

The Koingnaas KBBV High Court Case and the Crisis of Failing Municipalities in South Africa

Executive Summary

This report provides a deep-dive research analysis of the landmark High Court case, *Kamiesberg Local Municipality and Another v Koingnaas Belastingbetalersvereniging and Another* [Case No: 2609/2021; [2024] ZANCHC 14] [1], decided in the Northern Cape Division (Kimberley) on February 16, 2024, and its subsequent application for leave to appeal, dismissed on October 11, 2024 [[2]]. It examines the systemic service delivery collapse within the **Kamiesberg Local Municipality (KLM)**, the subsequent citizen-led intervention by the **Koingnaas Ratepayers' Association (KBBV)**, and the profound legal, financial, and socio-economic implications of this judgment.

This case represents a critical constitutional flashpoint in South Africa's ongoing local government crisis. While the High Court acknowledged that the municipality had fundamentally failed in its constitutional duties to provide basic services like water, sanitation, and road maintenance, it ruled that private citizens and ratepayers' associations cannot legally "usurp" municipal functions or bypass public procurement frameworks under the guise of common-law self-help doctrines such as *negotiorum gestio* (unauthorized management of another's affairs) or necessity [1] [3].

This report contextualizes the Koingnaas case within the broader landscape of municipal collapse in South Africa, referencing the Auditor-General's 2023-24 Consolidated General Report on Local Government Audit Outcomes [4] and the South African Human Rights Commission's (SAHRC) April 2026 Inquiry Report on the Northern Cape [5]. Finally, it rates the importance of this case for failing municipalities across South Africa, providing strategic insights into how communities, the private sector, and the judiciary are reshaping the future of local governance.

1. Background: The Transition and Collapse of Koingnaas

Koingnaas is a remote town situated in the Namaqualand region of the Northern Cape, approximately 100 kilometers northwest of Garies [3]. Established, owned, and historically operated as a private "mining town" by **De Beers Consolidated Mines**, Koingnaas was characterized by high-quality, privately managed infrastructure and reliable services [1] [3].

However, as mining operations wound down, De Beers initiated a process of transitioning municipal services to the local public authority. This occurred partially in 2010 and was fully finalized in 2016, incorporating Koingnaas into the **Kamiesberg Local Municipality (KLM)** [1] [3]. To facilitate this handover and ensure the long-term maintenance of the town's infrastructure, De Beers provided a substantial refurbishment grant of **R21 million** to KLM in 2016 [1] [6].

The Service Delivery Freefall

Following the handover, municipal service delivery in Koingnaas rapidly deteriorated. KLM failed to ring-fence the R21 million De Beers grant for Koingnaas, absorbing it into the municipality's general operational coffers [6]. Within a few years, the town's infrastructure entered a state of near-total collapse:

- **Water and Sanitation:** The reverse osmosis water purification system fell into disrepair, leading to frequent supply interruptions. Raw sewage was repeatedly discharged directly into the surrounding veld, causing severe environmental contamination and posing an acute public health hazard [3] [7].
 - **Road Infrastructure:** Streets became severely eroded, with massive potholes making municipal and public roads virtually impassable [3] [6].
 - **Waste Management:** Refuse collection became erratic, and waste was routinely dumped in unlicensed, hazardous disposal sites immediately outside the town [3].
 - **Environmental Pollution:** The nearby dried-up tailings dam of the West Coast Resources mine (under business rescue) began blowing toxic dust storms over the town, causing widespread respiratory and sinus issues among residents, with no active intervention from the municipality to enforce environmental compliance [3].
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2. The Legal Battle: Kamiesberg Local Municipality v KBBV

Faced with an unresponsive and bankrupt municipality, the residents of Koingnaas established the **Koingnaas Belastingbetalersvereniging (KBBV)** (Koingnaas Ratepayers' Association), led by local resident Johan G. Gräbe [1]. Driven by the desire to save their town from ruin, KBBV took matters into their own hands:

- They organized community work teams and used over 50 tons of concrete to repair the town's crumbling streets [6].
- They entered municipal properties to conduct emergency repairs on the broken sewerage and water plants [1].
- KBBV then billed the Kamiesberg Local Municipality **R120,000** for the cost of these repairs [1] [2].

