**PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE**

FRIDAY, 9 APRIL 2021

QUESTION FOR WRITTEN REPLY

**11. Mr D Smith to ask Mr AW Bredell, Minister of Local Government, Environmental Affairs and Development Planning:**

(1) (a) What is the number of instances in which he and his Department have been taken to court, (b) what are the details of the (i) disputes, (ii) judgments and (iii) costs to the Department associated with cases in (aa) 2014, (bb) 2015, (cc) 2016, (dd) 2017, (ee) 2018, (ff) 2019, (gg) 2020 and (hh) 2021 to date;

(2) whether there are any pending cases before the courts that his Department is involved in; if so, what are the relevant details?

**REPLY:**

I have answered the question in relation to my portfolio as Provincial Minister responsible for Local Government.

**1) (a) What is the number of instances in which he and his Department have been taken to court, (b) what are the details of the (i) disputes, (ii) judgments and**

In respect of those matters in which myself and my Department of Local Government have been taken to court and relief was sought against us in the 2014/15 to 2021/22 financial years, the details are as follows:

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| **Matter** | **Details** | **Costs** |
| **Matzikama Local Municipality (Applicant in Main Application/First Respondent in Counter Application) v Member of Executive Council Responsible for Local Government, Western Cape (First Respondent in Main Application/Applicant in Counter Application), and others**  | Municipality sought an interim interdict suspending the MEC’s decision to designate independent investigators in terms of s106 of the Local Government: Municipal Systems Act to investigate allegations of maladministration, fraud, corruption and serious malpractice at the Matzikama Municipality and suspending the investigation pending resolution of an intergovernmental dispute. The matter was heard on 1 March 2021 and judgment has been reserved by the Court.  | R 308 844.00 |
| **Billy Claasen (Applicant)****v The Member of The Executive Council** **Responsible for Local Government,** **Environmental Affairs and Development Planning, Western Cape (First Respondent), The Bergriver Municipality (Second Respondent), RI Daniels NO Chairperson of the Disciplinary Committee (Third Respondent), The Speaker of the Council of Bergrivier Municipality (Fourth Respondent) and****the Independent Electoral Commission (Fifth Respondent)** | Notice of Motion was filed on 11 January 2019. Notice of Intention to oppose and an answering affidavit was filed by the MEC for Local Government. The applicant brought a review application pertaining to the decision to remove him as a Councillor. Mr Claasen failed to pursue the proceedings further. | R 134 800.00 |
| **John Nortje (Applicant) v The Member of The Executive Council** **Responsible for Local Government, Environmental Affairs and Development** **Planning, Western Cape** (**First Respondent), The Municipal Council, Swellendam Municipality (Second Respondent) and The Independent Electoral Council,** **Western Cape (Third Respondent)**  | The applicant sought an order reviewing and setting aside the decision of Swellendam Municipality in terms of which Mr Nortje was found guilty of a breach of the Code of Conduct for Councilors and dismissed as a Councillor from the Municipality, and the decision of the Minister to confirm the decision of the Municipality. Notice of Motion was filed on 11 July 2019 and the Minister filed his Notice of Intention to Oppose on 1 August 2019 and accordingly filed an answering affidavit to the application. The applicant intends to withdraw the application. | R 66 170.00 |
| **V Waxa** | Ex parte judgment, interdict application dismissed with costs, Part B has not been proceeded with, as Applicant imprisoned. Review of the decision to remove the applicant as a councillor in the Knysna Municipality. He also applied to interdict the IEC from holding the by – elections in Ward 4, Knysna on 13 February 2019. The matter was successfully opposed by the MEC and the application was dismissed to interdict the by election. Applicant was convicted of the murder of another councillor and received life imprisonment, the review part of the application then became moot. | R179 200.00 |
| **Bitou Municipality v MEC Local Government**  | This was an urgent application for an interdict to stay an investigation launched by the first respondent in terms of s106(1)b of the Local Government: Municipal Systems Act 31 of 2002 read with s7(1) of the Western Cape Monitoring and Support of Municipalities Act, subject to the review of the MEC‘s decision to that a full investigation be conducted. In this matter the MEC had launched a counter application effectively to compel the municipality to allow access to the investigators and to cooperate with the investigative process. The initial application failed and the MEC‘s counter application was successful. | R650 900.00 |
| **Anwar Adams v City of Cape Town and the Western Cape Provincial Minister of Local Government** | This was a review application launched Mr Adams, a municipal councillor and member of the municipal council of the City of Cape Town who was found guilty in a disciplinary hearing instituted by Council for breaching the Code of Conduct for municipal councilors contained in Schedule 1 of Local Government: Municipal Systems Act 32/2000, as amended. He applied to review and set aside the guilty finding dated 1 August 2016 and sanction which was imposed by the council and MEC which was a suspension for one month without a salary. A court order was granted in favour of the applicant. | R13 680.00 |

