

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1)
OF THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

“Allegations of improper conduct and maladministration relating to undue delay by Sol Plaatje Municipality to finalise a claim for damages to property situated at 14 West Circular Avenue, West End in Kimberley in February 2015”

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER
CONDUCT AND MALADMINISTRATION RELATING TO UNDUE DELAY BY
SOL PLAATJE MUNICIPALITY TO FINALISE A CLAIM FOR DAMAGES TO
PROPERTY SITUATED AT 14 WEST CIRCULAR AVENUE, WEST END IN
KIMBERLEY IN FEBRUARY 2015**

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Executive Summary

- (i) This is a report of the Public Protector 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 23 of 1994 (the Public Protector Act).
- (ii) The report communicates the findings and appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, following an investigation into allegations of improper conduct and maladministration relating to undue delay by Sol Plaatje Municipality to finalise a claim for damages to property situated at 14 West Circular Avenue, West End in Kimberley in February 2015.
- (iii) The complaint was lodged on 4 July 2017 by Mr. J P J Havenga (the Complainant), at the Northern Cape Provincial Office of the Public Protector South Africa in Kimberley.
- (iv) The Complainant alleged that on 24 February 2015 there was flooding in the area of his residence. The water could not be drained through the municipal drainage system because it was blocked, his yard was flooded and the water caused damage to his house and property.
- (v) In essence, the Complainant alleged undue delay by Sol Plaatje Municipality to finalise his claim of approximately R128 000 for damages to his property situated at 14 West Circular Avenue, West End in Kimberley on 24 February 2015.
- (vi) Based on the analysis of the complaint, the following issues were identified for the investigation:
 - (a) Whether there was undue delay by Sol Plaatje Municipality to finalise a claim by the Complainant for damages to his property, situated at 14 West Circular Avenue, West End in Kimberley in February 2015; and if so,

whether the conduct of the Municipality was improper and constitutes maladministration.

(vii) The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act. It included correspondence with the Municipality, an analysis of the relevant documents and information obtained during the investigation and consideration and application of the relevant laws and prescripts.

(viii) Having considered the evidence and information obtained during the investigation, the Public Protector makes the following findings:

(a) Regarding whether there was undue delay by Sol Plaatje Municipality to finalise a claim for damages by the Complainant to his property situated at 14 West Circular Avenue, West End in Kimberley in February 2015 due to flooding; and if so, whether the conduct of the Municipality was improper and constitutes maladministration:

(aa) The allegation that Municipality failed to finalise a claim for damages by the Complainant to his property situated at 14 West Circular Avenue, West End in Kimberley due to flooding in February 2015, is substantiated.

(bb) The Municipality's failure to finalise the claim for damages to the Complainant's property situated at 14 West Circular Avenue, West End in Kimberley, was in not in accordance with the relevant provisions of the Local Government: Municipal Finance Management Act, 2003 (MFMA) relating to the managing of liabilities of the Municipality and Item

2 of the Code of Conduct for Municipal Staff Members as set out in Schedule 2 of the Local Government: Municipal Systems Act.

(cc) The conduct of the Municipality was improper, constitutes maladministration and prejudiced the Complainant.

(dd) The Municipality's conduct accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration and undue delay in terms of section 6(4)(a) of the Public Protector Act.

(ix) **The appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution is the following:**

(a) **The Acting Municipal Manager of the Municipality to:**

(aa) Take the appropriate steps to engage with the Complainant to offer a settlement relative to his claim for damages against the Municipality, within 30 days from the date of this report.

(bb) Take the appropriate steps in respect of disciplinary action in line with Consequence Management Policy of the Municipality against any official(s) of the Municipality who contributed to the undue delay in the finalisation of the Complainant's claim for damages, within sixty (60) business days from the date of this report.

(cc) Apologise in writing to the Complainant for the delay in finalising his claim for damages, within 30 days from the date of this report.

- (dd) Ensure that all the officials of the Municipality that deal with claims of damages against the Municipality are trained on Loss Control and Insurance Policy and how it should be managed, within sixty (60) working days from the date of the report.