In response, rather than welcoming the assistance, the Kamiesberg Local Municipality and its Municipal Manager, Rufus Cormarco Beukes, approached the Northern Cape High Court in December 2021 to secure an urgent *rule nisi* (interim interdict) to stop the residents [1]. KLM argued that KBBV's actions constituted unlawful "self-help," interfered with municipal administration, and bypassed the strict statutory procurement laws governing public funds [1] [2].

The KBBV Counter-Application

KBBV launched a robust counter-application, seeking a court order to:

- 1 Compel KLM to restore the water, sanitation, and road infrastructure within a strict timeline of two to four weeks [1].

- 2 Authorize KBBV to **take over control and administration** of the town's municipal infrastructure and services should KLM fail to comply [1].
- 3 Force KLM to pay all invoices submitted by KBBV for such services within seven days of receipt [1].
- 4 Provide a full accounting of how the R21 million De Beers donation was utilized [1].
- 5 Issue a judicial declarator that KBBV's self-help actions were lawful under a *sui generis* common-law doctrine of **necessity** or *negotiorum gestio* [1] [2].

The High Court Judgment (February 16, 2024)

Presiding Judge **M.C. Mamosebo** delivered a reportable judgment that ruled firmly in favor of the municipality, confirming the final interdict against KBBV and dismissing the ratepayers' counter-application [1] [2]. The court's ruling was built on three core legal pillars:

A. Lack of Standing (*Locus Standi*)

The court raised a fatal point *in limine* regarding KBBV's legal standing [1] [2]. As a voluntary association governed by its own constitution, KBBV's founding document mandated that its management committee must consist of no fewer than five and no more than eleven elected members [1]. At the time of launching the counter-application, KBBV's committee had dwindled to only four members due to vacancies [1].

Invoking established Supreme Court of Appeal (SCA) precedents, such as *Land and Agricultural Bank of South Africa v Parker* [8] and *Lupacchini NO v Minister of Safety and Security* [9], Judge Mamosebo ruled that the minimum number of committee members is a **capacity-defining condition** [1]. Because the committee was inquorate, KBBV lacked the legal capacity to act or litigate on behalf of the association, rendering its counter-application a legal nullity that could not be retrospectively ratified [1] [2].

B. Violation of Section 217 (Procurement and Legality)

KBBV argued that its repair work and subsequent invoicing of the municipality was justified under the common-law doctrine of *negotiorum gestio* (where a person steps in to manage the affairs of another in an emergency without prior consent) [1] [2].

The High Court rejected this argument. It ruled that allowing a private association to unilaterally perform public works and demand reimbursement from a municipal treasury directly violates **Section 217 of the Constitution**, which mandates that all public procurement of goods and services must be conducted in accordance with a system that is fair, equitable, transparent, competitive, and cost-effective [1] [2]. Allowing ratepayers to bypass formal municipal supply chain management frameworks would invite financial chaos, arbitrariness, and a complete breakdown of fiscal controls [1] [2].

C. Separation of Powers and Constitutional Remedies

The court strongly castigated KBBV's attempt to judicially authorize a private takeover of public services [1] [2]. Judge Mamosebo emphasized that local government is a distinct, autonomous

sphere of government established under **Section 151 of the Constitution** [1]. While a municipality's failure to deliver services is a grave constitutional breach, the remedy cannot be the private usurpation of public functions [1] [2].

The Constitution and local government legislation provide specific, structured mechanisms for municipal failure—namely, **Section 139 provincial or national interventions** [1]. Under Section 139, the provincial executive can intervene, impose a recovery plan, or dissolve a failing council [1] [10]. Private citizens cannot bypass these constitutional structures to install themselves as administrators [1] [2].

"Usurping the powers and functions of a Municipality is definitely not one of them... service delivery issues must be resolved through constitutional and legislative frameworks, such as Section 139 of the Constitution." [1] [2]

Leave to Appeal Dismissed (October 11, 2024)

KBBV subsequently applied for leave to appeal to the Supreme Court of Appeal (SCA), arguing that the High Court failed to develop the common law to recognize a *sui generis* form of necessity when a municipality persistently fails to meet its constitutional obligations [2].

