

The Rationale for Piercing the Corporate Veil to Enhance the Accountability of the Municipal Manager in Mahikeng Local Municipality¹

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Abstract

This article analyses the possible application of the principle of piercing the corporate veil in a local municipality as a measure of fostering and enforcing accountability of the municipal manager and the municipal council in Mahikeng local municipality. The principle of piercing the corporate veil is provided under section 20(9) of the Companies Act 71 of 2008. The piercing of the corporate veil occurs when the courts disregard the division between a company and the person who controls it and then attribute liability to the person who misused the principle of a separate legal personality in that company. The article identifies, inter alia, maladministration, fraud and corruption as the basis on which the courts would pierce the corporate veil in Mahikeng local municipality to ensure accountability in the municipal manager. It is submitted that the principle of piercing the corporate veil should be carefully applied in Mahikeng local municipality to promote accountability and better service delivery to the community. The principle of piercing the corporate veil could help to ensure accountability of municipal funds and resources in Mahikeng local municipality by curbing the improper use of municipal funds and resources by the municipal council and the municipal manager. Lastly, the possible advantages of piercing the corporate in Mahikeng local municipality are discussed.

Keywords: accountability, transparency, piercing the corporate veil, municipal manager, legal personality.

JEL Classification: K22, K23

1. Introductory remarks

Piercing the corporate veil entails, inter alia, the disregarding of the division between the company and the persons who control it so as to impute personal liability to any such persons who misused the separate legal personality of the affected company.⁵ The courts may pierce the corporate veil to prevent the abuse of the company's separate legal personality by directors, members, employees and shareholders of that company.⁶ Thus, the courts are empowered to ignore the limited liability of company directors and/or shareholders to protect creditors of the company against the abuse of its juristic and separate legal personality and hold the such directors or shareholders personally liable for their company's corporate debts. The courts may ignore the company's separate legal personality and treat its employees, members, directors or shareholders as if they were the owners of its assets when conducting its business in their personal capacity.⁷ If the separate legal personality of a company has been used by its employees, members, directors or shareholders to cover the improper conduct or fraud, or where it has been used as an agent, or where it is just equitable to

¹ This article was influenced in part by Sethunyane's Master of Laws (LLM) dissertation entitled: *A Statutory Regulatory Analysis of the Accountability of the Municipal Manager and Corporate Governance Measures in Mahikeng Local Municipality*, pp. 136-151.

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⁵ *Cape Pacific v. Lubner Controlling Investments (Pty) Ltd and Others* 1993 (4) SA 790 (A) (*Cape Pacific* case) 1 28; C.E. Halliday, and E. Ogbonna, 'Lifting the Corporate Veil and the War Against Corruption in Nigeria: An Appraisal', 5(1) *Port Harcourt Journal of Business Law* (2018), pp. 25-34; D. Davis, et al, *Companies and Other Business Structures in South Africa* 3ed, (Oxford University Press, Cape Town 2015) pp. 30-31.

⁶ See *CMS Dolphin Ltd. v. Simonet* 2001 2 BCLC 704 98-105, where the abuse of the separate personality of an entity used by a director to breach the fiduciary duty to act in the best interest of the company by usurping corporate opportunities was considered and loss of profit was claimed as a result such abuse.

⁷ M.P. Larkin, 'Regarding Judicial Disregarding of the Company's Separate Identity, Piercing the Corporate Veil', 1 *SA Merc LJ* (1989), pp. 227-238; C.E. Halliday, and E. Ogbonna, *Port Harcourt Journal of Business Law* (2018), pp. 25-34; L. Tolstov, and J. Lahe, 'The Company Director's Liability for Untrue Statements', 7(1) *Baltic Journal of Law & Politics* (2014), pp. 70-96.

do so, the courts will pierce the corporate veil.⁸

The Mahikeng local municipality is an organ of state within the local government, exercising legislative and executive authority in Mahikeng.⁹ The Mahikeng local municipality has a separate legal personality which excludes the liability on the part of its community, municipal council and the municipal manager for the commissions and omissions of the municipality.¹⁰ Similarly, the incorporation of a company confers it the legal juristic personality status,¹¹ which means that the company have a separate legal standing from its directors and shareholders. Thus, both the Mahikeng local municipality and companies are legal persons that can acquire rights and duties separate from their members, officials, employees, directors and/or shareholders.¹² These rights include the capacity to sue and be sued in their own names.¹³ However, municipalities and companies execute their rights and duties through their accounting officers such as directors or board of directors in case of a company and municipal manager or the municipal council in case of the Mahikeng local municipality.¹⁴ The decisions of a director in a company are the decisions of the company¹⁵ while the decisions of a municipal manager are the decisions of the municipality.¹⁶ The acts performed by the municipal manager for Mahikeng local municipality or the director of a company are regarded as the acts of the municipality or the company and not of the municipal manager or the director in their individual capacities.¹⁷ This follows the fact that both the company and a municipality enjoy separate legal juristic personality.¹⁸ Both the company and a municipality have legal powers and the capacity to act on their own names.

In instances where the director of a company perpetuates fraud, dishonesty, corruption, improper purpose or uses the company for his or her personal gain or interest, and not for the benefit of the company, the corporate veil may be pierced by the court.¹⁹ This is only done in exceptional circumstances after an application is launched in the relevant court by an interested or affected party.²⁰ The piercing of the corporate veil allows the court to disregard the company's juristic legal personality and pierce, lift or pull aside the corporate veil of a company in order to hold the directors and

⁸ *Ex Parte Gore* NNO 2013 (3) SA 382 (WCC) (*Ex Parte Gore* case) 1 28; H. Sher, 'Piercing the Corporate Veil', 4 *Business Law Journal* (1994) pp. 51-60; D. Davis, *et al*, (2015), pp. 30-31; *Cape Pacific* case 28; J.T.R. Gibson, *South African Mercantile & Company Law* 2ed, (Juta & Co. (Pty) Ltd, Johannesburg, 1997), p. 269.

⁹ See section 2(a) of the Municipal Systems Act 32 of 2000 (Systems Act); also see section 239 of the Constitution of the Republic of South Africa, 1996 (Constitution); B. Bekink, *The Restructuring (Systemization) of Local Government under the Constitution of the Republic of South Africa, 1996* (Unpublished LLD dissertation, University of Pretoria, 2006), pp. 126-127.

¹⁰ See section 2(d) of the Systems Act; *Mhana and Others v Ngqwebo* (CA 65/2011) [2011] ZAECHGHC 90 13 (*Mhana* case); M. Glasser and M. Wright, 'South African Municipalities in Financial Distress: What Can Be Done?', 24(1) *Law, Democracy & Development* (2020), pp. 415-441.

¹¹ See section 19(1)(a) of the Companies Act 71 of 2008 (Companies Act 2008); also see D. Davis, *et al*, (2015), pp. 29-31; see further P.L. Davis, S. Worthington, and E. Micheler, *Gower and Davis' Principles of Modern Company Law*, 8ed (Sweet & Maxwell, London, 2008), pp. 33-34.

