

**IN THE HIGH COURT OF SOUTH AFRICA  
EASTERN CAPE DIVISION, GRAHAMSTOWN**

CASE NO. 778 / 2019

**Before the Honourable Madam Justice Beshe  
Grahamstown, Thursday 6 June 2019**

In the matter between:

<b>GRAHAMSTOWN BUSINESS FORUM (NPC)</b>	First Applicant
<b>THE GRAHAMSTOWN RESIDENTS ASSOCIATION</b>	Second Applicant
<b>BEER PROPERTIES (PTY) LIMITED</b>	Third Applicant
<b>PINZON TRADERS 8 (PTY) LIMITED</b>	Fourth Applicant

- and -

<b>ESKOM HOLDINGS SOC LIMITED</b>	First Respondent
<b>NATIONAL ENERGY REGULATOR SOUTH AFRICA</b>	Second Respondent
<b>MAKANA MUNICIPALITY</b>	Third Respondent
<b>THE EXECUTIVE MAYOR OF MAKANA MUNICIPALITY <i>NOMINE OFFICIO</i></b>	Fourth Respondent
<b>THE MUNICIPAL MANAGER OF MAKANA MUNICIPALITY <i>NOMINE OFFICIO</i></b>	Fifth Respondent
<b>NATIONAL TREASURY</b>	Sixth Respondent
<b>THE MINISTER FOR COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS</b>	Seventh Respondent
<b>THE MEC FOR COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, PROVINCE OF THE EASTERN CAPE</b>	Eighth Respondent

**DRAFT ORDER**

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Having heard Mr I J Smuts SC and Mr G Brown, counsel for the applicants, and Mr S L Shangisa and Ms L Rakgwale, counsel for the first respondent, and having read the papers filed of record,

**IT IS ORDERED:**

1. That the acknowledgement of debt and payment agreement (referred to collectively as "the payment agreement") reached between the first respondent ("Eskom") and third respondent ("Makana Municipality") and attached hereto marked "A" is made an order of this court;
2. That the review proceedings to implement interruptions in the electricity supply to Makana Municipality of 2 April 2019 and as published in notices on 14 March 2019 in the Herald and Daily Dispatch newspapers is postponed *sine die*;
3. That Eskom undertakes to supply electricity to Makana Municipality in the ordinary course, provided that Makana Municipality complies with the payment agreement (and excepting load shedding as may be scheduled nationally from time to time);

4. That Makana Municipality is ordered to comply with the conditions contained in the payment agreement;
5. That Makana Municipality is ordered to deliver written notice, on affidavit, to this Court, the applicants (through their attorneys of record) and Eskom (through its attorneys of record) on or before the 8<sup>th</sup> day of each month indicating and providing evidence of its compliance with its obligations under the payment plan, and its monthly current account obligations to Eskom;
6. That Makana Municipality and the fourth and fifth respondents are ordered to nominate by name and designation, within 7 days of the granting of this order, the responsible person(s), by name, and designation, who are mandated to ensure compliance with the terms of this order and give effect thereto, by giving written details of such person's name (or such persons' names) and such person's designation (or designations) to this Court, to Eskom (through its attorneys of record) and to the applicants (through their attorneys of record);
7. That Makana Municipality is ordered to report to this Court on affidavit and to the applicants (through their attorneys of record) and to Eskom (through its attorneys of record) before the last business day of every second month after the granting of this order, furnishing full and comprehensive details as to the manner of such compliance with paragraphs 4 and 5 of this order;

8. That Makana Municipality is ordered to pay the applicants' costs of suit, (Wheeldon Rushmere & Cole Inc), and Eskom's costs of suit (Netteltons and Smith Tabata), such costs to include the costs of two counsel on an opposed basis .

BY ORDER OF COURT

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COURT REGISTRAR

" A "



## MAKANA MUNICIPALITY

### ACKNOWLEDGEMENT OF DEBT AND PAYMENT PLAN AGREEMENT

#### 1. INTRODUCTION

It is recorded that:






- 1.1 Eskom Holdings SOC Ltd ("Eskom") is currently supplying Makana Local Municipality ("the Municipality") with bulk electricity in terms of the Electricity Supply Agreement ("ESA"), entered into between Eskom and the municipality on or about the 20<sup>TH</sup> June 2004.
- 1.2 The Municipality acknowledges that it is truly and lawfully indebted to Eskom for electricity supplied in terms of the ESA and undertakes to pay Eskom as detailed in this Acknowledgement of Debt and Payment Plan Agreement ("the Agreement").
- 1.3 The Municipality also acknowledges that the terms and conditions set out herein below shall regulate and govern the repayment of all and any monies due, owing and payable to Eskom arising out of the Municipality's indebtedness to Eskom.
- 1.4 The Municipality acknowledges that, in addition to the arrear payments set out in clause 4 below, it undertakes to make timeous monthly payments on its current account as contemplated in the ESA.

#### 2. PERIOD OF AGREEMENT

- 2.1 Notwithstanding the last signature hereof, this Agreement shall become effective on 06 June 2019 and shall remain in force until the Municipality has paid Eskom in full the amounts as set out in clause 4 below.

#### 3. DEBT ACKNOWLEDGEMENT

- 3.1 The Municipality acknowledges that as at 31 May 2019 it is truly and lawfully indebted to Eskom in the sum of **R44 156 057.49 (Forty Four Million One Hundred and Fifty Six Thousand and Fifty Seven Rand and Forty Nine Cents)** including VAT and accumulated interest compounded monthly to 3<sup>1st</sup> May 2019 for electricity supplied to the Municipality.