**(2) whether there are any pending cases before the courts that his Department is involved in; if so, what are the relevant details?**

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| **Member of the Executive Council: Local Government, Environmental Affairs and Development Planning, Western Cape v Prince Albert Municipality and Another** In a judgment delivered on 13 May 2020 the High Court held that, amongst other, Regulation 12(4) of the Regulations on Appointment and Conditions of Employment of Senior Managers is not valid or binding after 9 March 2019 as a result of the declaration of the order of Constitutional Invalidity in relation to the Local Government: Municipal Systems Amendment Act 2011.The MEC for Local Government pursuant to the judgment delivered on 13 May 2020, filed an application for leave to appeal the reasoning in the judgment. The application was granted on 18 June 2020 and the matter is to be heard by a full bench of the High Court on 23 July 2021.  |
| **Minister for Local Government, Environmental Affairs and Development Planning, Western Cape Provincial Government v Bitou Municipality and LMR Ngoqo** On 19 March 2019, the Minister responsible for Local Government brought an application seeking, inter alia, to review and set aside the appointment of the second respondent as the Municipal Manager of Bitou Municipality.The main application was successful, and on 13 August 2019, Nieuwoudt AJ made the following order: 1. The settlement agreement in terms of which Bitou Municipality would pay Mr Lonwabo Ngoqo the sum of R781 184.00 and settle a dispute related to Mr Ngoqo’s dismissal from the Municipality, is reviewed and set aside and
2. The decision to appoint Mr Ngoqo as Municipal Manager at Bitou Municipality is reviewed and set aside.

An application for leave to appeal the judgement of 13 August 2019 was lodged by Bitou Municipality and accordingly granted. On 16 September 2020, the appeal was heard before a full bench of the Labour Appeal Court. The appeal lodged by Bitou Municipality was dismissed by the Labour Appeal Court on 11 February 2021. Bitou Municipality and Mr Ngoqo have filed application for leave to appeal to the Constitutional Court, wherein the Minister responsible for Local Government has filed his intention to oppose the appeal. |
| **Member of the Executive Council: Local Government, Environmental Affairs and Development Planning, Western Cape v Knysna Municipality and Another** The MEC for Local Government on 11 February 2020 instituted Legal Proceedings, seeking a Court order reviewing and setting aside the Knysna Municipal Council resolution to adopt a Scarce Skills and Retention Policy that permitted the payment of such an allowance to Senior Managers at the Municipality, in contravention of the prevailing Upper Limits Notice. The Minister also sought a Court Order directing the Municipality to recover any irregular expenditure incurred as a result of scarce skills allowance being paid to Senior Managers since the adoption of the Policy, in excess of the total remuneration packages prescribed in the relevant upper limits notice. Knysna Municipality has agreed to abide the decision of the Court. The matter has been set down for hearing on 12 August 2021.  |
| **Matzikama Local Municipality (Applicant in Main Application/First Respondent in Counter Application) v Member of Executive Council Responsible for Local Government, Western Cape (First Respondent in Main Application/Applicant in Counter Application), and others** Municipality sought an interim interdict suspending the MEC’s decision to designate independent investigators in terms of s106 of the Local Government: Municipal Systems Act to investigate allegations of maladministration, fraud, corruption and serious malpractice at the Matzikama Municipality and suspending the investigation pending resolution of an intergovernmental dispute. The matter was heard on 1 March 2021 and judgment was principally granted in the MEC’s favour.  |
| **Executive Council of The Western Cape Province, Western Cape Minister of Local Government, Environmental Affairs and Development Planning, Western Cape Minister of Finance and Economic Opportunities, Administrator (Financial Recovery) Kannaland Local Municipality v Kannaland Local Municipality and 20 others** The Western Cape Government sought and were granted an interdict restraining the respondents from undermining or interfering with the implementation of the Financial Recovery Plan and taking potentially prejudicial and unlawful decisions (Part A). Part B of the matter *inter alia* reviewing and setting aside certain decisions made by the Municipality is still to be heard.  |