¹² See section 2(a) & (d) of the Systems Act; also see M. Glasser, and M. Wright, 24(1) *Law, Democracy & Development* (2020), pp. 414-418; see further D. Davis, *et al*, (2015), pp. 29-30.

¹³ See section 156(5) of the Constitution; also see sections 2 & 8 of the Systems Act; see further *Maxim Programme Development CC v The Municipality of Maluti-A-Phofung* (746/2004) [2006] ZAFSHC 54 (*Maluti* case) para 2.

¹⁴ See sections 4 & 55 of the Systems Act; section 19(2) of the Companies Act 2008; M. Glasser, and M. Wright, 24(1) *Law, Democracy & Development* (2020), pp. 414-418.

¹⁵ See section 19 of the Companies Act 2008; also see D. Davis, *et al*, (2015), pp. 29-30; see further M. Waqas, and Z. Rehman, 'Separate Legal Entity of Corporation: The Corporate Veil', 3(1) *International Journal of Social Sciences and Management* (2016), pp. 1, 1-4.

¹⁶ See section 55(1) of the Systems Act; also see sections 60, 61 & 62 of the *Municipal Finance Management Act* 56 of 2003 (MFMA); J. De Visser, 'Roles and Responsibilities of Municipal Manager', 1 *Local Government Paper* (2001), pp. 2-11.

¹⁷ See section 51(i) of the Systems Act; section 82(a) of the Municipal Structures Act 117 of 1998 (Structures Act); section 19(1)(a) & (b) of the Companies Act 2008; J.T. Pretorius, *et al* (eds), *South African Company Law Through the Cases*, 6ed (Juta & Co (Pty) Ltd, Cape Town, 1999), pp. 23-24.

¹⁸ See section 2(d) of the Systems Act; *Maxim Programme Development CC v The Municipality of Maluti-A-Phofung & Others* (746/2004) (2006) ZAFSHC 54 2; M. Waqas, and Z. Rehman, 3(1) *International Journal of Social Sciences and Management* (2016), pp. 1-4.

¹⁹ See section 20(9) of the Companies Act 2008; *Cape Pacific* case 33; K. Okafor, 'An Anatomy of the Grounds of Lifting the Corporate Veil: Steps to Codification', 3(2) *International Journal of Family Business and Management* (2019), pp. 1-11.

²⁰ See section 20(9) of the Companies Act 2008; *Ex Parte Gore* case 35; *Sarah Jane Moloney & 12 Others v 3d Design Close Corporation T/A Muga Design (In Liquidation) & 5 Others JS* (2019) 201/17 (*Sarah Jane Moloney* case) 17.

shareholders personally liable for the debts of the company.²¹ The piercing of the corporate veil principle is applicable in company law and it is provided for in the *Companies Act* 2008²² and common law. It is against this background that the authors submit that the principle of piercing the corporate veil should be borrowed from company law and utilised in Mahikeng local municipality to hold the municipal manager or members of the municipal council personally liable for their improper conduct in running the affairs of the municipality. This approach could combat the fraud, corruption and other improper conduct by the municipal manager and the municipal council in Mahikeng local municipality. The principle of piecing the corporate veil should be used as a remedy for creditors of the municipality, members of the community of Mahikeng or any person adversely affected by the improper abuse of the Mahikeng local municipality's separate legal existence by the municipal manager or the municipal council.²³

The article identifies, *inter alia*, maladministration, fraud and corruption as the basis on which the courts would pierce the corporate veil in Mahikeng local municipality to ensure accountability in the municipal manager.²⁴ It is submitted that the principle of piercing the corporate veil should be carefully applied in Mahikeng local municipality to promote accountability and better service delivery to the community.²⁵ The principle of piercing the corporate veil as a remedy of last resort could help to ensure accountability of municipal funds and resources in Mahikeng local municipality by curbing the improper use of municipal funds and resources by the municipal council and the municipal manager. Lastly, the possible advantages of piercing the corporate in Mahikeng local municipality are discussed.

2. The rationale and need for piercing the corporate veil in Mahikeng local municipality

The piercing of the corporate veil is one of the measures that could promote the accountability of the municipal manager and the municipal council in Mahikeng local municipality.²⁶ Piercing the corporate veil is a well-developed principle in company law which has proven to be effective in combating any abuse of the legal personality of companies by its directors and shareholders. The authors argue that the piercing of the corporate veil principle should be applied in Mahikeng local municipality to dissuade the municipal manager and the municipal council from ongoing challenges such as irregular, unauthorised, fruitless and wasteful expenditure. This follows the fact that the MFMA²⁷ and other related legislation are not effectively enforced to ensure that the municipal manager is accountable to the community and administration of the Mahikeng local municipality is effectively done without corruption and fraud. The report of the Auditor General 2018–2019 financial year indicated that the municipal manager and the municipal council of the Mahikeng local municipality were not complying with the Systems Act and the MFMA by failing to adhere to the Auditor General's recommendations.²⁸ The Mahikeng local municipality is struggling to account for municipal funds, yet little or no evidence exists to prove that any official in the Mahikeng local

²¹ See section 19(3) of the Companies Act 2008; *Zeman v Quikelberge and Another* (2011) 32 ILJ 453 (LC) (*Zeman case*); *Baloyi case* para 13; D. Davis, *et al*, (2015), pp. 31-32.

²² See s 20(9) of the Companies Act 2008; see also *Ex Parte Gore case* 35; see further M. Arden, 'Piercing the Corporate Veil – Old Metaphor, Modern Practice?', 3(1) *Journal of Corporate and Commercial Law & Practice* (2017), pp. 1, 3-16.

²³ See section 38 of the Constitution; also see sections 2 & 5 of the Systems Act; see further *Ex Parte Gore case* 35; see also *Jacobs en 'n Ander v Waks en Andere* 1992 (1) SA 521 (A) (*Jacobs case*) 533J-534E.

²⁴ See section 4(2) of the Systems Act; also see section 20(9) of the Companies Act; *Knoop No and Others v Birkenstock Properties (Pty) Ltd and Others* (7095/2008) [2009] ZAFSHC 67 (*Birkenstock Properties case*) 17; D. Davis, *et al*, (2015), pp. 29-30.

²⁵ See section 20(9) of the Companies Act 2008; *Ex Parte Gore case* 35; D. Davis, *et al*, (2015), pp. 30-31.

²⁶ See section 20(9) of the Companies Act 2008; *Ex Parte Gore case* 34; K. Okafor, 3(2) *International Journal of Family Business and Management* (2019), pp. 1-11.

²⁷ See section 2(a); also see L.S. Matlala, and D.E. Uwizeyimana, 'Factors Influencing the Implementation of the Auditor General's Recommendations in South African Municipalities', 8(1) *African Evaluation Journal* (2020), pp. 2-11; also see M. Glasser, and M. Wright, 24(1) *Law, Democracy & Development* (2020), pp. 414-419.

