
REPORT NO. 24 OF 2009/10

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION AND UNDUE DELAY BY THE MASTER OF THE HIGH COURT, BLOEMFONTEIN IN REMITTING PAYMENT OF PENSION BENEFITS HELD IN THE GUARDIAN’S FUND
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Executive Summary

(i) The Office of the Public Protector (OPP) investigated a complaint into allegations of maladministration and undue delay by the Master of the High Court, Free State Province, in remitting payment of pension benefits held in the Guardian’s Fund to its beneficiary, Mr T K Ntsala (the Complainant).

(ii) In essence the allegations by the Complainant were as follows:

(a) The deceased was in the employ of the Free State Department of Education as an Educator before her passing away on 6 March 2003;

(b) Since then the Complainant had been receiving a monthly allowance from the Guardian’s Fund as a beneficiary to the deceased’s estate;

(c) In January 2008, he lodged an application with the Guardian’s Fund for the release of benefits from the fund as per prescribed form (J251); and

(d) The Master of High Court received his documents as acknowledged by the date stamp of 4 January 2008, further thereto, no benefits were received to date.

(iii) From the investigation it was found that:

(a) The Complainant did not receive his benefits from the Guardian’s Fund despite having submitted all necessary documentation to facilitate the process including his banking details for purposes of depositing same into his banking account;
(b) Payment was approved by the Master of the High Court, and a non-transferable, non-negotiable cheque was issued on 22 February 2008 amounting to R82 133.65;

(c) The said cheque was cashed on 31 March 2008 at FNB Westonaria by an unknown person;

(d) The said cheque was not deposited into the Complainant’s bank account as instructed per J251 form and the signature endorsed at the back of the cheque differs materially from that of the Complainant;

(e) It is the standard procedure at the Guardian’s Fund that after the deposit has been effected, the deposit slip must be filed for record purposes. However, in this instance no proof to the effect that the cheque was deposited into the Complainant’s account could be produced;

(f) No reasonable explanation could be provided by the Master regarding the whereabouts of the cheque;

(g) There is a lack of proper control mechanisms to monitor the cheques that have been paid out to the beneficiaries, and there is no register kept to record such; and

(h) Payments are processed manually and as a result thereof it has a potential of being conducive to promoting fraud.

(iv) It was recommended that:
(a) The Master of the High Court, Free State immediately pays the Complainant an amount of R82 133.65 with applicable interest effective from 22 February 2008 to the date of payment, being the date the original cheque was due for payment;

(b) Urgent steps be taken to ensure that an effective electronic system is in place to circumvent re-occurrence of similar situations;

(c) The Master should consider conducting an internal investigation into the circumstances surrounding this matter with a view to taking appropriate disciplinary and/or remedial action to prevent similar re-occurrences;

(d) The matter should as a matter of urgency be reported to the Provincial Commissioner of the South African Police Services for him to institute a criminal investigation into the circumstances surrounding the disappearance of the Complainant’s cheque.
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1. INTRODUCTION

1.1 This report is submitted to the Minister of Justice and Constitutional Development, the Director-General of the Department of Justice and Constitutional Development, the Chief-Master of the High Court, Pretoria, the Master of the High Court, Free State Province and the Free State Provincial Commissioner of the South African Police Services, by virtue of the provisions of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and section 8(1) of the Public Protector Act, 1994 (Public Protector Act).

1.2 It relates to an investigation into allegations of undue delay by the Master of the High Court in remitting payment of pension benefits.

2. THE COMPLAINT

2.1 The Office of the Public Protector (OPP) received a complaint from Mr T K Ntsala (the Complainant) on 8 July 2008 about allegations of undue delay by the Master of the High Court, Free State Province in paying out the pension benefits of the late M E Ntsala.

2.2 The Complainant alleged that his mother was employed by the Department of Education as an educator. He further alleged that he was the beneficiary to the estate of the late M E Ntsala who passed away on 6 March 2003.
2.3 It is alleged that subsequent to the deceased's demise the Complainant was receiving a monthly allowance from the Guardian's Fund from 2003 to 2006.

