



## Overview of the Challenges Affecting the Accountability of the Municipal Manager in Mahikeng Local Municipality

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**Abstract:** Accountability is one of the important principles and values for the proper and effective management of municipalities in the local government in South Africa. This article provides an overview of the challenges affecting the accountability of the municipal manager in Mahikeng local municipality. The article identifies the failure to account, the failure to comply with the legislative framework for accountability, the lack of compliance with the ethical standards, the municipality having too many creditors, the failure to follow proper communication channels as some of the challenges affecting the accountability of the municipal manager in the Mahikeng local municipality. These challenges have affected the effective service delivery in the Mahikeng local municipality. To this end, the authors argue for enhancing the enforcement approaches and compliance with the relevant laws and prescripts in order to curb the irregular, unauthorised, wasteful and fruitless expenditure in the Mahikeng local municipality.

**Keywords:** accountability, local government, municipal manager, socio-economic development, transparency.

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## 1. Introductory Remarks

Accountability entails that the municipal manager and the municipal council have a responsibility to be answerable to the community of Mahikeng area for the performance of their duties (Dowdle, 2006, p. 3; Van der Nest, Thornhill & Dejager, 2008, p. 546). This follows the fact that the municipal council is entrusted with, among others, the management of the municipal funds and budget for the benefit and on behalf of the people of Mahikeng area (Bekker, 2009, p. 15; Mahikeng Local Municipality, 2017, p. 6). It is the municipal council's constitutional obligation to ensure that Mahikeng local municipality strives within its financial and administrative capacity to achieve its objectives to provide for a democratic and accountable government for local communities, to promote social and economic development and to ensure the sustainable provision of services to communities (see s 152 of the Constitution of the Republic of South Africa, 1996, "the Constitution of South Africa"; also see Mofolo & Adonis, 2021, p. 1). The main objective of the Municipal Finance Management Act 56 of 2003 ("MFMA", see s 2) is to ensure sound and sustainable management of the financial affairs of municipalities, including the Mahikeng local municipality. The MFMA read together with the Municipal Systems Act 32 of 2000 ("Systems Act", see ss 4-6) and the Municipal Structures Act 117 of 1998 ("Structures Act", see s 18) clarify the responsibilities and duties of the municipal council, municipal manager, and other municipal officials. The Systems Act provides that the municipal council has a duty to ensure that municipal services are provided to the community in an accountable and transparent manner (see s 4(2)(b) & (d) of the Systems Act; see further Mantzaris, 2014, p. 82). The municipal manager is assigned by the municipal council the duties and responsibilities of handling municipal finances and providing basic services to the Mahikeng local community (see s 55(1)(a)(i) of the Systems Act; also see s 60 MFMA; see also Joubert & Faris, 2008, p. 150). Furthermore, the municipal manager for Mahikeng local municipality must be held accountable for municipal finances and the lack of delivery of basic services by the municipal council and the community of Mahikeng (see s 55(1) of the Systems Act; also see s 60 of the MFMA; see also Mokgopo, 2016, p. 67). The reason for this is that the municipal manager is the accounting officer and the head of administration of the municipality (see s 54A of the Systems Act; also see s 60(a) of the MFMA; see also Thornhill, 2008, p. 731). The municipal manager must ensure that every income and expenditure in the municipality is accounted for.

It is important to note that a municipality would not be able to perform its functions in a controlled manner if it did not have a proper legislative framework and basic administration and management personnel to run its administration (Bruwer & Rossouw, 2019, p. 49). However, there are gaps and flaws within the basic administration and management of personnel to run its administration. Legislation such as the MFMA is not properly implemented and enforced, which results in a lack of accountability. There is no proper implementation of the MFMA owing to the fact that the municipal manager failed to prevent the irregular, unauthorised, wasteful and fruitless expenditure in the municipality. No investigations were conducted to hold anyone liable for that irregular, unauthorised, wasteful and fruitless expenditure in the municipality (see ss 62-65 of the MFMA; also see Mathiba, 2019a). To this end, this article provides an overview of the challenges affecting the accountability of the municipal manager in Mahikeng local municipality. The article identifies the failure to account, the failure to comply with the legislative framework for accountability, the lack of compliance with the ethical standards, the municipality having too many creditors, the failure to follow proper communication channels as some of the challenges affecting the accountability of the municipal manager in the Mahikeng local municipality (Ndevu & Muller, 2017, p. 16). These challenges have affected the effective service delivery in the Mahikeng local municipality. Accordingly, it is submitted that there is a need for ensuring enforcement and compliance with the ethical standards and the MFMA in order to enhance service delivery and deal with challenges affecting the accountability of the municipal manager in the Mahikeng local municipality. The authors submit that this approach could help in curbing and/or preventing the irregular, unauthorised, wasteful and fruitless expenditure in the Mahikeng local municipality.

