
REPORT NO. 47 OF 2009/10

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY BY THE SOUTH AFRICAN POLICE SERVICE TO PROCESS AND SUBMIT PENSION DOCUMENTS IN RESPECT OF THE LATE L D MOKOENA TO THE GOVERNMENT EMPLOYEES PENSION FUND
<table>
<thead>
<tr>
<th>INDEX</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive summary</td>
</tr>
<tr>
<td>1. INTRODUCTION</td>
</tr>
<tr>
<td>2. BACKGROUND</td>
</tr>
<tr>
<td>3. THE COMPLAINT</td>
</tr>
<tr>
<td>4. POWERS AND JURISDICTION OF THE PUBLIC PROCTOR TO INVESTIGATE THE COMPLAINT</td>
</tr>
<tr>
<td>5. THE INVESTIGATION</td>
</tr>
<tr>
<td>6. THE LEGAL FRAMEWORK AND PRINCIPLES APPLICABLE TO THE INVESTIGATION</td>
</tr>
<tr>
<td>7. OBSERVATIONS MADE FROM THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION</td>
</tr>
<tr>
<td>8. FINDINGS</td>
</tr>
<tr>
<td>9. RECOMMENDATIONS</td>
</tr>
<tr>
<td>10. CONCLUSION</td>
</tr>
</tbody>
</table>
Executive summary

(i) The Public Protector investigated an allegation of undue delay by the South African Police Service (the SAPS) to process and submit pension documents in respect of the late Mr L D Mokoena to the Government Employees Pension Fund (the GEPF).

(iii) From the investigation the following findings were made:

(a) The SAPS failed to inform Ms M L Dlamini that there were outstanding documents in the claim of her share in the pension benefits of the deceased, when it was incumbent upon them to have done so in terms of section 33(2) of the Constitution of the Republic of South Africa, 1996. This contributed to the delay in the submission of the exit documents to GEPF;

(b) It is disconcerting that the SAPS only advised Ms Dlamini of the outstanding documents, a year after she lodged the claim and only after the intervention of the Office of the former Minister of Safety and Security;

(c) The delay by the SAPS in processing the said exit documents was in part due to outstanding documents not having been received timeously from the beneficiaries. Where such documents were received, they were not correctly completed;

(d) Furthermore, the process of getting the exit documents to the SAPS Head Office and ultimately to the GEPF was unduly delayed by the cumbersome and strict adherence to SAPS protocol and procedures; and
(e) The allegation by Ms Dlamini that the SAPS was trying to resuscitate a "marriage" that had been dissolved by advising her that they were awaiting a "lobola confirmation letter" from the deceased's previous marriage was without substance.

(iv) In terms of section 182(1)(c) of the Constitution, 1996 and section 6(4)(c)(ii) of the Public Protector Act, 1994, it is recommended that the National Commissioner of the SAPS take steps to ensure that:

(a) The cumbersome procedures of submitting exit documents of former members of the SAPS that were based in the provinces are reviewed in order to streamline and expedite the relevant administrative processes; and

(b) The Termination Section of the SAPS informs beneficiaries or affected parties of queries relating to exit documents that have to be submitted to GEPF and the corrections that have to be made, without delay.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY BY THE SOUTH AFRICAN POLICE SERVICE TO PROCESS AND SUBMIT PENSION DOCUMENTS IN RESPECT OF THE LATE L D MOKOENA TO THE GOVERNMENT EMPLOYEES PENSION FUND

1. INTRODUCTION

1.1 This report is submitted in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act) to:

1.1.1 The Complainant, the Minister of Police; and

1.1.2 The National Commissioner of the South African Police Service (SAPS).

1.2 It relates to an investigation into allegation of undue delay by the SAPS to process and submit pension documents to the Government Employees Pension Fund (the GEPF) in respect of the late L D Mokoena.

2. BACKGROUND

The late Mr Mokoena was employed by the SAPS at the Caledonspoort Border Post in the Free State Province. He was previously married to Ms Monica Mokhele according to traditional rites and two children were born out of the marriage. At the time of his death he was married, according to civil law, to Ms Mapaulo Lisbeth Dlamini.

3. THE COMPLAINT

3.1 On 6 February 2007, the Public Protector received a complaint from Ms M Dlamini (the surviving spouse of the deceased)(the Complainant)
alleging that the SAPS was unduly delaying the processing of exit documents relating to the pension benefits of her late husband.

3.2 The Complainant further alleged that she had submitted a claim for her share of the pension benefits of her late husband to the SAPS Area Office in Bethlehem, soon after he died in May 2005, but payment had not been forthcoming. She also alleged that in June 2006, she appealed to the then Minister of Safety and Security (the Minister) whereupon she was referred to Superintendent A Geldenhuyse of the Terminations Section at the SAPS Head Office.