**PARLEMENT VAN DIE PROVINSIE WES-KAAP**

VRYDAG, 9 APRIL 2021

VRAAG VIR SKRIFTELIKE BEANTWOORDING

**11. Mnr D Smith vra Mnr AW Bredell, Minister van Plaaslike Regering, Omgewingsake en Ontwikkelingsbeplanning:**

(1) (a) In hoeveel gevalle is hy en sy Departement voor die hof gedaag, (b) wat is die besonderhede van die (i) geskille, (ii) hofuitsprake en (iii) kostes vir die Departement wat verband hou met sake in (aa) 2014, (bb) 2015, (cc) 2016, (dd) 2017, (ee) 2018, (ff) 2019, (gg) 2020 en (hh) 2021 tot op hede;

(2) Is daar nog sake voor die howe waarby sy Departement betrokke is; so ja, wat is die tersaaklike besonderhede?

**ANTWOORD:**

Ek het die vraag beantwoord met betrekking tot my portefeulje as Provinsiale Minister verantwoordelik vir Plaaslike Regering.

**(a) In hoeveel gevalle is hy en sy Departement voor die hof gedaag, (b) wat is die besonderhede van die (i) geskille, (ii) hofuitsprake en**

Wat betref die sake waarin ek en my Departement van Plaaslike Regering voor die hof gedaag is en verligting teen ons in die 2014/15- tot 2021/22-boekjare versoek is, is die besonderhede soos volg:

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| **Saak** | **Besonderhede** | **Kostes** |
| **Matzikama Plaaslike Munisipaliteit (Aansoeker in hoofaansoek / Eerste respondent in teenaansoek) v Lid van die Uitvoerende Raad verantwoordelik vir Plaaslike Regering, Wes-Kaap (Eerste respondent in hoofaansoek / Aansoeker in teenaansoek), en ander** | Die munisipaliteit het 'n tussentydse interdik gevra wat die LUR se besluit om onafhanklike ondersoekers aan te wys ingevolge artikel 106 van die Wet op Plaaslike Regering: Munisipale Stelsels, om die bewerings van wanadministrasie, bedrog, korrupsie en ernstige wanpraktyke by die Matzikama Munisipaliteit te ondersoek, op te skort en die ondersoek op te skort tot tyd en wyl ’n interne regeringsgeskil besleg is. Die saak is op 1 Maart 2021 aangehoor en die uitspraak is voorbehou deur die hof.   | R 308 844.00 |
| **Billy Claasen (Aansoeker)****v Die lid van die Uitvoerende Raad****verantwoordelik vir Plaaslike Regering,****Omgewingsake en Ontwikkelingsbeplanning, Wes-Kaap (Eerste Respondent), Die Bergriver Munisipaliteit (Tweede Respondent), RI Daniels Voorsitter van die Tugkomitee (Derde Respondent), Die Speaker van die Raad van** **die Bergrivier Munisipaliteit (Vierde Respondent) en****die Onafhanklike Verkiesingskommissie (vyfde respondent)** | Die Kennisgewing van Mosie is op 11 Januarie 2019 ingedien. Kennisgewing van mosie om die aansoek teen te staan en ’n antwoordende beëdigde verklaring is deur die LUR vir Paaslike Regering ingedien. Die applikant het ’n hofbevel versoek om die beslissing ingevolg waarvan hy as Raadslid ontslaan is tersyde te stel. Mnr Claasen het nie die saak verder gevoer nie. | R 134 800.00 |
| **John Nortje (applikant) v Die lid van die Uitvoerende Raad****verantwoordelik vir Plaaslike Regering, Omgewingsake en Ontwikkelingsbeplanning, Wes-Kaap (Eerste Respondent), Die Munisipale Raad, Swellendam Munisipaliteit (Tweede Respondent) en die Onafhanklike Verkiesingsraad,****Wes-Kaap (Derde Respondent)** | Die applikant het 'n hofbevel versoek om die beslissing van die Swellendam Munisipaliteit te hersien en tersyde te stel ingevolge waarvan mnr. Nortje skuldig bevind is aan 'n oortreding van die Gedragskode vir Raadslede en as Raadslid van die munisipaliteit ontslaan is, en die besluit van die Minister om die besluit van die munisipaliteit te bevestig.Die Kennisgewing van Mosie is op 11 Julie 2019 ingedien en die Minister het op 1 Augustus 2019 sy Kennisgewing van Mosie om Aansoek Teen te staan ingedien en dienooreenkomstig ’n antwoordende beëdigde verklaring tot die aansoek ingedien. Die applikant is van voorneme om die aansoek terug te trek. | R 66 170.00 |
| **V Waxa** | Ex parte oordeel, interdik aansoek met koste van die hand gewys. Daar word nie met Deel B voortgegaan nie, want die applikant is in hegtenis geneem. Hersiening van die besluit om die applikant as raadslid van die Knysna Munisipaliteit te ontslaan.   Hy het ook aansoek gedoen om die OVK op 13 Februarie 2019 van die tussenverkiesing in wyk 4, Knysna, te verbied. Die LUR het die saak suksesvol teëgestaan ​​en die aansoek is van die hand gewys om ’n interdik teen die tussenverkiesing te verkry. Applikant is skuldig bevind aan die moord op 'n ander raadslid en het lewenslange gevangenisstraf ontvang. | R179 200.00 |
| **Bitou Munisipaliteit v LUR Plaaslike Regering**  | Dit was 'n dringende aansoek om 'n interdik te verkry om 'n ondersoek te stop wat die eerste respondent ingestel het ingevolge Artikel 106 (1) b van die Wet op Plaaslike Regering: Wet op Munisipale Stelsels 31 van 2002 saamgelees met Artikel 7 (1) van die Wes-Kaapse Wet op Monitering en Ondersteuning van Munisipaliteite, onderhewig aan die hersiening van die besluit van die LUR dat 'n volledige ondersoek gedoen word. In hierdie saak het die LUR 'n teenaansoek ingedien om die munisipaliteit te dwing om toegang tot die ondersoekbeamptes toe te laat en om samewerking te verleen tydens die ondersoekproses. Die aanvanklike aansoek het misluk en die teenaansoek van die LUR was suksesvol. | R650 900.00 |
| **Anwar Adams v Stad Kaapstad en die Wes-Kaapse provinsiale Minister van Plaaslike Regering** | Dit was 'n hersieningsaansoek wat mnr Adams, 'n munisipale raadslid en lid van die munisipale raad van die Stad Kaapstad, ingedien het. Hy is skuldig bevind in 'n tugverhoor wat deur die Raad ingestel is vir die oortreding van die gedragskode vir munisipale raadslede vervat in Bylae 1 van die Wet op Plaaslike Regering: Munisipale Stelsels, Wet 32 van 2000, soos gewysig. Hy het aansoek gedoen om die skuldige bevinding van 1 Augustus 2016 en die sanksie wat deur die raad en die LUR opgelê is, wat 'n skorsing vir een maand sonder salaris was, te hersien en tersyde te stel. 'n Hofbevel is ten gunste van die applikant toegestaan. | R13 680.00 |