- (ee) Develop an Insurance Management Policy for the Municipality in line with Loss Control and Insurance Policy in conjunction with section 61, 62(c) and sec 78 of the MFMA to regulate insurance by the municipality against claims for damages and liabilities and submit it to the Council for consideration and adoption, within ninety (90) working days from the date of this report.

- (ff) Establish the internal complaint mechanism to ensure that complaints against the delivery of service are expeditiously resolved as per the resolution taken by the high level meeting between the PPSA and the NC Premier, within sixty (60) working days from the date of the report.

- (gg) Ensure that Internal Audit, on an annual basis, review the adequacy and effectiveness of the municipality's system of internal control, risk management and supply chain management.

- (hh) Ensure that the Audit Committee of the municipality, in all its meetings, consider the internal audit and AGSA reports to ensure that the recommendations are implemented.

- (ii) Report to the Council on the progress made with the implementation of the remedial action taken in paragraphs (ix) (aa) to (hh) above, within 120 working days from the date of the report and to submit a copy thereof to the Public Protector.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION RELATING TO UNDUE DELAY BY SOL PLAATJE MUNICIPALITY TO FINALISE A CLAIM FOR DAMAGES TO PROPERTY SITUATED AT 14 WEST CIRCULAR AVENUE, WEST END IN KIMBERLEY IN FEBRUARY 2015

1. INTRODUCTION

- 1.1 This is a report of the Public Protector, issued 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 23 of 1994 (the Public Protector Act).
- 1.2 The report is submitted in terms of sections 8(1) of the Public Protector Act to the following persons to inform them of the outcome of the investigation and the remedial action taken:
 - 1.2.1 The Premier of the Northern Cape, Dr Z Saul.
 - 1.2.2 Mr B Vass, the Northern Cape Member of the Executive Council (MEC) for Co-operative Governance, Human Settlements and Traditional Affairs (COGHSTA).
 - 1.2.3 Mr B S Lenkoe, the Head of the Northern Cape Department of COGHSTA.
 - 1.2.4 Ms Nomizizi Maputle, the Speaker of the Sol Plaatje Municipality (Municipality).
 - 1.2.5 Mr Kagisho Sonyoni, the Executive Mayor Municipality of the Municipality.
 - 1.2.6 Mr Goolam Akharwaray, the Municipal Manager of the Municipality.
 - 1.2.7 A copy of the report is also provide to Mr JPJ Havenga, who lodged the complaint.

- 1.3. The report relates to an investigation into an allegations of improper conduct and maladministration relating to undue delay by Municipality to finalise a claim for damages to property situated at 14 West Circular Avenue, West End in Kimberley in February 2015.

2. THE COMPLAINT

- 2.1. The complaint was lodged on 3 March 2015 by Mr J P J Havenga (the Complainant), at the Northern Cape Provincial Office of the Public Protector South Africa in Kimberley.
- 2.2. The Complainant alleged that on 24 February 2015 there was flooding in the area of his residence. The water could not be drained through the municipal drainage system, because it was blocked, his yard was flooded and the water caused damage to his house and property.
- 2.3. In essence, the Complainant alleged undue delay by the Municipality to finalise his claim of approximately R128 000.00 for damages to his property situated at 14 West Circular Avenue, West End in Kimberley on 24 February 2015.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

- 3.1 The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.
- 3.2 Section 182(1) of the Constitution provides that:

“The Public Protector has the power as regulated by national legislation –

- (a) *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;*
- (b) *to report on that conduct; and*
- (c) *to take appropriate remedial action.”*

- 3.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national legislation.
- 3.4 Section 6(9) of the Public Protector Act grants the Public Protector discretionary powers to accept complaints which are lodged more than two (2) years after the occurrence of the incident.
- 3.5 In terms of section 6(9) of the Public Protector Act, the Public Protector is barred from entertaining complaints reported after two years of the date of an incident unless special circumstances exist. However, the mere fact that the incident occurred more than two (2) years before being reported to the office does not, in itself, bar the Public Protector from investigating the matter. Instead, it is mainly the interests of justice that dictate whether the Public Protector should investigate the matter or not. It is axiomatic that the Public Protector is to identify special circumstances using a discretion should the Public Protector decide to entertain such a complaint.
- 3.6 Some of the special circumstances that the Public Protector took into account to exercise her discretion favorably to accept this complaint, includes the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether she would be able to successfully investigate the matter with due consideration to the availability of evidence and/or records relating to the incident(s) and whether there are any competent alternative remedies available to the Complainant and the overall impact of the investigation.