3.3 She was further aggrieved by the fact that the SAPS only informed her that they were awaiting a "lobola confirmation letter" in connection with the deceased’s previous marriage before they could process the exit documents, after she was referred to Superintendent Geldenhuyse by the Office of the Minister. The SAPS had received a query from the GEPF that the deceased had previously nominated Ms Mokhele and two children as the beneficiaries of his pension benefits. The GEPF had accordingly requested proof of the deceased’s previous marriage and proof of the relationship between the deceased and the two children, from the SAPS.

3.4 According to Ms Dlamini, the insistence of the SAPS on the "lobola confirmation letter" amounted to them trying to recreate a marriage that had been dissolved.

4. THE POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT

4.1 Section 182(1) of the Constitution provides that the Public Protector has the power:
4.1.1 "To investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;

4.1.2 To report on that conduct; and

4.1.3 To take appropriate remedial action."

4.2 Section 6(4) of the Public Protector Act provides that "the Public Protector shall be competent to investigate, on his or her own initiative or on receipt of a complaint, inter alia, any alleged-

4.2.1 Abuse or unjustifiable exercise of power or unfair, capricious, discourteous or improper conduct or undue delay by a person performing a public function; or

4.2.2 An act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person."

4.3 As the allegation of improper prejudice due to undue delay was made against a government department, the Public Protector has the powers and jurisdiction to investigate it.

5. THE INVESTIGATION

5.1 The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act, and comprised:

5.1.1 Consideration and analysis of the complaint;

5.1.2 Telephonic interviews with:
5.1.2.1 The Complainant to request supporting documents and later to request her to submit a properly completed form to the SAPS Head Office;

5.1.2.2 Captain Wood at the SAPS Head Office to enquire about the progress in the matter;

5.1.2.3 Captain Ferreira of the SAPS, who advised that the exit documents had been sent to GEPF on 23 October 2006 and later to enquire about progress after the documents were returned by GEPF as incomplete;

5.1.2.4 Mr C Meyer at the Termination Section of the SAPS to enquire as to what other option was available in the absence of the lobola letter, since it was difficult to trace Ms Mokhele;

5.1.2.5 Ms E Hartzenberg at the SAPS Free State Provincial Commissioner’s Office in Bloemfontein, who advised that they were in the process of tracing Ms Mokhele and to enquire about progress after the documents were returned by GEPF as incomplete;

5.1.2.6 Ms January at the Terminations Section of the SAPS, who advised that they had received outstanding documents from the SAPS at Zastron through the SAPS Provincial Commissioner’s office in Bloemfontein and later on to enquire whether the outstanding documents had been received after the documents were returned by GEPF as incomplete;

5.1.2.7 Inspector C van Wyngaardt at the SAPS Zastron regarding “further outstanding documents” at GEPF;

5.1.2.8 Mr G Sikwambana at the Department of Home Affairs to enquire about the process of applying for the unabridged birth certificates required by
GEPF with regard to the children born of the deceased’s marriage to Ms Mokhele;

5.1.2.9 Ms Mokhele regarding documentary proof (affidavit) of paternity of her children from her marriage with the deceased;

5.1.2.10 Mr P Voss at GEPF to enquire about progress in the matter;

5.1.2.11 Director Nieuwoudt at the SAPS Head Office and Mr Bogosi of GEPF, who advised that the respective required forms relating to the matter were not properly completed; and

5.1.2.12 Ms P Lefotho at the SAPS Zastron to request her to assist in getting Ms Mokhele to properly complete the outstanding documents.

5.1.3 Correspondence with Ms C de Vries at GEPF, on periodic basis to enquire on the progress in the matter.

6. THE LEGAL FRAMEWORK AND PRINCIPLES APPLICABLE TO THE INVESTIGATION

6.1 The Constitution

6.1.1 Section 27(1)(c) provides that everyone has the right to have access to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.

6.1.2 In terms of section 33(1), everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
6.1.3 Section 33(2) provides that everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

6.1.4 Section 7(2) of the Constitution provides that the state must respect, protect, promote and fulfill the rights in the Bill of Rights (found in chapter 2 of the Constitution).

6.2 Government Employees Pension Law, 1996

Section 26 provides that:

"(1) Notwithstanding anything to the contrary in any law contained, a benefit payable in terms of this Law shall be paid to the member, pensioner or beneficiary entitled to such benefit within a period of 60 days after the date on which the Board receives a duly completed statement in the prescribed form or, if the Board receives such statement before the date on which a benefit is payable to the member or pensioner concerned in terms of this law, within a period of 60 days after the date on which such benefit is so payable.

(2) If a benefit is not paid within the period referred to in subsection (1), interest shall be paid by the Fund to the member, pensioner or beneficiary on any part of the amount of the benefit not paid within the period of 60 days referred to in subsection (1), at the rate prescribed."