2.4 It is the Complainant's contention that upon his attainment of majority status he lodged an application with the Guardian's Fund for the release of the benefits (J251 form) which was acknowledged by the Master of the High Court on 4 January 2008.

2.5 He further avers that on 4 January 2008 he completed and submitted all the necessary documents including his banking particulars, but payment has not been effected.

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

3.1 The institution of the Public Protector was established in terms of Chapter 9 of the Constitution as one of a cluster of constitutional institutions supporting and strengthening constitutional democracy in the Republic of South Africa.

3.2 The Public Protector Act provides for the additional powers and operational requirements of the Public Protector. The Public Protector receives complaints from aggrieved persons and institutions against government agencies and officials.

3.3 He/She has the power to investigate these matters, to report on his/her findings and to take appropriate remedial action.

3.4 In terms of Section 182(1) of the Constitution the Public Protector has the power 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.

3.5 The conduct complained against therefore falls within the mandate of the Public Protector to investigate.

4. THE INVESTIGATION

4.1 The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act. It comprised the following:

4.1.1 An analysis of the complaint;

4.1.2 Perusal of information provided;

4.1.3 Telephonic enquiries with the Master’s Office;

4.1.4 Perusal of correspondence received from the Master’s Office,

4.1.5 Consultation with the Deputy Master and the Guardian’s Fund, and

4.1.6 Consideration and application of the relevant provisions of the Constitution, the Public Protector Act, and the Administration of Estates Act, 1965 (Administration of Estates Act).

5. LEGISLATIVE FRAMEWORK

5.1 The Constitution
5.1.1 Section 33(1) of the Constitution provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

5.1.2 Section 33(2) provides that everyone whose rights have been adversely affected by the administrative action has the right to be given written reasons.

5.1.3 Section 237 provides that all constitutional obligations must be performed diligently and without delay.

5.2 The Administration of Estates Act, 1965

5.2.1 Establishment of the Guardian’s Fund

5.2.1.1 The Guardian’s Fund is a statutory body established in terms of section 91 of the Administration of Estates Act, 1913, and continues to exist in terms of section 86 of the Administration of Estates Act, 1965.

5.2.1.2 Section 86 provides that the Guardian’s Fund shall consist of all monies:

“(a) in that Fund at the commencement of the Act, or;

(b) received by the Master under this Act or any other law; or in pursuance of an order of Court or;

(c) accepted by the Master in trust for any known or unknown person.”

5.2.2 What happens with moneys when deposited into the Guardian’s Fund

5.2.2.1 Section 86(2) provides that whenever money is so received or accepted by the Master, he shall open in the books of the Guardian’s Fund an account in the
name of the person to whom that money belongs, or the estate of which that money forms part.

5.2.3 How does payment take place?

5.2.3.1 Section 87 provides that the moneys in the Guardian’s Fund shall be deemed to be deposits for the purpose of the Public Investment Commissioners Act, 1984, and the Master may from time to time pay out of any working balance retained at his or her disposal under the said Act, any amounts due and payable out of the said Fund (own emphasis).

5.2.4 When and how can an account holder claim the invested money?

5.2.4.1 Section 89 provides that the Master shall, upon the application of any person who has become entitled to receive any money out of the Guardian’s Fund, pay that money to that person (own emphasis).

6. EVALUATION OF EVIDENCE

6.1 The following assessments have been made from the evidence gathered in the investigation:

6.1.1 The Complainant exercised his right to claim the benefits held in the Guardian’s Fund in terms of section 89 of the Administration of Estates Act;

6.1.2 The Master did adhere to the provisions of section 86(2) of the Administration of Estates Act in that an account was opened in the books of the Guardian’s Fund in the name of the person to whom that money belongs or the estate of which that money forms part, namely, the Complainant under estate reference number 2767/2003;
6.1.3 However, on application for the release of the money held in terms of section 86(2), the Master could not account as to what happened with the money or where it has disappeared to. On application for the release of the funds, a cheque amounting to a sum of R82 133.65 dated 22 February 2008 was drawn and payable to the Complainant. However the cheque disappeared from the coffers of the Guardian’s Fund and cannot be accounted for as the Complainant never received it. The said cheque was cashed by an unknown person at FNB, Westonaria Bank on 31 March 2008; and