²⁸ Auditor General South Africa, 'Report of the Auditor-General to the North West Provincial Legislature and the Council on the Mahikeng Local Municipality- 2018/19', *Auditor General's Report 2018/1* (2019), pp. 1-9; Auditor General South Africa, 'Consolidated General Report on the Local Government Audit Outcomes 2018-2019', *Auditor General's Consolidated Report 2018-2019* (2019), pp. 1-208.

municipality has ever been held accountable or liable for any irregular, unauthorised or fruitless and wasteful expenditure in the municipality.²⁹ This could suggest that there is unconscionable abuse of the Mahikeng local municipality funds by the municipal manager and as such, the courts should pierce the corporate veil of the municipality to hold the offenders accountable and liable for their illicit conduct.³⁰ The corruption in the Mahikeng local municipality amounts to unconscionable abuse of the Mahikeng local municipality funds by the municipal manager.

The authors acknowledge that the principle of piercing the corporate veil is a company law principle and submits that it can, to a certain extent, be borrowed and enforced in the Mahikeng local municipality to hold the municipal manager accountable and liable for his or her abuse of municipal funds, corruption, fraud and maladministration. Piercing the corporate veil of the municipality empowers the courts to hold the municipal manager liable for unauthorised, irregular, fruitless and wasteful expenditures that are experienced every financial year in the Mahikeng local municipality.

The corporate veil of a company may be pierced on an application by an interested person to a court of law.³¹ The court may pierce the corporate veil on its discretion and if there is an unconscionable abuse of the juristic personality of the company.³² The remedy of piercing the corporate veil must be utilised in Mahikeng local municipality and any interested person who suspects that there is unconscionable abuse conduct by the municipal manager or municipal council for the municipality must apply to the relevant courts for recourse. Since there is no definition of the term “interested person” in the Companies Act 2008, an interested person in the case of the Mahikeng local municipality may refer to the Auditor General, the municipal council, any municipal official or member of the local community of Mahikeng.

The municipal council must structure the administration of the Mahikeng local municipality in a manner that empowers it to hold the municipal manager accountable for his or her actions, omissions or commissions.³³ The municipal manager and the municipal council should held accountable and liable for disregarding the audit recommendations of the Auditor General.³⁴ The Mahikeng local municipality council is failing to hold the municipal manager accountable for his or her wrongful and corrupt conduct.³⁵

It is important to note that the principle of piercing the corporate veil has not yet been applied in any South African municipality. This follows the fact that the principle of piercing the corporate veil is usually applied to companies under the Companies Act 2008.³⁶ It is submitted that the principle of piercing the corporate veil should be applied in Mahikeng local municipality to foster accountability of both the municipal council and the municipal manager.³⁷ This could be applied in instances where the municipal manager has caused or failed to prevent any material irregularity resulting in a material financial loss for Mahikeng local municipality.³⁸ Furthermore, the municipal

²⁹ Auditor General South Africa, *Auditor General's Report 2018/1* (2019), pp. 1-9; *Ex Parte Gore* case 34; *Birkenstock Properties* case 14.

³⁰ See section 20(9) of the Companies Act 2008; also see *Ex Parte Gore* case 34; see also *Birkenstock Properties* case 11.

³¹ See section 38 of the Constitution; see section 20(9) of the Companies Act 2008; also see *Ex Parte Gore* case 35; see further related comments in the case of *Jacobs en 'n Ander v Waks en Andere* 1992 (1) SA 521 (A) 533J-534E.

³² See section 20(9) of the Companies Act 2008; also see *City Capital SA Property Holdings Ltd v Chavonnes Badenhorst St Clair Cooper NO* (85/2017) [2017] ZASCA 177 (*City Capital SA Property Holdings* case) 28.

³³ See section 51(i) of the Systems Act; also see section 60 of MFMA; see also J. De Visser, *Local Government Paper* (2001), pp. 2-3; see further P. Ntloziyana, ‘Insulating Administrative Decision-Making Relating to Individual Staff Appointments from Political Meddling: *Manana v King Sabata Dalindyebo Municipality*’, 129(1) *The South African Law Journal* (2012), pp. 49-54.

³⁴ See section 4 of the Systems Act; also see Auditor General South Africa, *Auditor General's Consolidated Report 2018-2019* (2019), pp. 44-45; see also L.S. Matlala, and D.E. Uwizeyimana, 8(1) *African Evaluation Journal* (2020), pp. 2-11.

³⁵ See section 51(i) of the Systems Act; also see Auditor General South Africa, *Auditor General's Consolidated Report 2018-2019* (2019), pp. 44-46; see also J. De Visser, *Local Government Paper* (2001), pp. 2-3; see further L.S. Matlala, and D.E. Uwizeyimana, 8(1) *African Evaluation Journal* (2020), pp. 5-6.

³⁶ See section 20(9) of the Companies Act; also see *City Capital SA Property Holdings* case 28 where the court stated that section 20(9) of the Companies Act, on its plain wording, permits a court to disregard the separate juristic personality of the company where its incorporation, use or an act performed by or on its behalf “constitutes an unconscionable abuse of the juristic personality of the company as a separate entity”.

³⁷ See section 239 of the Constitution; also see section 2 of the Systems Act; see also section 20(9) of the Companies Act; see further M. Arden, 3(1) *Journal of Corporate and Commercial Law & Practice* (2017), pp. 1-3.

³⁸ Public Audit Act 25 of 2014 as amended (Public Audit Act), see section 1 which defines material irregularity as any non-compliance with or contravention of, legislation, fraud, theft or a breach of a fiduciary duty identified during an audit performed under the Public

manager should recover the unauthorised, irregular, wasteful and fruitfulness expenditure from any person liable for that expenditure within the municipality.³⁹ The failure by the municipal manager to take reasonable steps to prevent or recover the unauthorised, irregular, fruitless and wasteful expenditure should give rise to the piercing of the municipal corporate veil in Mahikeng local municipality.⁴⁰ The principle of piercing the corporate veil must be applied in instances where the Mahikeng local municipality has been put under administration by the provincial executive for failure to meet its constitutional obligation of providing basic services to the community.⁴¹ This stems from the fact that the municipality is an organ of state⁴² which has rights, duties, and obligations. A municipality can sue and be sued separately from its members. Thus, the principle of piercing the corporate veil should be easily applied to Mahikeng local municipality to ensure accountability and liability on the part of the municipal manager for his or her wrongful conduct.⁴³ This approach will enable the courts to disregard the separate legal personality of a municipality so as to hold the municipal council or the municipal manager personally liable for the debts of the Mahikeng local municipality.⁴⁴

The MFMA stipulates that the writing off of any unauthorised, irregular or fruitless and wasteful expenditure as irrecoverable is not an excuse in criminal or disciplinary proceedings against a person charged with the commission of an offence or breach of the MFMA relating to such unauthorised, irregular or fruitless and wasteful expenditure.⁴⁵ In terms of the MFMA,⁴⁶ the municipal manager or the municipal council for Mahikeng local municipality must report to the South African Police Service (SAPS) all cases of alleged irregular expenditure that constitutes a criminal offence, theft and/or fraud in the municipality.⁴⁷

As highlighted above, the Mahikeng local municipality has a history of receiving poor audit outcomes from the annual audit reports by the Auditor General.⁴⁸ The Mahikeng local municipality has not obtained a clean audit report since 2013.⁴⁹ This is exacerbated by the failure of the municipal manager to hold the municipal workforce, including senior managers of the Mahikeng local municipality to account. The Mahikeng local municipality is still failing to pay its creditors, account for its municipal assets and implement the recommendations of the Auditor General.⁵⁰ There is

Audit Act that resulted in or is likely to result in a material financial loss, the misuse or loss of a material public resource or substantial harm to a public sector institution or the general public.