- 3.7 The underlying reason for time-frames is the trite maxim; justice delayed is justice denied. Underpinning this principle is the prejudice parties suffered when time has lapsed. To mention, but a few; no finality of a matter, evidence lost, memories failing and legislation and policies evolving.
- 3.8 In this specific case, the Public Protector concluded that the alleged undue delay by the Municipality to finalize the insurance claim of the Complainant for damages to his property situated at 14 West Circular Avenue, West End in Kimberley on 24 February 2015, is to date still continuing resulting in him being prejudiced.
- 3.9 Therefore, the investigation required that the Public Protector explores the Complainant's insurance claim documents submitted to the Municipality, in order to determine the causes of undue delay to finalize the insurance claim submitted in 2015 and whether such delay was improper and constituted maladministration. The Public Protector accordingly decided to exercise her discretion in favour of this complaint. Conscious to all these reasons, the Public Protector concluded that it is in the interests of justice to investigate and determine the merits or demerits thereof.
- 3.10 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs and to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.
- 3.11 In the matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect.¹ The Constitutional Court further held that:

¹ [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].

“When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.”²

3.12 The constitutional court further held that:

- 3.12.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65);
- 3.12.2 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (paragraph 67);
- 3.12.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints, as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68);
- 3.12.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (paragraph 69);
- 3.12.5 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the

² *Supra* at para [73].

demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (paragraph 70);

- 3.12.6 The Public Protector’s power to take remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (paragraph 71);
- 3.12.7 Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in the words suggests that she has to leave the exercise of the power to take remedial action to other institutions or that it is the power that is by its nature of no consequence (paragraph 71(a));
- 3.12.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d)); and
- 3.12.9 “Appropriate” means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (paragraph 71(e)).
- 3.13 In the matter of the *President of the Republic of South Africa v Office of the Public Protector and Others, Case No 91139/2016 (13 December 2017)*, the Court held as follows when confirming the powers of the Public Protector:
- 3.13.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the Constitution (para 71);
- 3.13.2 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers (paragraphs 100 and 101):

- a) Conduct an investigation;
- b) Report on that conduct; and
- c) To take remedial action.

3.13.3 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings. (para 104);

3.13.4 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court. (Para 105);

3.13.5 The fact that there are no firm findings on the wrong doing, does not prohibit the Public Protector from taking remedial action. The Public Protector's observations constitute *prima facie* findings that point to serious misconduct (paragraphs 107 and 108); and

3.13.6 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (paragraph 112 of the judgment).

3.14 The Municipality is an organ of state and its conduct amounts to conduct in state affairs, as a result, the matter falls within the jurisdiction of the Public Protector.

3.15 The Public Protector's powers and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties.

4. THE INVESTIGATION

4.1 Methodology

4.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

4.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.2 Approach to the investigation

4.2.1 The investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?

4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to improper conduct or maladministration?

4.2.1.4 In the event of improper conduct or maladministration, what would it take to remedy the wrong and what action should be taken?

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether the failure by the Municipality to finalise a claim for damages to property situated at 14 West Circular Avenue, West End in Kimberley in February 2015, and if so, whether the conduct of the Municipality was improper, constitutes maladministration and prejudiced him.

4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Municipality to prevent improper conduct, and maladministration.

4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and/or maladministration where possible and appropriate.

4.3 On analysis of the complaint, the following issues were identified for investigation:

4.3.1 Whether there was undue delay by Sol Plaatje Municipality to finalise a claim by the Complainant for damages to his property, situated at 14 West Circular Avenue, West End in Kimberley in February 2015; and if so, whether the conduct of the Municipality was improper and constitutes maladministration.