**(2) Is daar nog sake voor die howe waarby sy Departement betrokke is; so ja, wat is die tersaaklike besonderhede?**

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| **Lid van die Uitvoerende Raad: Plaaslike Regering, Omgewingsake En Ontwikkelingsbeplanning, Wes-Kaap v Prins Albert Munisipaliteit en Nog een** In 'n uitspraak wat op 13 Mei 2020 gelewer is, het die Hooggeregshof bevind dat onder meer Regulasie 12 (4) van die Regulasies ingevolge die Aanstelling en Diensvoorwaardes van Senior Bestuurders nie na 9 Maart 2019 geldig of bindend is nie as gevolg van die verklaring van die orde van Grondwetlike Ongeldigheid in verband met die Wysigingswet op Plaaslike Regering: Munisipale Stelsels 2011.Die LUR vir Plaaslike Regering het ingevolge die uitspraak van 13 Mei 2020 'n aansoek ingedien om verlof tot appèl teen die argumente en redenasie wat in die hofuitspraak aangevoer is. Die aansoek is op 18 Junie 2020 toegestaan ​​en die saak moet deur 'n volbank van die Hooggeregshof op 23 Julie 2021 aangehoor word.  |
| **Minister van Plaaslike Regering, Omgewingsake en Ontwikkelingsbeplanning, Wes-Kaapse Provinsiale Regering v Bitou Munisipaliteit en LMR Ngoqo** Op 19 Maart 2019 het die Minister wat verantwoordelik is vir Plaaslike Regering 'n aansoek ingedien wat onder meer probeer om die aanstelling van die tweede respondent as munisipale bestuurder van die Bitou Munisipaliteit te hersien en tersyde te stel.Die hoofaansoek was suksesvol, en op 13 Augustus 2019 het AJ Nieuwoudt die volgende hofuitspraak gelewer: 1. Die skikkingsooreenkoms ingevolge waarvan die Bitou Munisipaliteit die bedrag van R781 184,00 aan mnr. Lonwabo Ngoqo sou betaal en 'n geskil in verband met die afdanking van mnr. Ngoqo uit die munisipaliteit sou besleg, word hersien en tersyde gestel en
2. Die besluit om mnr. Ngoqo as munisipale bestuurder by die Bitou Munisipaliteit aan te stel, word hersien en tersyde gestel.