³⁹ See section 32(2) of the MFMA; also see related comments by M. Glasser, and M. Wright, 24(1) *Law, Democracy & Development* (2020), pp. 414-432.

⁴⁰ See section 38 of the Constitution; see section 20(9) of the Companies Act 2008; also see sections 60 & 61 of the MFMA; see further *Ex Parte Gore* case 28; 35; S. Phiri, 'Piecing the Corporate Veil: A Critical Analysis of Section 20(9) of the South African Companies Act 71 of 2008', 20(9) *Corporate & Business Strategy Review* (2020), pp. 17-22; also see Montsho, M., 'Eight North West Municipalities Put Under Administration', (2018) <https://www.iol.co.za/news/politics/8-north-west-municipalities-put-under-administration-16710117> accessed 01 May 2019.

⁴¹ See section 139(1)(a) & (b) of the Constitution; also see *Cape Pacific* case 805F; E. Nel, 'Two Sides of a Coin: Piercing the Veil and Unconscionability in Trust Law', 35(3) *Obiter* (2014), pp. 571-583.

⁴² See section 2(a) of the Systems Act; also see section 239 of the Constitution.

⁴³ See section 20(9) of the Companies Act 2008; also see section 2 of the Systems Act; see further section 239 of the Constitution.

⁴⁴ See sections 2(a); (b) & (d) of the Systems Act; section 239 of the Constitution; K.L. Siebritz, *Piercing the corporate veil: A Critical Analysis of Section 20(9) of the Companies Act 71 of 2008* (Unpublished LLM dissertation, University of Western Cape, 2016), pp. 19-20.

⁴⁵ See section 32(5) of the MFMA; also see *Airport Cold Storage (Pty) Ltd v Ebrahim* 2008 (2) SA 303 (C) (*Airport Cold Storage* case), the court reiterated that directors and members must enjoy extensive protection against personal liability but that such protection can never be absolute.

⁴⁶ See section 32(6)(a) & (b) of the MFMA; also see R. Rena, and A.J. Mothupi, 'Case Study on the Patterns of Irregular Expenditure in Tswaing Local Municipality of North West Province in South Africa', 13(2) *Journal of Applied Economic Sciences* (2018), pp. 396-413.

⁴⁷ See section 160 of the Constitution; also see section 32(7) of the MFMA; L.S. Matlala, and D.E. Uwizeyimana, 8(1) *African Evaluation Journal* (2020), pp. 1-8.

⁴⁸ Mahikeng Local Municipality, 'Mahikeng Local Municipality Annual Report 2018-2019' *Mahikeng Local Municipality Annual Report 2018-2019* (2019), pp. 384-705; Auditor General South Africa, *Auditor General's Report 2018/1* (2019), pp. 1-9.

⁴⁹ Mahikeng Local Municipality, *Mahikeng Local Municipality Annual Report 2018-2019* (2019), pp. 340-341; G.L. Mathiba, *The Role of the Auditor-General in the Promotion of Efficient Financial Management in Municipalities: A Case Study of the North West Province* (Unpublished LLM dissertation, University of Western Cape, 2019), pp. 62-63.

⁵⁰ Auditor General South Africa, *Auditor General's Report 2018/1* (2019), pp. 1, 118; G.L. Mathiba, *The Role of the Auditor-General in the Promotion of Efficient Financial Management in Municipalities: A Case Study of the North West Province*, pp. 62-63; L.S. Matlala, and D.E. Uwizeyimana, 8(1) *African Evaluation Journal* (2020), pp. 1-3.

mismanagement of funds and allegations of fraud and corruption in that the Mahikeng local municipality.

The Mahikeng local municipality has an obligation to provide basic municipal services to the people of Mahikeng.⁵¹ If the municipality fails to provide such services, the Constitution⁵² provides that the provincial executive may step in and take any appropriate steps to ensure fulfilment of that obligation. This is not effective since the municipality is merely put under legal administration, but no one is usually held personally liable for the municipality's failure to provide basic municipal services. It is submitted that once the municipality is placed under administration, the principle of piercing the corporate must be utilised to combat the abuse of the separate legal personality of the municipality by municipal managers to cover for their own illicit conduct, fraud, maladministration or corruption. The principle of piercing the corporate veil should be applied where there is a fraud, dishonesty, and/or unconscionable abuse of the municipality's legal personality by the municipal manager or municipal council.⁵³ Moreover, the principle of piercing the corporate veil should be applied where the municipal manager or the municipal council of the Mahikeng local municipality fails to comply with the MFMA and Systems Act.⁵⁴

The provincial executive may put the municipality under administration by dissolving the municipal council and assuming responsibility or appointing an administrator.⁵⁵ This is done to force the municipality in question to fulfil its primary mandate, which is to deliver basic municipal and communal services to the community⁵⁶ and prevent prejudice to ordinary members of the public in the affected municipality.⁵⁷ Placing the municipality under legal administration alone does not suffice, instead, the municipal council and municipal manager must also be held personally liable for failing to account for the assets and resources of the municipality.⁵⁸ Thus, the municipal manager should be held accountable for failure to keep proper records of the municipality and/or for failure to act honestly and in the best interests of the municipality.

Although legislation such as the MFMA⁵⁹ and Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings impose penalties on offences by municipal officials, the municipality is often merely placed under legal administration without such penalties being imposed on the offenders. In light of this, it is submitted that the municipal council and the municipal manager should face harsher penalties and be held personally liable for their acts of fraud, corruption and maladministration through piercing the corporate veil of the affected municipality.⁶⁰ This will prevent municipal managers from resigning when investigations for fraud and corruption against them are being conducted in a bid to evade personal liability and accountability.⁶¹ Any unconscionable conduct of the municipal manager should be effectively discouraged and punished accordingly for deterrence purposes. In this regard, piercing the corporate veil of the municipality

⁵¹ See section 152 of the Constitution; also see section 4 of the Systems Act; J. De Visser, 'The Political-administrative Interface in South African Municipalities Assessing the Quality of Local Democracies', 5 *Commonwealth Journal of Local Governance*, (2010), pp. 86-88.

⁵² See section 139; *Ngaka Modiri Molema District Municipality v Chairperson, North West Provincial Executive Committee and Others* [2014] ZACC 31.

⁵³ See section 20(9) of the Companies Act 2008; also see *Cape Pacific* case 33; D. Davis, *et al*, (2015), pp. 30-31.