## **2. Challenges Affecting the Accountability of the Municipal Manager**

### **2.1. Failure to Account**

The municipal manager for Mahikeng local municipality is the accounting officer of the municipality, and as such, he or she must carry out the duties and functions of an accounting officer (see s 54A of the Systems Act; also see s 60(a) of the MFMA; see also Thornhill, 2008, p. 731; see further Bruwer & Rossouw, 2019, p. 49). The municipal manager is required by the MFMA to prepare proper records for all the assets, liabilities, resources and finances of the Mahikeng local

municipality (see s 60(a) of the MFMA; also see Mathiba, 2019b, p. 63). This is to ensure that the municipality is able to provide services to the community within its financial capacity (s 152(2) of the Constitution of South Africa; also see Mazibuko & Fourie, 2013, pp. 133-134). The Mahikeng local municipality has been obtaining disclaimers and qualified opinions since 2013 to date. This is an indication that the municipal manager has been failing to be accountable for all the assets and liabilities of the municipality and has also been failing to provide the Auditor General with a fair presentation of accurate financial records of the municipality. Thus, the municipal manager for Mahikeng local municipal is failing to account for municipal assets and consequently to uphold the principles of good corporate governance in governing the affairs of the municipality (Beyers, 2015, p. 125).

## **2.2. Failure to Enforce the Legal Framework Governing the Administration of the Municipality**

The legislation governing the administration of the municipality is not adequately enforced in the Mahikeng local municipality. This follows the fact that the municipal manager and/or the municipal council are often not held accountable for municipal funds. The municipal manager is often not held accountable for failure to keep proper records of the municipality or failure to act with fidelity, honesty, and in the best interests of the municipality. Although legislation, such as the MFMA and Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings impose penalties on offences by the municipal officials, the municipality is often put under administration and the municipal manager suspended and does not face harsher or any penalties at all (see s 174 of the MFMA; also see *Pietersen v S* (A309/2017) [2019] ZAWCHC 93 118; *Maluleke v Greater Giyani Local Municipality and Others* (J3093/18) [2018] ZALCJHB 456; (2019) 40 ILJ 1061 (LC) (4 October 2018) paras 3 & 4). In most instances the municipal managers resign when investigations for fraud and corruption against them are being conducted, and thus escape accountability (*Karoo Hoogland Municipality v Nothnagel & Another* (CA07-14) [2015] ZALAC 57; (2015) 36 ILJ 2021 (LAC) para 2). Once the municipal manager has resigned the municipal council will not be able to hold him/her accountable. In this instance, the unconscionable conduct of the municipal manager will be imputed to the municipality. This means that all the irregular, unauthorized and fruitless and wasteful expenditure incurred by the municipality as a result of the municipal manager's conduct remain with the municipality. The adequate enforcement of the

legal framework governing the administration of the municipality in this instance will assist in enforcing accountability of the municipal manager to curb wasteful and fruitless expenditure.

In addition to the above, the municipal manager has failed to enforce the MFMA, which requires him/her to recover unauthorised, irregular, fruitless and wasteful expenditure from municipal officials liable for it unless such expenditure is written-off or declared irrecoverable by the municipal council following the investigations (s 32(2)(b) of the MFMA; also see Mofolo & Adonis, 2021, p. 3). There have not been sufficient measures adopted in Mahikeng local municipality to address material irregularities and ensure that those who commit financial misconduct are held accountable and are liable for such financial misconduct or material irregularities. The authors argue that the failure to enforce the legislative framework has affected ensuring that the municipal officials who are responsible for irregular, fruitless and wasteful expenditure are held accountable. Proper enforcement of the legal framework could have curbed the recurrence of irregularities and financial misconduct which has affected effective service delivery in the Mahikeng local municipality.