4.4 The Key Sources of information

4.4.1 Documents and correspondence

4.4.1.1. A copy of an e-mail from Ms Reene Barends of the Municipality, dated 11 July 2019 to Lion of Africa insurers (Lion of Africa).

4.4.1.2 Copies of an e-mails from Ms Ntombizodwa Zwane of Lion of Africa Insurance, dated 10 July 2019, 15 July 2019, 21 August 2019 to the Municipality;

4.4.1.6. A copy of an e-mail from Mr Eugene Baise, the Chief Financial Officer (CFO) of the Municipality, dated 25 May 2020.

4.4.2 Legislation and other prescripts

4.4.2.1 The Constitution of the Republic of South Africa, 1996.

4.4.2.2 The Public Protector Act No 23 of 1994.

4.4.2.3 The Local Government: Municipal Systems Act no 32 of 2000. (Municipal Systems Act).

4.4.2.4 The Local Government: Municipal Finance Management Act, 56 of 2003 (MFMA).

4.4.2.5 Consequence Management Policy of the Municipality.

4.4.3 Notice issued in terms of section 7(9) of the Public Protector Act

4.4.3.1 A Notice was issued in terms of section 7(9) of the Public Protector Act to Mr Boy Dhlwayo, the then Acting Municipal Manager, on 12 March 2021, affording him an opportunity to respond to the evidence obtained during the investigation. He did not respond.

4.4.3.2 Letters were also sent to Ms Renee Barends, the former acting Risk Officer and Mr Zahid Cader of the Municipality, the CFO of the Municipality, Mr Eugene Baise, the Manager: Assets and Risk at Sol Plaatje Municipality, and Ms Ntombizodwa Zwane, the Senior Claims Analyst at Lion of Africa, to respond to the contents of the section 7(9) Notice in as far as it affects or impact on them, on 12 March 2021. No responses were received.

5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1. Regarding whether there was undue delay by Sol Plaatje Municipality to finalise a claim for damages by the Complainant to his property situated at 14 West Circular Avenue, West End in Kimberley in February 2015; and if so, whether the conduct of the Municipality was improper and constitutes maladministration

Common cause or undisputed facts

- 5.1.1. It is common cause that on 24 February 2015 there was flooding in Kimberley that caused damage to the Complainant's property situated at 14 West Circular Avenue, West End, in Kimberley.
- 5.1.2. The Complainant submitted a claim for damages to the Municipality on 25 February 2015 in the amount of approximately R128 000. He was advised to lodge his claim with Lion of Africa, the insurers of the Municipality
- 5.1.3. Neither the Municipality nor its insurers denied liability for the damages suffered by the Complainant as a result of the flooding.
- 5.1.4. The Municipality has not finalised Mr Havenga's claim for damages to his property submitted on 25 February 2015.

Issues in dispute

- 5.1.5. The Complainant contended that on 24 February 2015 there was flooding in Kimberley that caused damage to his property situated at 14 West Circular Avenue, West End, in Kimberley.

5.1.6. The Complainant further contended that there was undue delay on the part of the Municipality to finalise his claim for damages to his property, as a result of the flooding incident.

5.1.7. In a response to the outstanding information to the Public Protector from the Municipality, Ms Renee Barends, the former Acting Risk Officer of the Municipality stated in an e-mail dated 11 July 2019 that the departmental report of the incident would be sent soon. However, no report was received from Ms Barends.

5.1.8. In a response to the allegations during the investigation, Miss N Zwane, the Senior Claims Analyst at Lion of Africa, the insurers of the Municipality at the time, contended the following in an email, dated 15 July 2019 that:

5.1.8.1. The claim documents were received on 16 February 2015;

5.1.8.2. The departmental report was only received on 29 April 2016 but the report was not clear and the attorneys requested further update;

5.1.8.3. The Maintenance Report was requested from the insured and it was not received;

5.1.8.4. There was no further approach or follow up from attorneys;

5.1.8.5. The claim would be reviewed and re- opened and determined if it could be finalised amicably; and

5.1.8.6. The office to keep the file open for 5 working days in order to allow her to obtain and review the Loss Adjuster's report.