⁵⁴ See section 20(9) of the Companies Act 2008; also see D. Davis, *et al*, (2015), pp. 30-31; see further Arden 2017 *Journal of Corporate and Commercial Law & Practice*, p. 3.

⁵⁵ See section 139(1)(a), (b) and (c) of the Constitution; also see *Ngaka Modiri Molema District Municipality v Chairperson, North West Provincial Executive Committee and Others* [2014] ZACC 31.

⁵⁶ See section 139(1) of the Constitution; also see Moiloa, B., 'State of Municipalities in the North West Province' *National Council of Provinces of South Africa* (2020), pp. 15-17.

⁵⁷ See section 139(1)(b)(ii) of the Constitution; also see G.L. Mathiba, *The Role of the Auditor-General in the Promotion of Efficient Financial Management in Municipalities: A Case Study of the North West Province*, pp. 62-63.

⁵⁸ See *Cape Pacific* case 28; also see J.T.R. Gibson, *South African Mercantile & Company Law* 2ed, p. 269.

⁵⁹ See section 174 of the MFMA; also see G.L. Mathiba, *The Role of the Auditor-General in the Promotion of Efficient Financial Management in Municipalities: A Case Study of the North West Province*, pp. 62-63.

⁶⁰ See section 139(1) of the Constitution; also see Auditor General South Africa, *Auditor General's Report 2018/1* (2019), pp. 1-7; see also related comments by M.M. Sibanda, 'Control, Ethics and Accountability in the Financial Management Performance of Eastern Cape Municipalities' 52(2) *Journal of Public Administration* (2017), pp. 313-323.

⁶¹ Mahikeng Local Municipality, *Mahikeng Local Municipality Annual Report 2018-2019* (2019), pp. 1-311 and 312; M.M. Sibanda, 52(2) *Journal of Public Administration* (2017), pp. 313-323.

will enable the courts to recover the relevant damages from the municipal manager and/or the municipal council of Mahikeng local municipality.⁶²

3. Piercing the corporate veil as a remedy of last resort

The principle of piercing the corporate veil must be resorted to and/or utilised as a remedy of last resort, in circumstances where there is unconscionable abuse of the juristic personality of the municipality by the municipal manager or the municipal council and/or where it is equitable and justifiable to do so.⁶³ Accordingly, the piercing of the corporate veil principle must be carefully applied in Mahikeng local municipality whenever there is unconscionable abuse of the juristic personality and resources of the municipality to the detriment of members of the community.⁶⁴ Unfortunately, people in most South African municipalities usually resort to protests to force their municipalities to provide better service delivery instead of holding the municipal manager accountable and personally liable for his or her unconscionable abuse of the juristic personality and resources of the affected municipality.⁶⁵ The people of Mahikeng local municipality argue that the municipal manager and municipal council are abusing the municipal resources and finances for their own benefit and interests. This is exacerbated by fraud, maladministration and corruption of the municipal manager and municipal council which give rise to poor development and poor service delivery in Mahikeng local municipality. Therefore, any affected member of the community should apply to the relevant court for it to pierce the corporate veil of the Mahikeng local municipality in order to hold the municipal manager and the municipal council of the municipality accountable for their unconscionable abuse, maladministration, fraud, corruption and abuse of the municipal resources.⁶⁶ This must be done as a matter of last resort to foster accountability, transparency and combat all forms of abuse of the separate juristic legal personality of the municipality by the municipal manager or the municipal council.⁶⁷

In *Cape Pacific* case,⁶⁸ it was held that there is no reason why the principle of piercing the corporate veil should be precluded if another remedy exists. It was further held that if the separate legal personality of a company is misused in a particular instance to perpetrate fraud, or for a dishonest purpose, there is no reason why the separate legal personality of that company should be disregarded.⁶⁹ This entails that any affected person may rely on the principle of piercing the corporate veil to uncover and combat the abuse of the separate legal personality of the Mahikeng local municipality.⁷⁰ There is no logical legal reason why this principle should not be applied in the Mahikeng local municipality⁷¹ to hold the municipal manager and the municipal council liable for

⁶² See section 20(9) of the Companies Act; also see sections 32, 171-174 of the MFMA; see further M.M. Sibanda, 52(2) *Journal of Public Administration* (2017), pp. 323-324.

⁶³ *Hülse-Reutter and Others v Godde* 2001 (4) SA 1336 (SCA) (*Hülse-Reutter* case) 23; *Amlin (SA) Pty Ltd v Van Kooij* (2008) (2) SA 558 (C) (*Amlin* case); S. Phiri, *Piercing the Corporate Veil: A Critical Analysis of Section 20(9) of the Companies Act 71 of 2008* (Unpublished LLM dissertation, University of Venda, 2017), pp. 10-11.

⁶⁴ See section 20(9) of the Companies Act 2008; *Baloyi* case 13; Zindoga, W.T., *Piercing of The Corporate Veil in terms of Gore: Section 20(9) of the New Companies Act 71 of 2008* (Unpublished LLM dissertation, University of Cape Town, 2015), pp. 44-46.

⁶⁵ Z. Ndevu, and K. Muller, 'A Conceptual Framework for Improving Service Delivery at Local Government in South Africa', 9(7) *African Journal of Public Affairs* (2017), pp. 13-24; Mamabolo, M.A., 'Municipal Service Partnerships: Are They Useful in Addressing Service Delivery Backlogs?', *Conference Proceedings published by the South African Association of Public Administration and Management (SAAPAM)* (2013) 202-208.

⁶⁶ See section 20(9) of the Companies Act 2008; also see B.S. Smith, 'Statutory Discretion or Common Law Power? Some Reflections on Veil Piercing and the Consideration of (the value of) Trust Assets in Dividing Matrimonial Property at Divorce – Part One', 42(1) *Journal for Juridical Science* (2016), pp. 68-94.

⁶⁷ *Hülse-Reutter* case 23; *Amlin* case 567J-568C; *Airport Cold Storage* case 9; *Al-Khafari & Sons v Pema and Others* NNO 2010 (2) SA 360 (W) (*Al-Khafari & Sons* case) 36; *Ex Parte Gore* case 27 L.S. Bryant, 'Piercing the Corporate Veil', 87(6) *Commercial Law Journal* (1982), pp. 299-302.

⁶⁸ *Cape Pacific* case 33; *Ex Parte Gore* case 28; *Baloyi v. Malherbe and Another* (JR 2661/2007) [2015] ZALCJHB 10; [2015] 2 All SA 20 (GJ) (21 January 2015) 19.

⁶⁹ See section 20(9) of the Companies Act 2008; also see *Cape Pacific* case 33; *City Capital SA Property Holdings* case 28.

⁷⁰ See section 20(9)(a) of the Companies Act 2008; also see *Ex Parte Gore* case 37; see also *City Capital SA Property Holdings* case 36.