On October 11, 2024, Judge Mamosebo dismissed the application with costs [[2]]. The court reaffirmed that there were no reasonable prospects of success, noting that the supremacy of the Constitution and the statutory frameworks governing public finance (such as the MFMA) leave no room for private, unregulated entities to assume public administrative powers under the guise of common-law necessity [2].

3. The Context: A Systemic Municipal Collapse in South Africa

The Koingnaas case is not an isolated incident; it is a microcosm of a systemic, nationwide collapse of local government in South Africa. This is starkly illustrated by key data from the Auditor-General's 2023-24 Local Government Audit Outcomes and the SAHRC's 2026 Northern Cape Inquiry.

A. The Nationwide Picture (AGSA 2023-24 Outcomes)

The Auditor-General of South Africa (AGSA), Tsakani Maluleke, reported that South African local government remains in a "dire state" characterized by a severe lack of fiscal discipline, crumbling infrastructure, and a pervasive failure of accountability [4].

Metric / Audit Outcome Category	National Statistics (2023-24)	Description & Key Implications
Total Audited Municipalities	257	The total number of local, district, and metropolitan municipalities in SA.
Clean Audits	41 (16%)	Only 16% of municipalities achieved an unqualified audit with no findings [4].
Modified Audit Opinions	107 (43%)	Municipalities receiving qualified, adverse, or disclaimed opinions due to poor record-keeping [4].
Material Findings on Performance	119 (48%)	Nearly half of all municipalities produced unreliable or useless performance reports [4].
Compliance Failures	206 (83%)	The vast majority of municipalities failed to comply with key legislative frameworks [4].
Unfunded Budgets	113 (44%)	44% of municipalities adopted budgets they had no actual revenue to fund [4].
Unauthorised Expenditure	174 (68%)	Over two-thirds of municipalities overspent their approved budgets [4].

B. The Local Reality: Kamiesberg Local Municipality's Financial Health

The AGSA's specific profile of the **Kamiesberg Local Municipality (KLM)** for the 2023-24 financial year exposes a bankrupt, administratively crippled institution that is mathematically incapable of delivering basic services [11]:

- **Audit Outcome:** KLM has received a **Qualified audit opinion** for five consecutive years (2019-20 to 2023-24) [11].
- **Creditor Payment Period:** It takes KLM an average of **more than 1,400 days to pay its creditors** (the legally mandated statutory limit is 30 days) [11].
- **Debt Recoverability: 85% of the debt** owed to KLM is deemed completely unrecoverable, leaving the municipality with virtually no local revenue base [11].
- **Deficit:** KLM spent **R37.10 million more than it generated** in the 2023-24 financial year alone [11].
- **Accumulated Waste:** KLM's accumulated Unauthorised Expenditure stood at **R137.65 million**, Irregular Expenditure at **R143.89 million**, and Fruitless & Wasteful Expenditure at **R36.92 million** [11].
- **Infrastructure Neglect:** KLM spent just **R613,176** on repairing and maintaining its entire property, plant, and equipment portfolio—representing a microscopic **0.3%** of its asset value [11]. The National Treasury's mandatory minimum norm is **8%** [11].
- **Resource Losses:** The municipality lost **52% of its piped water** to leaks and burst pipes, and **8.6% of its electricity** to distribution losses [11].

C. Systemic Human Rights Violations (SAHRC 2025-2026 Inquiry)

On April 22, 2026, the South African Human Rights Commission (SAHRC) released a damning provincial inquiry report into local government in the Northern Cape [5] [12]. The SAHRC concluded

that service delivery failures in the province are no longer mere "administrative glitches," but constitute **systemic human rights violations** that strip citizens of their constitutional right to human dignity, clean water, and a safe environment [5] [12].