5.1.9. In another e-mail dated 21 August 2019, Ms Ntombizodwa Zwane of Lion of Africa requested the Complainant to provide an affidavit of non-insurance or a letter from third party insurance company stating that the Complainant was not claiming

from his policy and a copy of utility bill as proof of ownership in order to enable Lion of Africa to proceed with the claim.

- 5.1.10. The affidavit of non-insurance or a letter from third party insurance company stating that the Complainant was not claiming from his policy and a copy of a utility bill as proof of ownership were sent to Lion of Africa and Ms Zwane confirmed telephonically on 20 September 2019 to have received the requested information.
- 5.1.11. There was no evidence obtained during the investigation that the required outstanding information from Municipality was submitted to Lion of Africa to enable it to finalise the Complainant's claim. However, in an email during the investigation, dated 25 May 2020 Mr. Zahid Cader, the Chief Financial Officer of the Municipality stated that there was still outstanding information required from Lion of Africa insurance, but he did not specify
- 5.1.12. No evidence was found during the investigation that the Municipality met with the Complainant to address his claim for damages that were not paid. The Complainant's claim for damages has not been finalised to date.

Application of the relevant law

- 5.1.13. Section 195(1)(a) of the Constitution provides among others, that public administration must be governed by the democratic values and principles enshrined in the Constitution, including that the principle of a high standard of professional ethics must be promoted and maintained. According to section 195(2) of the Constitution these principles are applicable to the administration in every sphere of government.
- 5.1.14. Section 33 of the Constitution provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

- 5.1.15. According to section 237 of the Constitution, all constitutional obligations must be performed diligently and without delay.
- 5.1.16. Section 55(1) of the Municipal Systems Act provides, that as the head of the administration of a municipality, the municipal manager is, subject to the policy considerations of the municipal council, responsible and accountable for, *inter alia*, the management of the provision of services to the local community in a sustainable and equitable manner.
- 5.1.17. Section 63(1) of the MFMA provides that the accounting officer of a municipality is responsible for the management of, *inter alia*, the liabilities of the municipality. In this regard, the municipal manager must ensure that the municipality has and maintains a system of internal control; of assets and liabilities.
- 5.1.18. Accordingly, the Municipal Manager of the Municipality is responsible for the management of all liabilities of the Municipality, which includes claims for damages, against it.
- 5.1.19. The Municipality could not provide the investigation team with an Insurance Management Policy that regulates insurance by the Municipality.
- 5.1.20. A Code of Conduct for Municipal Staff Members is provided for in Schedule 2 to the Municipal Systems Act.
- 5.1.21. Item 2 of the Code provides that a staff member of a municipality must at all times-
- (a) *loyally execute the lawful policies of the municipal council;*
 - (b) *perform the functions of office in good faith, diligently, honestly and in a transparent manner;*

(c) act in such a way that the spirit and objects of section 50 are promoted;

(d) act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and

(e) act impartially and treat all people, including other staff members, equally without favour or prejudice”.

- 5.1.22. Breaches of the Code must, by virtue of item 14, be dealt with in terms of the disciplinary procedures of the Municipality.
- 5.1.23. Section 3(1) of the Promotion of Administrative Justice Act 3 of 2000 provides that an administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.

Conclusion

- 5.1.24. The Complainant approached the Municipality on 25 February 2015, a day after the flooding of his house, to claim damages for what he lost from the Municipality. His claim was not denied and constituted a liability against the Municipality.
- 5.1.25. The Complainant was referred to the insurers of the Municipality to deal with his claim. However, the Municipality failed to submit the relevant reports and documents to the insurers in time for the claim to be considered and processed. The Municipality’s insurers also did not deny the merits of the claim for damages.
- 5.1.26. The Municipal Manager of the Municipality at the time and the officials dealing with the Complainant’s claim for damages were responsible in terms of the section 63(1) of the MFMA to properly manage the liability caused by the claim for damages against the Municipality.