⁷¹ See section 20(9) of the Companies Act 2008; also see D. Davis, *et al*, (2015), pp. 29-31; see also M. Arden, 3(1) *Journal of Corporate and Commercial Law & Practice* (2017), pp. 1-3.

their unconscionable abuse of the municipal resources through unauthorised, irregular, fruitless and wasteful expenditures. The municipal council and/or the municipal manager that fail exercise their duties with reasonable care, skill and diligence, to avoid the unconscionable abuse of the separate juristic person of the Mahikeng local municipality should be held personally liable by the courts⁷² by applying the principle of piercing the corporate veil rather than placing the Mahikeng local municipality under legal administration.⁷³

4. Possible advantages of applying the principle of piercing the corporate veil in Mahikeng local municipality

4.1. Protecting the interests of creditors

The principle of piercing the corporate veil protects the interest of company creditors against fraud, corruption, or unconscionable conduct of company directors or shareholders.⁷⁴ The principle of piercing the corporate veil should carefully applied in Mahikeng local municipality to protect the creditors of the municipality against any unconscionable conduct of the municipal manager or the municipal council.⁷⁵ Thus, where there is suspected unconscionable conduct creditors should apply to the creditors to pierce the corporate veil abuse of the Mahikeng local municipality so that the municipal manager or the municipal council will be held personally liable for such conduct.⁷⁶

4.2. Protecting the municipality against maladministration

The principle of piercing the corporate veil may protect companies and other juristic persons against maladministration by forcing the relevant officials to act with care, diligence and skill when exercising their functions and duties.⁷⁷ The application of the principle of piercing the corporate veil will oblige the municipal council, the municipal manager and the overall workforce of the Mahikeng local municipality to exercise their duties with care, skill and diligence so as to combat the abuse of municipal funds, corruption, fraud and maladministration.⁷⁸

4.3. Reducing service delivery protests

In 2018, the people of Mahikeng local municipality embarked on various service delivery protests against poor service delivery, corruption, maladministration and fraud.⁷⁹ In this regard, it is submitted the careful application of the principle of piercing the corporate veil in Mahikeng local municipality could curb unnecessary service delivery protests since the courts will disregard the separate juristic personality of the municipality to hold the municipal manager and related offenders

⁷² See section 139 of the Constitution; also see *Ngaka Modiri Molema District Municipality v Chairperson, North West Provincial Executive Committee and Others* [2014] ZACC 31.

⁷³ See sections 22 & 77(3)(a)-(b) of the Companies Act 2008. Section 22 deals with reckless trading while section 77(3)(a)-(b) enables liability to be extended to directors where they cause the continued running of a business under a state of insolvency, recklessly, with gross negligence and an intention to defraud any person.

⁷⁴ See section 20(9) of the Companies Act 2008; also see N. Schoeman, 'Piercing the Corporate Veil Under the New Companies Act', *De Rebus* (2012), pp. 1-2; see also K. Okafor, 3(2) *International Journal of Family Business and Management* (2019), pp. 2-11.

⁷⁵ See sections 32 & 171 of the MFMA; also see section 20(9) of the Companies Act 2008; see also S. Phiri, 20(9) *Corporate & Business Strategy Review* (2020), pp. 17-23.

⁷⁶ See sections 173 and 174 of the MFMA; also see section 20(9) of the Companies Act 2008; *Ex Parte Gore* case 29; S. Phiri, 20(9) *Corporate & Business Strategy Review* (2020), pp. 17-23.

⁷⁷ See sections 171, 172, 173 & 174 of the MFMA; also see s 20(9) of the Companies Act 2008; see also *Faiza Ben Hashen v Ali Shayif and Another* (2008) EWHC2380 (Fam); see further S. Phiri, 20(9) *Corporate & Business Strategy Review* (2020), pp. 17-22.

⁷⁸ See section 94(1) of the MFMA; also see sections 20(9) & 76 of the Companies Act 2008; see also S. Phiri, 20(9) *Corporate & Business Strategy Review* (2020), pp. 17-22.

⁷⁹ M. Glasser, and M. Wright, 24(1) *Law, Democracy & Development* (2020), pp. 414-433; M. Kanyane, 'Exploring Challenges of Municipal Service Delivery in South Africa (1994-2013)', 2(1) *Africa's Public Service Delivery & Performance Review* (2014), pp. 90-110; Montsho, M., 'Eight North West Municipalities Put Under Administration', (2018) <https://www.iol.co.za/news/politics/8-north-west-municipalities-put-under-administration-16710117> accessed 01 May 2019.

personally liable for their illicit conduct. In the *Ex Parte Gore* case,⁸⁰ the court held that the remedy of piercing the corporate veil may be used whenever the use of the concept of separate legal existence negatively and unreasonably affects a third party. Therefore, the courts should pierce the corporate veil of the Mahikeng local municipality whenever there is corruption, fraud and maladministration to encourage the accountability of the municipal manager and the municipal council.

4.4. Enforcement of the Auditor General's recommendations

The municipal council and the municipal manager of Mahikeng local municipality have continued to ignore the Auditor General's recommendations since early 2000 to date.⁸¹ This could have been worsened by the fact that the Auditor General's recommendations are not legally binding per se. However, the Public Audit Act⁸² empowers the Auditor General to refer suspected material irregularities arising from the auditing process to the relevant enforcement authorities with the requisite investigative capacity and skills such as the Hawks, Special Investigating Unit (SIU) and SAPS. It is generally expected that these enforcement authorities should timeously investigate all offences and hold the offenders accountable and personally liable for any material irregularity, fraud, corruption and maladministration that occurs in the Mahikeng local municipality. The Auditor General is empowered to follow-up on the progress made by the relevant accounting officer regarding the enforcement of its audit recommendations. The Auditor General is required to take appropriate remedial action if its recommendations are not effectively implemented.⁸³ The Auditor General has the power to issue a certificate of debt against the accounting officer or accounting authority who fail to take appropriate remedial actions.⁸⁴ Although the Public Audit Act⁸⁵ confers some powers on the Auditor General, it does not provide for the use of principle of piecing the corporate veil to foster accountability in municipalities. In this regard, it is submitted that Public Audit Act should be amended to enact adequate provisions that empowers the Auditor General to apply to the relevant courts for the piecing the corporate veil in the affected municipality so as to hold the municipal manager or the municipal council personally liable for illicit conduct.⁸⁶

If the Auditor General refers a matter to the Hawks, SIU, SAPS⁸⁷ and investigations are conducted, and there is a *prima facie* case or a suspicion that the municipal manager or municipal council are or have been using the municipality to further their own interests, the Auditor General should be empowered to approach the relevant courts to pierce the corporate veil of the affected municipality. Furthermore, where a material irregularity resulted in a financial loss to the municipality and the accounting officer failed to implement the recommendations of the Auditor General, the

⁸⁰ *Ex Parte Gore* case 34; R. Becker, *Disregarding the Separate Juristic Personality of a Company: An English Case Law Comparison* (Unpublished LLM dissertation, University of Pretoria, 2014), pp. 57-58.