The SAHRC report highlighted:

- **The "Stop-Gap" Financial Trap:** Municipalities are spending millions on temporary, expensive "fixes" rather than sustainable infrastructure [5] [12]. For example, the neighboring Kai !Garib municipality spends **R15.6 million annually on water tankering**—funds that could have built permanent water networks [12].
- **Critical Skills Starvation:** Municipalities are administratively hollowed out [12]. In Nama Khoi, only **7% of skilled technical and engineering posts** are filled [12].
- **The Sol Plaatje Sewage Disaster:** In Sol Plaatje (Kimberley), the sewage crisis is so severe that the SAHRC recommended the Premier declare a **provincial state of disaster** after raw sewage flooded residential homes, displacing families and creating a massive biological hazard [5] [12].
- **Ongoing Sewerage Failures in Koingnaas:** In August and October 2025, the Democratic Alliance (DA) captured drone and video footage showing KLM municipal trucks dumping raw sewage directly into the open veld in Koingnaas [7]. Despite directives from the Department of Water and Sanitation (DWS) dating back to 2021, KLM ignored all compliance notices, prompting the DWS to initiate **criminal and legal proceedings** against the Kamiesberg Municipality in late 2025 [7].

4. Rating the Importance of the Koingnaas Case

To evaluate the significance of the *Kamiesberg v KBBV* case for South Africa's 257 municipalities, we must weigh it against other key judicial precedents that have shaped municipal accountability.

Comparison with Key Judicial Precedents

LOCAL GOVERNMENT JUDICIAL PRECEDENTS IN SA		
[1] Makana (2020) "The Dissolution Precedent" Court orders Eastern Cape Govt to dissolve council under Section 139(1)(c).	[2] Lekwa (2021) "The Leapfrog Precedent" Court orders National Govt to bypass province and intervene under Sec 139(7).	[3] Koingnaas (2024) "The Self-Help Limit" Court blocks private takeover and billing; reaffirms Sec 217.

6 **The Makana Case (2020) (*Unemployed People's Movement v Premier of the Eastern Cape*) [13]:**

- *The Precedent:* For the first time, the High Court ordered a provincial executive to dissolve a dysfunctional municipal council under Section 139(1)(c) of the Constitution and appoint an administrator [13].
- *Significance:* Established that the judiciary can actively compel provinces to execute mandatory constitutional interventions in collapsed municipalities [10] [13].

7 The Lekwa Case (2021) (Astral Operations Ltd v Lekwa Local Municipality) [10]:

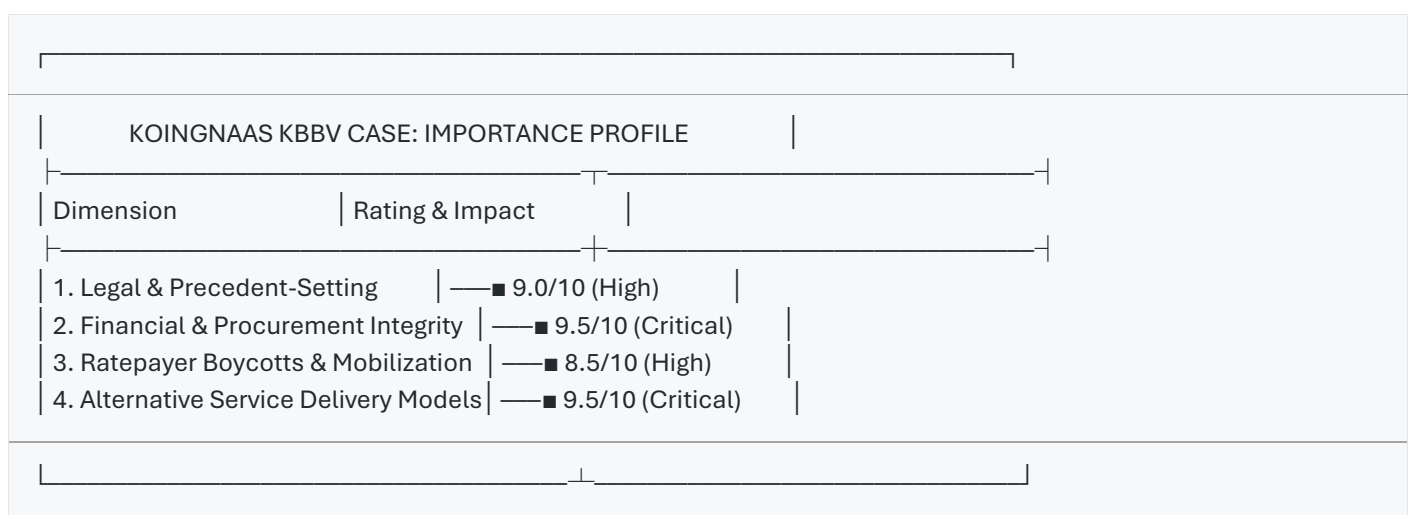
- *The Precedent:* The High Court ordered the national government to "leapfrog" over an inactive provincial executive and directly intervene in the collapsed Lekwa Local Municipality under Section 139(7) of the Constitution and Section 150 of the MFMA [10].
- *Significance:* Forced the National Treasury to draft and implement a financial recovery plan and led to the dissolution of the council, proving that the national government has a non-discretionary duty to act when local administration collapses [10].