- 5.1.27. The Municipality failed to provide the documents required by its insurers in time to enable it to consider and process the claim. This resulted in the Complainant's claim not having been paid to date.
- 5.1.28. The then Acting Municipal Manager committed on the Municipality to engage the Complainant to resolve his claim by means of a settlement in November 2020, but this did not happen. He has since been replaced as Acting Municipal Manager.
- 5.1.29. The undue delay by the Municipality was improper and constitutes maladministration. It also prejudiced the Complainant.

6. FINDINGS

- 6.1. **Regarding whether there was undue delay by Sol Plaatje Municipality to finalise a claim for damages by the Complainant to his property situated at 14 West Circular Avenue, West End in Kimberley in February 2015 due to flooding; and if so, whether the conduct of the Municipality was improper and constitutes maladministration:**
- 6.1.13. The allegation that Municipality failed to finalize a claim for damages by the Complainant to his property situated at 14 West Circular Avenue, West End in Kimberley due to flooding in February 2015, is substantiated.
- 6.1.14. The Municipality's failure to finalize the claim for damages to the Complainant's property situated at 14 West Circular Avenue, West End in Kimberley, was in not in accordance with the relevant provisions of the MFMA relating to the managing of liabilities of the Municipality and Item 2 of the Code of Conduct for Municipal Staff Members as set out in Schedule 2 of the Municipal Systems Act.

- 6.1.15. The conduct of the Municipality was improper, constitutes maladministration and prejudiced the Complainant.

- 6.1.16. The Municipality's conduct accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration and undue delay in in terms of section 6(4)(a) of the Public Protector Act.

7. REMEDIAL ACTION

- 7.1. **The appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution is the following:**

7.1.1. The Municipal Manager of the Municipality to:

- 7.1.1.1. Take the appropriate steps to engage with the Complainant to offer a settlement relative to his claim for damages against the Municipality, within 30 days from the date of this report.

- 7.1.1.2. Take the appropriate steps in respect of disciplinary action in line with Consequence Management Policy of the Municipality against any official(s) of the Municipality who contributed to the undue delay in the finalisation of the Complainant's claim for damages, within sixty (60) business days from the date of this report.

- 7.1.1.3. Apologise in writing to the Complainant for the delay in finalising his claim for damages, within 30 days from the date of this report.

- 7.1.1.4. Ensure that all the officials of the Municipality that deal with claims of damages against the Municipality are trained on Loss Control and Insurance Policy and how it should be managed, within sixty (60) working days from the date of the report.

- 7.1.1.5. Develop an Insurance Management Policy for the Municipality in line with Loss Control and Insurance Policy in conjunction with section 61, 62(c) and sec 78 of the MFMA to regulate insurance by the municipality against claims for damages and liabilities and submit it to the Council for consideration and adoption, within ninety (90) working days from the date of this report.
- 7.1.1.6. Establish the internal complaint mechanism to ensure that complaints against the delivery of service are expeditiously resolved as per the resolution taken by the high level meeting between the PPSA and the NC Premier, within sixty (60) working days from the date of the report.
- 7.1.1.7. Ensure that Internal Audit, on an annual basis, review the adequacy and effectiveness of the municipality's system of internal control, risk management and supply chain management.
- 7.1.1.8. Ensure that the Audit Committee of the municipality, in all its meetings, consider the internal audit and AGSA reports to ensure that the recommendations are implemented.
- 7.1.1.9. Report to the Council on the progress made with the implementation of the remedial action taken in paragraphs 7.1.1.1 to 7.1.1.8 above, within 120 working days from the date of the report and to submit a copy thereof to the Public Protector.

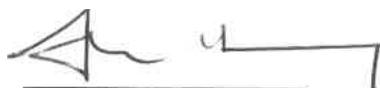
8. MONITORING

- 8.1 The Municipal Manager of the Municipality to submit an action plan to the Public Protector within 30 days from the date of this report on the implementation of the remedial action referred to in paragraph 7.1 above.

8.2 The submission of the implementation plan and the implementation of the remedial action shall, in the absence of a court order, be complied with within the period prescribed in this report to avoid being in contempt of the Public Protector.



ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE REPUBLIC OF SOUTH AFRICA
DATE: 13 / 12 /2021



Assisted by: Mr M Khanya, Provincial Representative:
Northern Cape
Public Protector South Africa