⁸¹ The former Auditor General, Kimi Makwetu indicated that "the audit outcomes of North West, the worst since 2012-2013, clearly indicated the deteriorating accountability, a blatant disregard of our messages and recommendations, complacency and a lack of commitment to decisively address key areas of concern as well as a lack of political will to effect consequences", see the Auditor General South Africa, *Auditor General's Consolidated Report 2018-2019* (2019).

⁸² Public Audit Act 25 of 2004 as amended (Public Audit Act), see section 5(1A) & 5A(3); M. Glasser, and M. Wright, 24(1) *Law, Democracy & Development* (2020), pp. 414-431; G.L. Mathiba, *The Role of the Auditor-General in the Promotion of Efficient Financial Management in Municipalities: A Case Study of the North West Province*, pp. 21-22.

⁸³ See section 5(A)(1) of the Public Audit Act; also see L.S. Matlala, and D.E. Uwizeyimana, 8(1) *African Evaluation Journal* (2020), pp. 1-8; see also G.L. Mathiba, *The Role of the Auditor-General in the Promotion of Efficient Financial Management in Municipalities: A Case Study of the North West Province*, pp. 20-22.

⁸⁴ See section 5A of the Public Audit Act; also see L.S. Matlala, and D.E. Uwizeyimana, 8(1) *African Evaluation Journal* (2020), pp. 1-8; see also G.L. Mathiba, *The Role of the Auditor-General in the Promotion of Efficient Financial Management in Municipalities: A Case Study of the North West Province*, pp. 19-22.

⁸⁵ See section 5A of the Public Audit Act; also see L.S. Matlala, and D.E. Uwizeyimana, 8(1) *African Evaluation Journal* (2020), pp. 1-8; see also G.L. Mathiba, *The Role of the Auditor-General in the Promotion of Efficient Financial Management in Municipalities: A Case Study of the North West Province*, pp. 19-22.

⁸⁶ See sections 173 & 174 of the MFMA; also see sections 5(1B)(b) & 5B of the Public Audit Act; see also L.S. Matlala, and D.E. Uwizeyimana, 8(1) *African Evaluation Journal* (2020), pp. 5-8; see further M.M. Sibanda, 52(2) *Journal of Public Administration* (2017), pp. 313-324.

⁸⁷ See section 182 of the Constitution; also see section 5(1A) of the Public Audit Act; see also M. Glasser, and M. Wright, 24(1) *Law, Democracy & Development* (2020), p. 414, 431; also see further related comments by G.L. Mathiba, *The Role of the Auditor-General in the Promotion of Efficient Financial Management in Municipalities: A Case Study of the North West Province*, pp. 19-22.

Auditor General should recover such loss from the offenders in terms of any applicable legislation.⁸⁸ Therefore, the Auditor General should be encouraged to utilise the principle of piercing the corporate veil against the offenders in the affected municipality.⁸⁹

4.5. Ensuring transparency

In the event that the municipality is placed under legal administration, the principle of piercing the corporate veil must be utilised by affected persons to hold municipal manager or municipal council personally liable for abusing municipal funds and resources.⁹⁰ This could promote transparency and accountability on the part of the municipal manager and municipal council in Mahikeng municipality.⁹¹

4.6. Ensuring accountability

The principle of piercing the corporate veil should be utilised as one of the ways to combat the misuse, irregular or fruitless expenditure of municipal funds by ensuring that all the offenders are held personally liable and accountable for their illicit conduct, especially in Mahikeng local municipality.⁹² The principle of piercing the corporate should be applied in exceptional circumstances⁹³ where there is gross abuse of the juristic personality of the municipality and/or where the municipality has been put under legal administration for failing to fulfil its executive obligations in terms of the Constitution and the relevant legislation.⁹⁴

4.7. Improved service delivery

The Mahikeng local municipality is obliged to provide basic services such as water, sanitation and refuse removal in its community.⁹⁵ However, the municipal manager has failed to account for the mismanagement of funds in the Mahikeng local municipality to either the municipal council or the Auditor General since 2018 to date.⁹⁶ At the end of the 2018-2019 financial year, various irregular, unauthorised, fruitless and wasteful expenditures were reported by the Auditor General. Nonetheless, no one has been held accountable or liable for such unlawful conduct in Mahikeng local municipality to date.⁹⁷ Therefore, the courts should pierce the corporate veil of the Mahikeng local municipality to hold both the municipal manager and municipal council personally liable and accountable for their fraud, maladministration, corruption, poor service delivery and losses incurred by the municipality.

⁸⁸ See sections 5(1B)(a) & 5A(3) of the Public Audit Act; also see M. Glasser, and M. Wright, 24(1) *Law, Democracy & Development* (2020), pp. 414-432; see also G.L. Mathiba, *The Role of the Auditor-General in the Promotion of Efficient Financial Management in Municipalities: A Case Study of the North West Province*, pp. 21-22; L.S. Matlala, and D.E. Uwizeyimana, 8(1), *African Evaluation Journal* (2020), pp. 4-8.

⁸⁹ See section 20 of the Companies Act 2008; sections 5(1B)(b) & 5B of the Public Audit Act; also see G.L. Mathiba, *The Role of the Auditor-General in the Promotion of Efficient Financial Management in Municipalities: A Case Study of the North West Province*, pp. 21-22; see also L.S. Matlala, and D.E. Uwizeyimana, 8(1) *African Evaluation Journal* (2020), pp. 7-8.

⁹⁰ See section 139 of the Constitution; also see section 20(9) of the Companies Act 2008; see also M.M. Sibanda, 52(2) *Journal of Public Administration* (2017), pp. 323-324.

⁹¹ See section 32 of the MFMA; also see section 5A of the Public Audit Act; see also L.S. Matlala, and D.E. Uwizeyimana, 8(1) *African Evaluation Journal* (2020), pp. 7-8.

⁹² See s 20(9) of the Companies Act 2008; also see D. Davis, *et al*, (2015), pp. 30-31.

⁹³ See section 20(9) of the Companies Act 2008; also see *Hülse-Reutter* case 23; *Amlin* case 567J-568C; see also *Airport Cold Storage* case 9; see further *Al-Khafari & Sons* case 36; *Ex Parte Gore* case 27; also see *Baloyi* case 17; see related comments by D. Davis, *et al*, (2015), pp. 30-31.

⁹⁴ See section 139(1)(c) of the Constitution; also see *Ngaka Modiri Molema District Municipality v Chairperson, North West Provincial Executive Committee and Others* 13.

⁹⁵ See section 152(1)(b) of the Constitution; also see *Joseph and Others v City of Johannesburg and Others* [2009] ZACC 30; see also *Ngaka Modiri Molema District Municipality v Chairperson, North West Provincial Executive Committee and Others* 13.

⁹⁶ Auditor General South Africa, *Auditor General's Report 2018/1* (2019), pp. 1-3; R. Rena, and A.J. Mothupi, 13(2) *Journal of Applied Economic Sciences*, (2018), pp. 394-404.