### **2.3. Lack of Ethical Behaviour/Non-Compliance with Ethical Standards**

The municipal manager for Mahikeng local municipality is expected to act with honesty, integrity, fidelity and in the best interest of the municipality in managing its financial affairs (s 195(1) of the Constitution of South Africa; also see s 61(1)(a) of the MFMA; see also Sibanda, 2017, p. 320). The municipal manager can achieve this by taking reasonable steps to ensure that the resources of the municipality are used effectively, efficiently and that unauthorised, irregular, or fruitless and wasteful expenditure and other losses are prevented (see s 62(1)(a) and (d) of the MFMA; also see Sibanda, 2017, p. 320; also see further related comments by Bruwer & Rossouw, 2019, p. 49). The municipal manager for Mahikeng local municipality must ensure compliance with legislation and conform to the highest standards of ethics. Unfortunately, the former municipal managers for the municipality did not uphold ethics in running the administration of the municipality. This is evidenced by the fact that, in 2014, the municipal manager was suspended following his failure to account for 1.5 billion that was an unauthorised and irregular expenditure incurred by the municipality over a single financial year (2013-2014) (see Mathiba, 2019b, p. 64; also see *Maluleke v Greater Giyani Local Municipality & Others* para 4). In 2018, another municipal manager

was suspended due to the Venda Building Society (VBS) scandal (SA Government, 2018). The said municipal manager took a unilateral decision to invest an amount of R 83 million in the VBS bank which was in contravention with the provisions of the MFMA. The municipal manager invested money into VBS mutual bank which was not registered as a bank in terms of the Banks Act 94 of 1990 (“Banks Act”, see s 11). This is an indication that the municipal manager did not follow internal control systems to guard against fraud, theft and financial mismanagement (s 67(1)(b) of the MFMA; also see Mokaeane, Moloi & Oksiutycz-Munyawiri, 2017, p. 382).

#### **2.4. Municipality Having too Many Creditors**

One of the major challenges is that any incoming municipal manager finds the municipality already having too many creditors and not being able to meet its obligations (Beyers, 2015, p. 125). The Mahikeng local municipality has too many creditors, such as Eskom and Sedibeng Water Board. As a result, the municipality is failing to settle its debts timeously, and this is in contravention with the MFMA (see s 65(1)(e) of the MFMA). In 2018, the Mahikeng local municipality owed Sedibeng Water Board an amount estimated above R 50 million (Mathiba, 2019b, p. 58). In 2017, the municipal manager admitted his inability to ensure consequence management in respect of the R 144 million illegal sales of land abandoned housing projects in Mahikeng (Mathiba, 2019b, p. 58; Department of Water & Sanitation, 2018). The authors argue that the municipal manager has to start implementing SCM policies with care. The municipal manager must ensure that municipal rates and taxes are collected from the community consistently to generate revenue. Failure to collect the municipal rates and taxes will result in the municipality not being able to settle its debts. Furthermore, the municipal manager has to ensure that municipal officials responsible for causing any unauthorised, irregular and fruitless and expenditures are held accountable and liable for such expenditures (s 32(2)(b) of the MFMA; also see Manyakaa, 2017, p. 501).

#### **2.5. Failure to Follow Proper Communication Channel**

The proper and effective accountability can be achieved through a shared responsibility within the Mahikeng local municipality among the municipal officials. This entails that the municipal council; municipal manager and the entire municipal officials must work together to achieve the constitutional obligations to

provide service delivery to the community of Mahikeng and to promote good governance (see s 195(1) of the Constitution of South Africa; also see Matlala & Uwezeyimana, 2020, p. 3). The major problem is that the municipal officials are not working together in Mahikeng local municipality. In the case of *Mahikeng Local Municipality v Famate Infocast (Pty) Limited* (CIV APP FB 11/2019) [2020] ZANWHC 24 (26 March 2020), there was no meaningful communication between the office of the municipal manager and the finance department.

### 2.5.1. Facts of the Case

During April 2007, the appellant, Mahikeng local municipality, invited interested parties to submit written proposals for a payment incentive scheme (*Mahikeng Local Municipality v Famate Infocast (Pty) Limited* para 2). On 25 May 2007, the respondent, Famate Infocast (Pty) Limited (Famate) submitted its proposal to Mahikeng local Municipality for the total costs of R1 725 000.00 (*Mahikeng Local Municipality v Famate Infocast (Pty) Limited* para 3). On 30 April 2008, the municipality issued a letter addressed to Famate, in which it accepted Famate's proposal (*Mahikeng Local Municipality v Famate Infocast (Pty) Limited* para 3).

