
PUBLIC PROTECTOR
SOUTH AFRICA

Report No. 132 of 2019/20


CLOSING REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION AND IMPROPER PREJUDICE BY THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY
1. INTRODUCTION

1.1. This is my closing report 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. I received a complaint from Mr Andile Dyakala (the Complainant) on 4 April 2016, in connection with the allegations of maladministration by the City of Tshwane Metropolitan Municipality (the CTMM). He lodged the complaint at the time when he was the CTMM’s Chief Financial Officer (the CFO) on a five (5) year contract from 01 July 2011 until 30 June 2016.

1.3. The essence of the complaint was as follows:

1.3.1. There was an abuse of power by Mr Kgosiemtsa Ramokgopa, the CTMM’s erstwhile Executive Mayor (the former Mayor) and Mr Jason Ngobeni, the erstwhile City Manager (the former CM) with regard to the disciplinary process followed against the Complainant. His suspension from 7 July 2014 was irregularly extended until his employment contract ended on 30 June 2016; and

1.3.2. He was unfairly treated because:

1.3.2.1. He had raised issues about irregular payments made to Messrs Dlamini Attorneys Inc (Dlamini Attorneys) to the amount of R 22 519 374.18. He wrote to the former CM as per a letter dated 26 May 2014 reporting these irregular payments, but the former CM failed to investigate or respond to him and a month later suspended him; and

1.3.2.2. He also raised the issues about possible money laundering by Njabzen Media, a service provider appointed in the office of the Mayor. He indicated to have reported this matter to the former CM as per a letter dated 12 June 2014.
1.4. The investigation was conducted in terms of section 182 of the Constitution, which confers upon the Public Protector, the power to investigate any alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action.

2. Based on an analysis of the allegations, the following issues was identified to inform and focus the investigation:

2.1. Whether the CTMM unduly delayed to finalise the Complainant’s disciplinary process, and whether such delay constitutes maladministration;

2.2. Whether or not there was maladministration by the CTMM in the allocation of work to Messrs. Dlamini Attorneys; and

2.3. Whether services provided by Njabzen Media to the CTMM were within the scope of their contract; and if not; whether payment of the said services constitutes maladministration.

3. The Investigation Process

3.1. A formal investigation was conducted through correspondence and interviews with the Complainant and relevant official(s) of the CTMM as well as perusal of all relevant correspondence and the analysis and application of all relevant laws, policies and related prescripts.

4. The Key Sources of information

4.1. Documents

4.1.1. Corresponderce between my office and officials from the CTMM;

4.1.2. Correspondence between Dlamini Attorneys and my office;
4.1.3. Correspondence between my office and the Complainant;

4.1.4. A notice in terms of section 7(9)(a) of the Public Protector Act was issued to the CTMM on 14 August 2019;

4.1.5. A notice in terms of section 7(9)(a) of the Public Protector Act (the Act) was issued to the former CM on 14 August 2019; and

4.1.6. A discretionary notice was issued to the Complainant on 10 January 2020.

4.2. Interviews/ Meetings conducted

4.2.1. On 7 May 2019, a meeting was conducted with the CTMM officials; and

4.2.2. On 29 August 2019, a meeting was conducted with Dlamini Attorneys.

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 the CTMM unduly delayed to finalise the Complainant's disciplinary process, and whether such delay constitutes maladministration:

Common cause issues

5.1.1. The CTMM appointed the Complainant as the CFO on a five year contract from the 01 July 2011 until 30 June 2016. He was charged and subjected to a disciplinary hearing based on a forensic report compiled by Fundudzi Forensic Services (Pty) LTD, dated April 2014. On 07 July 2014, the CTMM suspended him and on 06 August 2014, he was served with a notice to attend a disciplinary hearing.
5.1.2. The issue for my determination was whether the Complainant was subjected to an undue delay by the CTMM in the finalisation of his disciplinary process.

5.1.3. The Complainant argued that there was an abuse of power by the former Mayor and the former CM with regard to the delay in finalising the disciplinary process against him.

5.1.4. He reported that the disciplinary hearing commenced on 18 August 2014 and on 23 September 2014, the CTMM proposed a settlement offer, but he rejected it. On 9 October 2014, Advocate LM Montsho, the Chairperson of the disciplinary hearing, allowed the matter to stand down for him to approach the Labour Court. On 13 October 2014, he launched an urgent application at the Labour Court.

5.1.5. He reported that the hearing proceeded on 8 December 2014 and again from 2 to 5 February 2015. On 15 February 2015, the CTMM’s Legal Counsel approached him with a view of settling the matter. He could not reach a settlement. Whilst the disciplinary process was underway, the former CM allegedly terminated his employment on 9 March 2015.