 K.N.  
  
 M.V.  
 M.G.M.  


#### 4. REPAYMENT





- 4.1 The Municipality hereby undertakes to pay the Debt as follows:
- 4.1.1 R7 000 000.00 before end December 2019
  - 4.1.2 R7 000 000.00 before end March 2020;
  - 4.1.3 R7 500 000.00 before end December 2020;
  - 4.1.4 R7 500 000.00 before end March 2021
  - 4.1.5 R7 500 000.00 before end December 2021
  - 4.1.6 R7 656 057.49 before end March 2022
- 4.2 Subject to sub-clause 6.1 below, the Debt **shall not bear any interest after the date** on which the last interest was calculated as indicated in clause 3 above.
- 4.3 It is specifically recorded that the Municipality retains the right to repay the Debt in full at any given time during the period contemplated in sub-clause 4.1 above.
- 4.4 A certificate under the signature of a duly authorised employee of Eskom (whose authority as such need not be proved by Eskom) or by any professional practising accountant who is engaged by Eskom setting out the amount due and payable by the Municipality at any time in terms of this Agreement, shall be sufficient and prima facie proof of the Municipality's debt.
- 4.5 The Municipality shall pay the Debt to Eskom free of exchange and without any deduction or set-off.

#### 5 CURRENT ACCOUNTS

- 5.1 The Municipality acknowledges that its undertaking herein does not absolve it from any of its obligations in terms of the ESA, including its obligation to pay all the current accounts timeously and as and when they become due and payable in terms of the ESA.

#### 6 DEFAULT

- 6.1 Should the Municipality default in the payment of any one of the amounts as set out in sub-clause 4.1 above and/or default in the payment of any current account, or it enters into a compromise with creditors, the Municipality hereby consents to judgment being taken against it and the following shall apply:
- 6.1.1 the full balance owing on the Debt at the relevant time shall become due and payable immediately; and shall bear interest, compounded monthly from the date on which the last interest was calculated as indicated in clause 3 above, at a rate per annum equal to the prevailing prime rate charged by First National Bank of Southern Africa Limited in South Africa plus 2,5%;

 K.N.  M.V.  N.G.M. 

- 6.1.2 Eskom may without further notice take whatever legal remedies available to it including disconnection of supply of electricity to the Municipality; and
- 6.1.3 Eskom shall be entitled in such event to forthwith make the Agreement an order of court and to obtain judgment against the Municipality.
- 6.2 The Municipality undertakes to pay on an attorney and client scale, all legal costs and expenses incurred in making demand for, or suing for the recovery of the capital and interest or any portion thereof and the cost of the execution of any judgement and in general all the costs which Eskom may incur in connection herewith.

## 7 RENUNCIATION OF BENEFITS

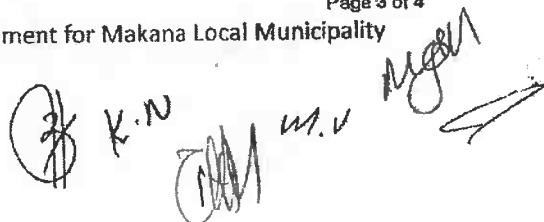
- 7.1 The Municipality renounces the benefits of the legal exceptions that there was no cause for the Debt and that there was an error in calculations and the Municipality declares itself to be fully acquainted with the meaning, force and effect of such renunciations.

## 8 GENERAL

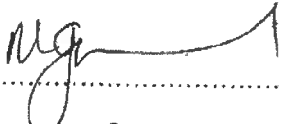
- 8.1 This Agreement constitutes the sole record with respect to the indebtedness of the Municipality to Eskom.
- 8.2 No addition to or variation or cancellation hereof shall be of any force or effect unless agreed to in writing by Eskom and the Municipality.
- 8.3 No indulgence which Eskom may grant to the Municipality in respect of the terms of this Agreement shall constitute a waiver or novation of any of the past or future rights of Eskom and Eskom shall not thereby be precluded from exercising any rights against the Municipality which may have arisen in the past or which might arise in the future.
- 8.4 The Parties agree that save for the express changes set out and agreed to in this Agreement, all the terms of the ESA remain intact, and all terms set out therein shall apply to this Agreement.

## 9 WARRANTY OF AUTHORITY

- 9.1 The Municipality hereby warrants that at the time of execution of this Agreement it has obtained all the approvals and/or consents required under any of its empowering legislations and has taken all necessary action to authorize its signatory to bind it in terms of this Agreement.

Handwritten signatures and initials, including 'K.N.', 'M.V.', and a signature that appears to be 'M. V. M.'.


SIGNED for and ON BEHALF of the Municipality by the signatory below, who warrants that he/she is duly authorized on 05/06/2019 2019.



NAME: RIANA MEIRING.

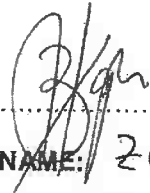
TITLE: ACTING MUNICIPAL MANAGER.

AS WITNESSES

1. 

2. 

SIGNED for and ON BEHALF of Eskom by the signatory below, who warrants that she/he is duly authorised on 06/06/2019 2019.



NAME: ZUHDI HAMZA

TITLE: SENIOR MANAGER, CUSTOMER SERVICES OPERATIONS

AS WITNESSES

1. 

2. 