The managing director of Famate held a meeting with the two officials of the finance department of the Mahikeng local municipality regarding the information needed and the way forward (*Mahikeng Local Municipality v Famate Infocast (Pty) Limited* para 3). Subsequent to that meeting, the director of Famate submitted the Service Level Agreement (SLA) to the Chief Financial Officer (CFO) of the Mahikeng local municipality (*Mahikeng Local Municipality v Famate Infocast (Pty) Limited* para 5). However, the SLA was never signed although no queries were received and despite follow-ups being made. Despite the fact that the SLA was not signed, Famate was given data on the resident's payment profile and was also given the list of Municipality's debtors to do the work (*Mahikeng Local Municipality v Famate Infocast (Pty) Limited* para 4). The director of Famate sought the intervention of the Mayor and that of the municipal manager, but the desired results were not achieved (*Mahikeng Local Municipality v Famate Infocast (Pty) Limited* para 5).

The municipal manager for Mahikeng local municipality refused to sign the SLA as he was not informed prior. This shows that there were no proper communication channels and procedures followed by the two officials to ensure that the municipal manager is informed about the purported contract between Famate and the Mahikeng local municipality. It is only the municipal manager who has the authority to sign the SLA. It was only at the end of the contract term that the

director of Famate approached the municipal manager for signature, who refused to sign the SLA as it was not communicated with him initially.

### **2.5.2. Legal Question**

The court, in the above-mentioned case, determined two issues. Firstly, the court had to determine whether a contract exists between the Mahikeng local municipality and Famate (*Mahikeng Local Municipality v Famate Infocast (Pty) Limited* para 13). Secondly, whether there was fictional fulfilment (*Mahikeng Local Municipality v Famate Infocast (Pty) Limited* para 13). This article does not discuss the issue of fictional fulfilment as it is not relevant in this regard.

### **2.5.3. Court's Findings**

The appeal was upheld, and the Plaintiff's claim was dismissed with costs as the court found that no agreement exists between Mahikeng local municipality and Famate (*Mahikeng Local Municipality v Famate Infocast (Pty) Limited* para 24). The municipal manager did not sign the SLA, therefore, no contractual relationship could exist without the existence of the SLA (*Mahikeng Local Municipality v Famate Infocast (Pty) Limited* para 17).

### **2.5.4. Rationale**

The court interpreted the Public Finance Management Act 1 of 1999 ("PFMA", see 38(1)(1)(f)) which states that only the accounting officer can enter into contracts for and on behalf of the Mahikeng local municipality. The authors agree that the accounting officer is the head of administration of the municipality and he or she must ensure that all contractual obligations within the municipality are settled within the prescribed or agreed period (see s 65(1) & (2)(e) of the MFMA; see also s 38(1)(f) of the PFMA). Mr Smit, who was the then municipal manager for Mahikeng local municipality, testified that he did not enter into a contract with Famate (*Mahikeng Local Municipality v Famate Infocast (Pty) Limited* para 19). The MFMA stipulates that an agreement procured through the SCM system of a municipality must be in writing and must stipulate the terms and conditions of the agreement (see s 116(1) of the MFMA). The court held that the language of the *latter* section of the MFMA is clear and unambiguous (see s 116(1) of the MFMA). It is imperative that a contract for procurement of goods and services concluded by a municipality must be in writing and must stipulate the terms and conditions as set out in this piece of legislation. These provisions are peremptory and mandatory. An agreement which fails to comply with this provision is invalid and unlawful (*Mahikeng Local Municipality v Famate Infocast (Pty) Limited* para 20). The



reliance on an oral agreement concluded between the parties is bad in law, because it does not comply with the legislature prescripts. This destroyed the case of Famate. This is because the case pleaded by Famate in its amended particulars of claim is based on an oral agreement entered into between Mr Mametja on behalf of Famate and Ms Modibela and Mr Mphologela on behalf of the Municipality (*Mahikeng Local Municipality v Famate Infocast (Pty) Limited* para 20).

