the official/ s acted within the course and scope of his or her employment on the alleged day and time and the incident resulted in the damages sustained by a third party, office of the Legal Manager shall if the matter warrants to be settled, advise the

Municipality to settle same by offering the most reasonable amount in full and final settlement of the matter.

19.4 Where the official/s acted within the course and scope of his or her employment on the alleged day and time and the incident resulted in the damages sustained by a third party, Legal Manager shall if the matter warrants to be settled, advise the Municipality to settle same by offering the most reasonable amount in full and final settlement of the matter.

19.5 Upon receipt of the notification, Legal Manager shall within a period of forty eight hours (48) hours instruct Panel of Attorneys to handle the matter for and on behalf of the employee concerned. The letter of instruction to Panel of Attorneys must be accompanied by all relevant documents to assist in the process.

19.6 Panel of Attorneys shall keep Legal Manager abreast of any developments in the matter.

19.7 Panel of Attorneys have discretion to appoint correspondent attorneys to represent such an employee ; Panel of Attorneys , in consultation with the Legal Manager shall appoint correspondent attorneys as per the court rules.

19.8 **In complex matters which needs services of Counsel , the Panel of Attorneys must request consent from the Legal Manager to appoint Counsel**

20. GARNISHEE ORDERS AND EMOLUMENTS ATTACHMENT ORDERS

PROCESSES:

- 20.1 Human Resources unit received the order [Court Order] from Sheriff of the Court;
- 20.2 Human Resources unit should notify the affected Employee about the order before implementing it;
- 20.3 Salary section should issue within ten (10) days of the receipt of the order issue out an acknowledgement of receipt letter of the order to the attorneys of the Creditor (s);
- 20.4 Salary unit should within a period of ten (16) days refer the matter to Legal Manager for verification and the authenticity of the court order/s in question;
- 20.5 Legal Manager shall within a period of fourteen (14) after receipt of the referral advise Human Resources unit (Salary) whether to process garnish or not depending on the means of verification found;
- 20.6 Legal Manager to issue out a communiqué to Human Resources section to implement the garnishee order after verification.

21. ADMINISTRATION ORDERS

- 21.1 Administration order is when the estate of the employee is being administered by a neutral person or a company. The employee gave consent to the Panel of attorneys to administer the estate on his or her behalf;
- 21.2 There is no garnishee order to be implemented where employee is under administration order;

21.3 Salary section should within a period of five (05) days notify the creditor (s) about the administration order status and provide the creditors with contact details of the said administrator(s) . [PAJA compliant]

22. TRANSITIONAL ARRANGEMENTS

22.1 This Procedure Manual shall become effective on the date of the approval by the Council

22.2 The procedure manual shall be reviewed annually.