'n Aansoek om verlof tot appèl teen die uitspraak van 13 Augustus 2019 is deur die Bitou Munisipaliteit ingedien en gevolglik toegestaan. Op 16 September 2020 word die appèl voor 'n volbank van die Arbeidsappèlhof aangehoor. Die appèl wat deur die Bitou Munisipaliteit ingedien is, is op 11 Februarie 2021 deur die Arbeidsappèlhof van die hand gewys.Beide die Bitou Munisipaliteit en mnr. Ngoqo het aansoeke om verlof tot appèl by die Konstitusionele Hof ingedien, waarin die Minister van Plaaslike Regering sy kennisgewing van voorneme om die appèl teen te staan ingedien het. |
| **Lid van die Uitvoerende Raad: Plaaslike Regering, Omgewingsake en Ontwikkelingsbeplanning, Wes-Kaap v Knysna Munisipaliteit en Nog een** Die LUR vir Plaaslike Regering het op 11 Februarie 2020 'n regsgeding ingestel met 'n hofbevel wat die besluit van die munisipale raad van Knysna om 'n Beleid op die Behoud van Skaars Vaardighede en Personeel te aanvaar wat die betaling van so 'n toelaag aan senior bestuurders by die munisipaliteit toelaat, tersyde stel aangesien dit ’n oortreding is van die bestaande Kennisgewing in verband met Boonste Limiete. Die Minister het ook 'n hofbevel aangevra wat die munisipaliteit beveel om onreëlmatige uitgawes te verhaal wat aangegaan is as gevolg van die skaars vaardighede toelaag wat sedert die goedkeuring van die beleid aan Senior Bestuurders betaal is, bo en behalwe die totale vergoedingspakkette wat in die toepaslike kennisgewing vir die boonste limiete voorgeskryf is.  Knysna Munisipaliteit het ingestem om die hofuitspraak te aanvaar. Uitspraak oor die saak sal gelewer word in ’n hofsaak wat geskeduleer is vir 12 Augustus 2021.  |
| **Matzikama Plaaslike Munisipaliteit (Aansoeker in hoofaansoek / Eerste respondent in teenaansoek) v Lid van die Uitvoerende Raad verantwoordelik vir Plaaslike Regering, Wes-Kaap (Eerste respondent in hoofaansoek / Aansoeker in teenaansoek), en ander**Die munisipaliteit het 'n tussentydse interdik aangevra om die LUR se besluit om onafhanklike ondersoekers aan te wys ingevolge Artikel 106 van die Wet op Plaaslike Regering: Munisipale Stelsels om die bewerings van wanadministrasie, bedrog, korrupsie en ernstige wanpraktyke by die Matzikama Munisipaliteit te ondersoek op te skort tot tyd en wyl hierdie interne regeringsgeskil besleg is. Die saak is op 1 Maart 2021 aangehoor en die uitspraak was in beginsel in die guns van die LUR.   |
| **Uitvoerende Raad van die Wes-Kaap, Wes-Kaapse Minister van Plaaslike Regering, Omgewingsake en Ontwikkelingsbeplanning, Wes-Kaapse Minister van Finansies en Ekonomiese Geleenthede, administrateur (finansiële herstel) Kannaland Plaaslike Munisipaliteit teen Kannaland Plaaslike Munisipaliteit en 20 ander**     Die Wes-Kaapse Regering het 'n interdik aangevra en dit is toegestaan ​​om die respondente daarvan te weerhou om die implementering van die Finansiële Herstelplan te ondermyn of in te meng en om te voorkom dat skadelike en onwettige besluite geneem word (Deel A).Deel B van die saak, *onder andere die*hersiening en tersydestelling van sekere besluite wat deur die munisipaliteit geneem is, moet nog aangehoor word. |