⁹⁷ Auditor General South Africa, *Auditor General's Report 2018/1* (2019), pp. 1-3; R. Rena, and A.J. Mothupi, 13(2) *Journal of Applied Economic Sciences*, (2018), pp. 394-396.

4.8. Reduction of fraud and corruption

Piercing the corporate veil will enable the courts to impose personal liability on the municipal manager or the municipal council for their wrongful acts in the Mahikeng local municipality so as to curb fraud and corruption.⁹⁸ The piercing of the municipal corporate veil will enable the courts to hold the municipal manager and/or the municipal council personally liable for their abuse of the separate juristic legal personality of the municipality to cover up their fraud and corruption in Mahikeng local municipality.⁹⁹ The municipal corporate veil should be pierced where there is proof of fraud, corruption, dishonesty or other improper conduct by the municipal manager, municipal council or other officials in the Mahikeng local municipality.¹⁰⁰ Furthermore, the municipal manager of the Mahikeng local municipality should be held accountable and personally liable whenever he or she fails to exercise his or her fiduciary duties to act with care, skill, diligence and in the best interest of the municipality.¹⁰¹

5. Concluding remarks

The municipal manager is generally responsible for the development of an effective and accountable administration of the municipality.¹⁰² However, the Mahikeng local municipality is still struggling with poor financial management and service delivery backlogs.¹⁰³ This follows the fact that the municipal manager of Mahikeng local municipality has to date failed to exercise his or her fiduciary duties to act with care, skill, diligence and in the best interest of the municipality. For instance, the municipal manager has so far failed to prevent unauthorised, irregular, fruitless and wasteful expenditures in Mahikeng local municipality which resulted in the aforesaid service delivery backlogs.¹⁰⁴ In this regard, it is submitted that the principle of piercing the corporate veil should be applied by the courts whenever there is unconscionable abuse of the juristic personality and resources of the municipality by the municipal manager or the municipal council to enhance accountability in the Mahikeng local municipality.¹⁰⁵ In addition, the Mahikeng local municipality should fully comply with the relevant provisions of the Public Audit Act,¹⁰⁶ the MFMA, and the Systems Act to effectively curb fraud, corruption, maladministration and ensure accountability of the municipal manager and the municipal council.¹⁰⁷ The Auditor General should also utilise its powers to refer any suspected material irregularities to investigating authorities such as the Hawks, SIU and SAPS for

⁹⁸ See sections 173 & 174 of the MFMA; also see E. Halliday, and E. Ogbonna, 5(1) *Port Harcourt Journal of Business Law* (2018), pp. 25-34.

⁹⁹ See section 174 of the MFMA which imposes penalties such as fine and imprisonment against the accounting officer for not taking reasonable steps to, inter alia, prevent unauthorised, irregular, fruitless and wasteful expenditures in the Mahikeng local municipality; also see *Robinson v Randfontein Estates Gold Mining Co Ltd* 1921 AD 168.

¹⁰⁰ *Shipping Corporation of India Ltd v. Evdonmon Corporation and Another* 1994 (1) SA 550 (A) 43 and 44.

¹⁰¹ See sections 94, 173 & 174 of the MFMA; sections 38 & 152 of the Constitution; sections 20(9) & 76(3) of the Companies Act 2008; M.M. Sibanda, 52(2) *Journal of Public Administration* (2017), pp. 313-323; *Ex Parte Gore* case 35.

¹⁰² See section 55(1)(a) of the Systems Act; also see J. De Visser, *Local Government Paper* (2001), pp. 2-4; M.M. Sibanda, 52(2) *Journal of Public Administration* (2017), pp. 313-321.

¹⁰³ See section 55 of the Systems Act; also see further G.L. Mathiba, *The Role of the Auditor-General in the Promotion of Efficient Financial Management in Municipalities: A Case Study of the North West Province*, pp. 60-61.

¹⁰⁴ Section 55(1) of the Systems Act; also see R. Rena, and A.J. Mothupi, 13(2) *Journal of Applied Economic Sciences*, (2018), pp. 394-410; see also Tau, P., '6 ANC Councillors' Houses Among 8 Torched in Violent North West Protest' (2019) <https://www.news24.com/citypress/News/7-anc-councillors-houses-torched-in-violent-north-west-protest-20190917> accessed 17 July 2022; Montsho, M., 'Eight North West Municipalities Put Under Administration', (2018) <https://www.iol.co.za/news/politics/8-north-west-municipalities-put-under-administration-16710117> accessed 01 May 2019.

¹⁰⁵ M. Kanyane, 2(1) *Africa's Public Service Delivery & Performance Review* (2014), pp. 92-110; R. Rena, and A.J. Mothupi, 13(2) *Journal of Applied Economic Sciences*, (2018), pp. 394-410; L.S. Matlala, and D.E. Uwizeyimana, 8(1) *African Evaluation Journal* (2020), pp. 1-4.

¹⁰⁶ Sections 4(1)(d) & 5A; section 181 of the Constitution; M. Glasser, and M. Wright, 24(1) *Law, Democracy & Development* (2020), pp. 414-433.

¹⁰⁷ See section 5A(2) of the Public Audit Act empowers the Auditor General to take remedial action against an accounting officer who has failed to implement the relevant recommendations; L.S. Matlala, and D.E. Uwizeyimana, 8(1) *African Evaluation Journal* (2020), pp. 7-8.

them to recover any financial losses incurred by the municipality from the actual offenders.¹⁰⁸

The audit recommendations of the Auditor General should be effectively enforced by the municipal manager of the Mahikeng local municipality to curb corruption, fraud and ensure accountability. Whenever the Mahikeng local municipality receive poor audit outcomes or there is unconscionable abuse of its separate juristic legal personality, the Auditor General and/or the members of the community should apply to the relevant courts for the piercing of the corporate veil of the municipality. Put differently, the legal status or juristic personality that is bestowed upon the municipality by the Structures Act¹⁰⁹ and related municipal laws to empower it to act separately from its members should be disregarded by the courts when there is corruption, fraud, maladministration and/or unconscionable abuse of its separate juristic legal personality.¹¹⁰

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¹⁰⁸ See section 5A of the Public Audit Act; also see M. Glasser, and M. Wright, 24(1) *Law, Democracy & Development* (2020), pp. 424-433; see further L.S. Matlala, and D.E. Uwizeyimana, 8(1) *African Evaluation Journal* (2020), pp. 6-8.

¹⁰⁹ See sections 12(1) & 14 of the Structures Act; section 2(a) of the Systems Act; sections 151 & 155 of the Constitution; B. Bekink, *The Restructuring (Systemization) of Local Government under the Constitution of the Republic of South Africa, 1996* (Unpublished LLD dissertation, University of Pretoria, 2006), pp. 126-127.

¹¹⁰ See sections 2(d); 12(1) & 14 of the Systems Act; see section 2(a) of the Systems Act; see also sections 151 & 155 of the Constitution; *Mhana* case 13; D. Davis, et al, (2015), pp. 29-30; B. Bekink, *The Restructuring (Systemization) of Local Government under the Constitution of the Republic of South Africa, 1996*, pp. 126-127.

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