8 The Kgetlengrivier Case (2020-2025) (Kgetlengrivier Concerned Citizens v Kgetlengrivier Local Municipality) [14]:

- *The Precedent:* Fed-up residents secured a High Court order temporarily handing over control of the town's water and sewage plants to the ratepayers' association, which restored water within 46 hours [14]. However, the court later ordered the infrastructure returned to the municipality, leading to a renewal of service collapse and an ongoing battle in the Supreme Court of Appeal (SCA) [14].
- *Significance:* Highlighted the extreme tension between community-led emergency operations and statutory municipal monopolies [14].

Multi-Dimensional Importance Rating: Koingnaas Case

The Koingnaas case is rated **9.5 / 10 in systemic importance** for failing municipalities in South Africa. Its significance is broken down across four critical dimensions:



1. Legal and Precedent-Setting Importance: 9.0 / 10

- **The "Self-Help" Boundary:** This case is the definitive judicial authority drawing a hard red line against unilateral community "self-help" [1] [2]. It establishes that no matter how severe a municipality's constitutional failure, ratepayers cannot legally usurp municipal functions or enter municipal property to perform unauthorized public works without explicit, formal consent [1] [2].
- **Constitutional Primacy:** It shuts down the attempt to use common-law doctrines like *negotiorum gestio* or necessity to bypass the constitutional division of powers [1] [2]. It forces communities to seek structured, statutory constitutional remedies (such as Section 139 interventions) rather than resorting to private administrative takeovers [1] [2].
- **Technical Rigor (*Locus Standi*):** It serves as a stern warning to civic organizations and ratepayers' associations to maintain strict compliance with their own internal constitutions, as any technical quorum defect will strip them of their legal standing to challenge municipalities in court [1] [2].

2. Financial and Procurement Integrity Importance: 9.5 / 10

- **Defending Section 217:** The judgment is a massive victory for public finance management [1] [2]. It protects the integrity of Section 217 of the Constitution and the Municipal Finance Management Act (MFMA) [1] [2].
- **Preventing Treasury Depletion:** If KBBV had won, it would have set a precedent allowing any private group to perform unauthorized public works, set their own prices, and legally force a municipal treasury to pay their invoices within seven days [1] [2]. This would have opened the floodgates to financial chaos, bid-rigging, and the complete collapse of municipal budgetary controls across South Africa's 257 municipalities [1] [2].

3. Impact on Ratepayer Boycotts and Civic Mobilization: 8.5 / 10

- **Rates Boycott Legitimacy:** The case directly impacts the growing "ratepayer rebellion" movement across South Africa, where communities in towns like Koster, Graaff-Reinet, and Garies are withholding rates in protest of non-delivery [6] [14] [15].
- **The Double-Payment Dilemma:** The judgment reinforces a painful reality for ratepayers: they cannot withhold rates to fund their own private service delivery and expect the courts to force the municipality to reimburse them [1] [2] [15]. Ratepayers are legally bound to pay property rates, even if they must pay a second time out of their own pockets to sink private boreholes, install solar power, or hire private refuse collectors [3] [6] [14].