6.3 Rules of the Government Employees Pension Fund

Rule 6 provides that the Board is entitled to require satisfactory proof of the right of any member, pensioner or his or her beneficiaries to any
benefit and the Fund is not obliged to pay benefits to a member, pensioner or their beneficiaries until such proof has been submitted to the Board.

7. OBSERVATIONS MADE FROM THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

7.1 Ms Dlamini alleged that she had submitted a claim for her share in the pension benefits of her late husband to the SAPS Area Office in Bethlehem soon after he died in May 2005, but payment had not been forthcoming. Unbeknown to her at the time, she was not the only beneficiary of the pension benefits of her late husband.

7.2 According to GEPF, the deceased had nominated Ms Mokhele, his previous spouse, as well as their two children, born on 23 September 1995 and on 2 November 1997 respectively, as beneficiaries. However, Ms Mokhele had not submitted a claim against the pension benefits of the deceased. That resulted in a query by GEPF, requiring proof of relations between the deceased and the children as well as the certified lobola letter from the deceased’s marriage to Ms Mokhele, in order to consider payment to the beneficiaries.

7.3 In this regard Rule 6 of the GEPF Rules specifically stipulates that the Board of Trustees of the GEPF is entitled to require satisfactory proof of the right of any member, pensioner or his or her beneficiaries to any benefit and that the Fund is not obliged to pay any benefits to a member, pensioner or their beneficiaries until such proof has been submitted to the Board.

7.4 At the outset it was difficult to locate Ms Mokhele to submit the requisite documents and it was even so when the documents were returned by GEPF to be corrected.
7.5 Ms Mokhele initially submitted copies of abridged birth certificates of the children including a *lobola* letter after she was located. The GEPF however, did not accept the copies of birth certificates since it did not indicate who the father is and the *lobola* letter was not certified by a Commissioner of Oaths, as required by GEPF. Hence the documents were returned to the SAPS by GEPF.

7.6 Subsequently, when proper documents (i.e. the affidavits to prove paternity and the certified *lobola* letter) had been received by GEPF, it turned out that the prescribed forms were not properly completed by Ms Mokhele and Ms Dlamini in that both did not acknowledge that the deceased had been married more than once.

7.7 The GEPF has still not received the corrected forms from the SAPS, hence payment is still outstanding. This delay is attributable to, amongst others, the fact that before exit documents of former members of the SAPS reach GEPF, it has to go through strict SAPS protocol from the point of exit to the Provincial Commissioner's office and then to the SAPS Head Office. In this case Ms Dlamini had to submit the requisite documents to the SAPS at Zastron and Kroonstad, respectively. The documents would then first have to be sent to the Office of the Provincial Commissioner in Bloemfontein, from where they would finally be sent to the SAPS Head Office in Pretoria before they are sent to GEPF. When the documents were returned by GEPF, they had to follow the same route.

8. **FINDINGS**

From the investigation the following findings were made:
8.1 The SAPS failed to inform Ms M L Dlamini that there were outstanding documents in the claim of her share in the pension benefits of the deceased, when it was incumbent upon them to have done so in terms of section 33(2) of the Constitution. This contributed to the delay in the processing of the exit documents to GEPF;

8.2 It is disconcerting that the SAPS only advised Ms Dlamini of the outstanding documents, a year after she lodged the claim and only after the intervention of the Office of the former Minister of Safety and Security;

8.3 The delay by the SAPS in processing the said exit documents was in part due to outstanding documents not having been received timeously from the beneficiaries. Where such documents were received, they were not correctly completed;

8.4 Furthermore, the process of getting the exit documents to the SAPS Head Office and ultimately to the GEPF was unduly delayed by the cumbersome and strict adherence to SAPS protocol and procedures; and

8.5 The allegation by Ms Dlamini that the SAPS was trying to resuscitate a “marriage” that had been dissolved by advising her that they were awaiting a “lobola confirmation letter” from the deceased’s previous marriage was without substance.

8.6 It has however, been noted that the SAPS had submitted the outstanding documents to the GEPF at the time of the issuing of this report.
9. RECOMMENDATIONS

9.1 In terms of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, it is recommended that the National Commissioner of the SAPS take steps to ensure that:

9.1.1 The cumbersome procedures of submitting exit documents of former members of the SAPS that were based in the provinces are reviewed in order to streamline and expedite the relevant administrative processes; and

9.1.2 The Terminations Section of the SAPS informs beneficiaries or affected parties of queries relating to exit documents that have to be submitted to GEPF and the corrections that have to be made, without delay.

10. CONCLUSION

The National Commissioner of the SAPS should report to the Public Protector on the progress in the implementation of the above recommendations within three (3) months from the date of this report.

ADV T N MADONSELA
PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA

Date: 31/03/2010
Assisted by: M I Matlawe: Senior Investigator