6.1.4 The Master of the High Court, Bloemfontein confirmed that they are conducting an internal investigation into the matter with a view to probing circumstances surrounding the disappearance of the cheque from the books of accounts of the Guardian’s Fund. Once the culprit has been found, the Master will recommend reimbursement of the beneficiary.

7. OBSERVATIONS AND FINDINGS

7.1 From the analysis of the evidence gathered during the investigation of this complaint, the following observations have been made:

7.1.1 The Complainant submitted the necessary application for the release of benefits (Form J251) on 4 January 2008, to date no monies have been paid into the Complainant’s banking account provided to the Guardian’s Fund for purposes of depositing the benefits.

7.1.2 The applicable procedure is that payment of the benefits must be made by means of a crossed cheque, deposited into the payee’s banking account and a copy of the deposit slip must be filed for record purposes.
7.1.3 On 21 February 2008 the final payment was approved by the Guardian’s Fund and a cheque issued on 22 February 2008.

7.1.4 The payments were not made into the Complainant’s account. This was verified through the Complainant’s banking statements from 26 February 2008 to 25 April 2008 which reflected no proof of the deposit for the amount of R82 133.65 despite the fact that the Master was provided with the Complainant’s banking details.

7.1.5 The person responsible for the distribution of cheques, Mr Tsoeu, could not provide proof (deposit slip) that the cheque was deposited into the Complainant’s banking account.

7.1.6 The crossed cheque which was supposed to have been deposited in the Complainant’s account was cashed by an unknown person on 31 March 2008 at FNB in Westonaria. The Complainant does not know the particulars of the person who cashed the cheque. On verification of signatures at the back of the cheque, the signature affixed thereto differs materially from that of the Complainant.

7.1.7 It is standard procedure at the Guardian’s Fund that after a cheque deposit has been effected, the deposit slip must be filed for record purposes. It has thus been observed that in this particular matter, there is no proof that the cheque was deposited neither was there a copy of the deposit slip on file as proof of deposit.

7.1.8 No reasonable explanation could be provided by Mr Tsoeu for deviating from standard procedures in this particular matter. Neither could he explain how a crossed ABSA bank cheque could be cashed at another banking institution
such as FNB. The Complainant contends that this points to a fraudulent transaction.

7.1.9 There is a lack of proper control mechanism to monitor the cheques that have been paid out to the beneficiaries, as there is no register kept to record such.

7.1.10 Payments are processed manually and as a result thereof if has a potential of promoting fraud.

8. RECOMMENDATIONS

8.1 In terms of the provisions of section 182(1)(b) of the Constitution and section 6(4)(c)(iii) of the Public Protector Act, it is recommended that:

8.1.1 The Master of the High Court, Bloemfontein should pay the Complainant an amount of R82 133.65 with applicable interest effective from 22 February 2008 to the date of payment, being the date the original cheque was due for payment, with immediate effect;

8.1.2 Urgent steps should be taken to ensure that an effective electronic system is in place to circumvent re-occurrence of similar situations;

8.1.3 The Master should consider conducting an internal investigation into the circumstances surrounding this matter with a view to taking appropriate disciplinary and/or remedial action to prevent similar re-occurrences; and

8.1.4 The matter should as a matter of urgency be reported to the Provincial Commissioner of the South African Police Services for the latter to consider instituting a criminal investigation into the circumstances surrounding the disappearance of the Complainant’s cheque from the Guardian’s Fund coffer.
9. CONCLUSION

9.1 The OPP will monitor the implementation of these recommendations on a monthly basis.

ADV M L MUSHWANA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 18/09/09

Assisted by: Mr Abongile Madiba, Senior Investigator, Free State Provincial Office