4. Importance for Alternative Service Delivery and PPP Models: 9.5 / 10

- **The Death of Unilateral Action:** The judgment makes it clear that the era of "going it alone" is legally dead [1] [6]. If communities want to fix their towns, they cannot do so antagonistically; they must do so through formal, legally structured channels [6].
- **Catalyzing Structured Public-Private Partnerships (PPPs):** By blocking unilateral self-help, the Koingnaas case forces a pivot toward structured, legally compliant collaborative models [6]. This is highly evident in the Northern Cape:
 - **The Kleinzee Model (February 2025):** In stark contrast to the litigation in Kamiesberg, the neighboring **Nama Khoi Local Municipality** and De Beers successfully concluded a structured, **R270 million transfer agreement** for the mining town of Kleinzee [[16]].

This handover was characterized by collaborative planning, transitional property tax rebates, and ring-fenced infrastructure funding, demonstrating how public-private transitions should be legally and cooperatively managed [[16]].

- **Service Level Agreements (SLAs):** Municipalities are increasingly forced to enter into formal, Section 78-compliant SLAs with organized community groups, allowing residents to perform road repairs or park maintenance under municipal oversight, ensuring compliance with both Section 217 and local government legislation.

5. Conclusion and Strategic Recommendations

The *Kamiesberg Local Municipality v Koingnaas Belastingbetalersvereniging* case is a landmark judgment that exposes the deep, painful contradictions of local governance in South Africa. It pits the raw, desperate need of citizens for basic human rights (clean water, sanitation, safe roads) against the rigid, non-negotiable statutory frameworks of public finance and constitutional law [1] [2] [3] [12].

The court's decision is legally correct and constitutionally necessary to prevent fiscal anarchy [1] [2]. However, it leaves the residents of Koingnaas—and hundreds of other collapsed towns across South Africa—in a tragic stalemate: barred from fixing their own infrastructure, yet bound to a bankrupt, dysfunctional municipality that is incapable of doing the work itself [1] [6] [11].

To break this impasse and save South Africa's failing municipalities from absolute ruin, the following strategic interventions are recommended:

Recommendations for Civic and Ratepayers' Associations

- 9 **Pivot from Antagonism to Structured Collaboration:** Ratepayers' associations must cease unilateral self-help actions that invite costly litigation [6]. Instead, they should demand the formalization of **Service Level Agreements (SLAs)** or Memorandums of Understanding (MOUs) with municipalities, legally authorizing them to perform specific maintenance tasks under municipal oversight.
- 10 **Ensure Meticulous Internal Governance:** Civic organizations must strictly adhere to their own constitutions [1] [2]. Annual General Meetings must be held, quorums must be maintained, and resolutions to litigate must be formally and impeccably recorded to prevent municipalities from defeating meritorious service delivery challenges on technical points *in limine* [1] [2].
- 11 **Litigate for Structural Remedies, Not Takeovers:** Rather than seeking judicial authorization to privately run municipal infrastructure, civic groups should follow the *Lekwa* and *Makana* precedents [10] [13]. They should litigate to compel provincial and national executives to execute **mandatory Section 139 interventions**, dissolve failed councils, and appoint professional, competent administrators [1] [10].

Recommendations for Municipal and Provincial Government

- 12 **Adopt the Kleinzee Model for Transitions:** When private or corporate infrastructure (such as mining towns or private estates) is transferred to local government, provincial executives and municipalities must reject hasty handovers [1] [3] [[16]]. They must implement structured, multi-year transition plans with ring-fenced funding, transitional tax rebates, and active private-sector collaboration, as successfully demonstrated in the Nama Khoi-De Beers Kleinzee agreement [[16]].
 - 13 **Establish "Active Citizen" SCM Frameworks:** Municipalities must proactively draft and adopt supply chain management policies that accommodate community-led initiatives. By creating pre-approved panels of community-based SMMEs and non-profit organizations, municipalities can legally and transparently contract local residents to perform minor road repairs and waste management, complying with Section 217 while leveraging local capacity [1] [2] [6].
 - 14 **Implement SAHRC Recommendations on Fiscal Reform:** Provincial COGTAs and National Treasury must act on the SAHRC's April 2026 recommendations [5]. This includes exploring alternative fiscal support mechanisms, such as the **direct payment of statutory obligations** (e.g., AGSA and SALGA fees) by the National Treasury on behalf of highly distressed municipalities like Kamiesberg, preventing the diversion of operational funds and stabilizing municipal bank accounts [5] [11] [12].
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