The director of Famate testified that he did not communicate initially with Mr Smit in order to ask him to sign the SLA and that Mr Smit refused to sign it (*Mahikeng Local Municipality v Famate Infocast (Pty) Limited* para 22). The court held that municipal manager was the only relevant official of the Municipality that could sign the SLA (*Mahikeng Local Municipality v Famate Infocast (Pty) Limited* para 22). Therefore, any consultations and/or negotiations with other officials of the Municipality do not help Famate's case at all. These officials could not sign the SLA and bind the Municipality to a contract. No evidence was presented that Mr Smit, who had the authority to sign the SLA and bind the Municipality contractually frustrated the signing of the SLA (*Mahikeng Local Municipality v Famate Infocast (Pty) Limited* para 22).

### **2.5.5. Case Analysis**

The authors are of the view that, even though the court ruled in favour of the Mahikeng local municipality, it is apparent that there was no meaningful communication between the office of the CFO and the office of the municipal manager (see s 81(2) of the MFMA). This is due to the fact that the office of the CFO accepted proposals from the Famate Company and did not inform the municipal manager. The CFO also received the SLA drafted by the Famate director, but they did not inform the municipal manager regarding same. Furthermore, the Famate Company also rendered the services to the Mahikeng local municipality, but the municipal manager did not have knowledge of such. The CFO cannot enter into contracts without the knowledge of the municipal manager as the accounting officer of the municipality (s 78(1)(a) of the MFMA; also see ss 53, 55 & 81 of the Systems Act). The CFO acts under delegated powers to advise and assist the accounting officer in carrying out a wide range of financial responsibilities (see s 63 of the Systems Act; see also s 81(1) of the MFMA). Such financial responsibilities include *inter alia* financial reporting, budget planning and monitoring implementation plan for internal and external audit recommendations (see s 81(1)(d)-(e) of the MFMA; also see Mathiba, 2019b, p. 37). The relevance of this case is to demonstrate that the miscommunication of municipal officials and

the accounting officer will cause unnecessary consultations and litigation, which cause the municipality to incur unnecessary expenses. This also shows that there are municipal officials who enter into oral agreements or promise people tenders in the municipality. In the labour court case of *Mafikeng Local Municipality v South African Local Government Bargaining Council and Others* (JR 668/10) [2011] ZALCJHB 157 (8 July 2011), the claimants were informed that they should report for duty whereas the municipal manager never approved their appointments. The claimants were not presented with any offers of employment, and no details pertaining to their appointment were agreed upon. The court dismissed the claim of the claimants in that the municipal manager did not approve their appointments and no employment relationship existed between the municipality and the claimants (*Mafikeng Local Municipality v South African Local Government Bargaining Council and Others* para 9). In the absence of an employment relationship, no unfair labour practice or dismissal could occur (*Mafikeng Local Municipality v South African Local Government Bargaining Council and Others* para 9). The authors argue that the matter ended up in the labour court because of a lack of communication in the municipality. The claimants were informed that they should report to work without the municipal manager's approval, and this was termed to be an administration error (*Mafikeng Local Municipality v South African Local Government Bargaining Council and Others* para 3).

### **3. Consequences for Lack of Accountability of Municipal Manager for Mahikeng Local Municipality**

The municipal manager for Mahikeng local municipality commits an act of financial misconduct if he or she deliberately or negligently contravenes a provision of the MFMA (see s 171(1)(a) of the MFMA; also see *Mndebele v Govan Mbeki Municipality & Others* (775/2021) [2021] ZAMP MHC 9 25; *Louis Nothnagel v Karoo Hoogland Municipality & 2 Others* (C431-12) [2012]). The municipal manager for Mahikeng local municipality commits an act of financial misconduct if he or she deliberately or negligently fails to comply with a duty imposed by a provision of the MFMA (see s 171(1)(b) of the MFMA; also see *Mndebele v Govan Mbeki Municipality & Others*; see also *Louis Nothnagel v Karoo Hoogland Municipality & 2 Others*). The municipal manager commits an act of financial misconduct if he or she deliberately makes or permits or instructs another official of the municipality to make any unauthorised, irregular or fruitless and wasteful expenditure (see s 171(1)(c) of the MFMA; also see *Mndebele v*

*Govan Mbeki Municipality & Others*). The municipal manager must be accountable for all the financial administration of the Mahikeng local municipality and take all reasonable steps to prevent the unauthorised, irregular, fruitless and wasteful expenditures from occurring in the municipality (see related comments by Bruwer & Rossouw, 2019, p. 49). One of the factors that cause the Mahikeng local municipality to be faced with financial difficulties is financial misconduct and lack of accountability by the municipal manager. Consequently, the Auditor General indicated in 2018-2019 report that there is an unauthorised, irregular, fruitless and wasteful expenditure in Mahikeng local municipality.

