

Establishing a municipal court

Case study: Stellenbosch Municipality

One of the constitutional objectives of local government is to promote a safe and healthy environment for the community, a key aspect of which is law enforcement. One way to ensure a safe and crime-free living environment is through visible crime prevention. However, law enforcement through policing can only be successful if those who are apprehended are also prosecuted. Essential for success is by-law enforcement through the magistrates' court system. Unfortunately, many municipalities have found that backlogs in the lower court system mean municipal matters are not prosecuted timeously or even properly. A potential solution is the introduction and establishment of a municipal court.

Background

The high crime levels in South Africa, backlogs in the criminal justice system and the gaps that existed in the national crime prevention strategies all had a negative impact on the management of crime within the jurisdiction area of the Stellenbosch Municipality (hereafter the Municipality). After the promulgation of the South African Police Services Amendment Act (hereafter the Amendment Act) in 1998, as well as the promulgation of regulations in relation thereto in 1999, the Municipality decided to investigate the possibility of establishing a municipal police service and a municipal court. This article focuses on the Municipality's experience in the latter.

What is a 'municipal court'?

A municipal court is a division of a magistrates' court that only focuses on the handling of municipal matters such as traffic violations, the breach of building regulations and the violation of municipal by-laws dealing with, among other things, nuisance and health regulations. In practice it would mean that a magistrates' court would have extra sessions dealing only with municipal matters. Thus, a municipal court is not a separate type of lower court functioning alongside a magistrates' court, but is rather a specialised sitting of a magistrates' court and operates according to the legislative framework set out in the Magistrates' Court Act of 1944.

Pre-establishment investigation

After consultations and various deliberations with stakeholders such as the council's attorneys, the applicable Regional Court and practitioners at the Cape Town Municipal Court, the Municipality was advised to conduct a pre-establishment investigation consisting of the following steps:

- conduct a pre-establishment investigation of the viability of the initiative, by assessing all relevant information on the numbers of fines and the amount of income that could be generated through a municipal court; and
- identify a task team that would be responsible for the court's establishment. The task team would finalise the structure and functioning of the court and would have to consider matters such as the contractual appointment of a magistrate (if the capacity does not exist within the local magistrates' court) to head the municipal court, the prosecutors necessary, the availability of a suitable facility, the administrative support required, and changes required to the municipal financial and information technology systems.

The task team was identified and consisted of municipal officials and politicians (legal services, traffic services, finance, planning and economical development and rescue services), officials of the local magistrates' court, members of the local SAPS and the council's attorneys. It studied the pre-establishment process followed by the Cape Town Municipal Court in detail, as well as the establishment and implementation processes.

- A municipal court is a division of a magistrates' court and focuses on handling municipal matters.
- A municipal court must be able to finance itself and good relations and networks must be established between the magistrates' court, the municipality and the SAPS.
- The organisation of the court is determined by agreement between the municipality and the Department of Justice.
- Establishing a municipal court is not the only or even the best solution in certain situations.

Establishment

When a municipality wishes to establish a municipal court, an application, supported by council resolution, needs to be submitted to the relevant Regional Court of the Department of Justice and to the Director of Public Prosecutions. The resolution should be informed by a detailed pre-establishment investigation report, as well as a business plan for implementation linked to an approved budget.

The final decision on the court's establishment is taken by the Department of Justice with the Director of Public Prosecutions. After receiving the go-ahead, the relevant council is responsible for the court's establishment and implementation by agreement between the parties. The agreement should stipulate which party will be responsible for the court's staffing and for infrastructure, among other things. For example, the court staff could be paid by the municipality (preferably from revenue generated by the municipal court itself). Each specific case study will result in a different agreement, depending on the circumstances.

Challenges

Although establishing a municipal court is relatively simple, the implementation of the system in Cape Town has highlighted the following challenges:

- the Department of Justice has insufficient funds to appoint more magistrates;
- setting up a municipal court creates a financial burden through, for e.g., initial expenses such as salaries, structural changes to existing buildings etc., as negotiated and agreed to by the parties;
- the fact that municipal boundaries do not correlate with magistrates' court district boundaries – for example, a municipality may fall within five different magistrates' court districts;
- magistrates' and prosecutors' limited knowledge of the new local government dispensation;
- additional legislative requirements, such as:
 - separate lock-up facilities for men and women, and for those arrested and awaiting trial;
 - ablution facilities for these people and for visitors to the court;
 - provision of food to the above people;
 - adequate security systems; and
 - the provision of means of travel from and to the court.

Stellenbosch's decision

After considering the report drafted by the task team, it was decided not to go ahead with establishing a municipal court for Stellenbosch at present. It was decided to collaborate with the Chief Magistrate in focussing on traffic violations and ensuring that there are no unnecessary delays in resolving these matters. During the task team's investigation it became evident that the limited success in municipal matters was also due to technical irregularities in issuing summonses. The Senior Prosecutor gave extensive training to municipal law enforcement officials on this matter, which had a noticeable positive effect in ensuring successful finalisation of municipal matters in the local magistrates' court. The Municipality will review the situation in future and the establishment of a municipal court is still a possibility.

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