The CFO for a municipality commits financial misconduct if he or she deliberately or negligently provides incorrect or misleading information to the accounting officer (see s 171(2)(d) of the MFMA; also see *Mndebele v Govan Mbeki Municipality & Others*). The CFO commits an act of financial misconduct if he or she fails to carry out the duties delegated in terms of the MFMA (see s 79 & 81(1)(e) of the MFMA; also see Sibanda, 2017, p. 321). The CFO of the Mahikeng local municipality is accountable to the municipal manager and must assist the municipal manager to implement the municipality's budget as he is administratively in charge of the municipal budget (see s 81(1)(a)-(b) & (2) of the MFMA; also see related comments by Sibanda, 2017, p. 321). The CFO further commits an act of financial misconduct also if he or she permits or instructs another official of the municipality to make any unauthorised, irregular or fruitless and wasteful expenditure (see s 171(2)(c) of the MFMA; also see Sibanda, 2017, p. 321; see also Mokaean, Moloi & Oksiutycz-Munyawiri, 2017, p. 382). The CFO plays an essential role in the municipality, and the municipal manager relies on the information provided by the CFO with respect to the municipal budget (see s 81(1)(a) of the MFMA; also see Sibanda, 2017, p. 321; see also Mokaean, Moloi & Oksiutycz-Munyawiri, 2017, p. 382).

The MFMA provides that the municipal manager is guilty of an offence if he or she fails to comply with the Act, and to take reasonable steps to implement the Supply Chain Management Policy (see s 173 of the MFMA; also see *Mndebele v Govan Mbeki Municipality & Others*; see also *Samwu obo Members & Further Applicants v Thaba Chweu Local Municipality & Another* (J2106-2013) [2015] ZALCJHB 31). The municipal manager is guilty of an offence for failing to take reasonable steps to prevent unauthorised, irregular, fruitless and wasteful expenditure or fails to take reasonable steps to prevent corruptive activities in the management of municipal assets (see s 173 (1)(a)(iii) & (iv) of the MFMA; also see *Louis*

*Nothnagel v Karoo Hoogland Municipality & Others* para 9). The municipal manager is guilty of an offence if he or she deliberately misleads or withholds information from the Auditor General. It is only through thorough investigations that one can determine whether the municipal manager is guilty of an offence or not. The Mahikeng local municipality is empowered by the MFMA to investigate financial misconduct against the accounting officer, the CFO, a senior manager or other officials of the municipality unless those allegations are frivolous, vexatious, speculative and unfounded (see s 172(3)(a) of the MFMA; also see *Mndebele v Govan Mbeki Municipality & Others* para 26; see also *Louis Nothnagel v Karoo Hoogland Municipality & Others* para 9). Looking at the status of the Mahikeng local municipality and the Auditor General's report from 2013 to date, there is little in the way of documented evidence to show that investigations are being conducted and that the responsible officials are being dealt with accordingly. It is only in 2018, where the municipal manager who invested money in VBS was suspended.

The authors are of the view that in an instance where a municipality fails to take such a step, to investigate any act of financial misconduct, any interested party in the municipality, must have a right to institute such investigations.

The MFMA provides that a municipality may recover any loss or damage suffered by it from a political office bearer of the municipality because of the deliberate or negligent unlawful actions of that official when performing a function of the office (see s 176 (2) of the MFMA; also see Ramutsheli & van Rensburg, 2015, p. 113). Although the MFMA states that it may recover its monies, it is yet to be seen in Mahikeng local municipality (see s 176 (2) of the MFMA; also see Ramutsheli & van Rensburg, 2015, p. 113). For over 10 years, the municipality has received bad audit outcomes, yet no one has been imprisoned within the municipality, and no municipal manager has been found guilty of an offence.

The MFMA further provides that a municipal official may be exempted provided that he or she acted in good faith (see s 176(1) of the MFMA). However, it cannot be true that the municipal manager for Mahikeng local municipality has acted in good faith. The authors can conclude that the Mahikeng local municipality is grappling with financial difficulties because of the accounting officer's failure to uphold his fiduciary duties to act in good faith, uphold ethical standards, and act with care, fidelity, honesty, diligence and skill in administering the affairs of the municipality (see s 94(1) of the MFMA; also see Beyers, 2015, p. 125).

The MFMA provides that any person who commits an offence in terms of section 173 of the same Act in the Mahikeng local municipality is liable to imprisonment

for a period not exceeding five years or to an appropriate fine determined in terms of the applicable legislation (see s 174 of the MFMA; also see s 182 (1)(c) of the Constitution of South Africa; Matlala & Uwezeyimana, 2020, p. 8). There is no evidence indicating that a municipal manager or an official in the Mahikeng local municipality has ever been imprisoned or paid a fine in terms of the MFMA. The authors argue that, if that was the case, the unnecessary unauthorised, irregular, fruitless and wasteful expenditures would be reduced in Mahikeng local municipality.

#### **4. Concluding Remarks**

From the foregoing discussion, the authors have indicated that the Mahikeng local municipality is grappling with the challenge of lack of efficient service delivery. This challenge largely owes to the lack of demonstrable accountability from the municipal manager (see related comments by Beyers, 2015, p. 125). The municipal manager for Mahikeng local municipality has been failing to account for municipal assets, liabilities, resources, and finances and has also failed to give to the Auditor General proper financial records and statements of the municipality (see s 195(1) of the Constitution of South Africa; also see s 60 of the MFMA; see also Matlala & Uwezeyimana, 2020, p. 1). The authors argue that failure to account for the municipal assets, liabilities, resources, and finances results in service delivery backlogs. Although there are municipal prescripts such as the MFMA and the Systems Act, among others, that can assist and guide the municipal manager in preparing proper records for the municipality and delivering basic services to the community efficiently, the municipality is still battling with proper accountability. The municipal manager is unable to prevent the unauthorised, irregular, fruitless and wasteful expenditures in the Mahikeng local municipality. Consequently, this has resulted in service delivery backlogs in the municipality (s 32(2)(b) of the MFMA; also see Tau, 2019; see also Montsho, 2019). The failure by the municipal manager to account for the municipal assets is an act of financial misconduct especially if the municipal manager deliberately or negligently contravenes the MFMA (see s 171(1)(a) of the MFMA; also see *Mndebele v Govan Mbeki Municipality & Others* 25). This stems from the fact that the municipal manager holds a fiduciary duty as the accounting officer of the municipality. The challenges of service delivery backlogs in the Mahikeng local municipality are a result of the lack of accountability of the municipal manager for the municipal assets. The main objectives of the Constitution of South Africa and the MFMA are to provide for an

accountable government and this is solely based on the fact that accountability is the key to proper service delivery. The authors submit that the municipal manager must implement and enforce the Municipal Management Act and the Systems Act to ensure proper accountability of the municipal assets. It is further submitted that the proper implementation of the latter mentioned Act, as well as other municipal prescripts such as the by-laws, will assist the municipal manager to prevent the irregular, unauthorised, wasteful and fruitless expenditure in the Mahikeng local municipality. It is hoped that this will also lead to improvement in ensuring effective service delivery in the Mahikeng local municipality. Moreover, it is submitted that the municipal manager must always ensure adherence to all internal control systems to guard against fraud, theft and financial mismanagement (see s 67(1)(b) of the MFMA; also see Mokaeane, Moloi & Oksiutycz-Munyawiri, 2017, p. 382). To achieve this, the municipal manager must conform to the highest ethical standards which include, act with honesty, integrity, fidelity and acting in the best interest of the municipality in managing its financial affairs (s 195(1) of the Constitution of South Africa; also see s 61(1)(a) of the MFMA; see also Sibanda, 2017, p. 320). Additionally, as part of ensuring accountability in the Mahikeng local municipality, the municipal manager must carefully implement the SCM policies in order to manage the number of creditors for the municipality so as to meet its obligations on time and thus comply with the MFMA (see s 65(1)(e) of the MFMA). Lastly, the municipal manager must ensure that there are proper communication channels in place that can be followed at all times. This will help with fostering accountability through meaningful communication between the office of the municipal manager and all relevant departments within the municipality.

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