5.1.6. On 16 March 2015, he approached the Labour Court, for an order reinstating him. On 23 March 2015, the court ordered that the termination of his employment contract be set aside and he be reinstated. Thereafter, the CTMM lodged an application for appeal against the judgment.

5.1.7. On 21 July 2015, the CTMM’s leave to appeal application was dismissed with costs. On 31 July 2015, by virtue of a letter, the CTMM advised the Complainant that the disciplinary hearing would resume and that the recordings would be furnished in due course. Four months passed and the CTMM had still failed to resume the hearing and also failed to provide the recordings.
5.1.8. During January 2016, the CTMM wrote to his attorneys suggesting dates for the hearing to resume. They responded and advised the CTMM that they had still not been furnished with the recordings as per the ruling of the presiding officer on 10 February 2015. On 2 February 2016, instead of providing the recordings as ordered by the presiding officer, the CTMM tabled another settlement offer.

5.1.9. On 1 April 2016, the Complainant received a letter from the former CM about the non-renewal of his contract which was to end on 30 June 2016. The former CM and the Mayor ensured that he was suspended for a period of two years. The disciplinary hearing was never finalised.

5.1.10. In a letter dated 19 August 2016 from the former CM to my office he, *inter alia*, stated that the Complainant was no longer an employee of the CTMM. His formal contract expired at the end of June 2016. At the time of the employment contract expiring, the Complainant was still suspended and subject to disciplinary proceedings. He denied that he had abused his powers when he initiated disciplinary proceedings against the Complainant. He specifically denied that the reason the Complainant was suspended was because he had raised official concerns regarding payments to Messrs Dlamini Attorneys, Njabzen Media and other service providers. According to the former CM, the letters that the Complainant alleged to have provided were never received and the former CM could find no record of them.

5.1.11. On 17 September 2019, the former CM responded to my section 7(9)(a) notice issued and stated, *inter alia*, that this matter was heard by the Labour Court. He argued that the Complainant had in fact also severely delayed the disciplinary proceedings because the disciplinary process had to be put on hold pending the Labour Court matter. The CTMM also made various settlement offers to the Complainant which he rejected and therefore his claim that the former CM and Executive Mayor abused their power to prejudice him was baseless.

**Application of the relevant legal prescripts:**
5.1.12. In terms of section (3)(1)(a)(ii) of the Local Government: Disciplinary Regulations for Senior Managers, 2010:

"Discipline must be applied in a prompt, fair, consistent and progressive manner. Section (3)(2)(b) ensures that Senior Managers are timeously informed of allegations of misconduct made against them."

5.1.13. Evidence at my disposal shows that the former CM informed the Complainant as early as June 2014 of the allegations of misconduct against him. The Complainant was charged mainly on the outcome of the forensic investigation conducted into the awarding of tender CB 367/2011 for various charges inter alia, misconduct, contravening disciplinary regulations, etc. were mentioned.

5.1.14. Regulation 7(6) (a) of the Local Government Disciplinary Regulations of Senior Managers, 2010 provides that "if a senior manager is suspended, a disciplinary hearing must commence within three months after the date of suspension, failing which the suspension will automatically lapse."

5.1.15. The disciplinary hearing were arranged in line with the Regulation 7(6)(a) of the Local Government Disciplinary Regulations of Senior Managers, 2010 because the disciplinary process commenced within 3 months after your suspension as required by the Regulations. The Complainant was suspended with effect from 07 July 2014 and the disciplinary commenced on 6 August 2014.

5.1.16. Section (3) (3) (b) states that a disciplinary hearing must be concluded within the shortest possible time. Similarly, section 10 (2) states that "the hearing must be conducted by the presiding officer who may determine the procedures to be followed, provided that the- (a) rules of natural justice are adhered to at all times; (b) Matter is speedily resolved with the minimum of legal formalities."

5.1.17. It is a fact that there were lots of legal formalities which were involved in this matter between the Complainant and the CTMM which impacted on the finalisation of the disciplinary hearing. These were legal formalities which had
nothing to do with the administration of the CTMM. Both parties were involved in legal disputes, hence the delay.

Conclusion

5.1.18. Based on the evidence gathered, it can be concluded that the CTMM did not contravene the applicable legal prescripts in the finalisation of the Complainant's disciplinary hearing.

5.2. Regarding whether or not there was maladministration by the CTMM in the allocation of work to Messrs Dlamini Attorneys:

Common cause issues

5.2.1. The CTMM appointed Dlamini Attorneys to Panel 3: Legal Advisors as per tender number CB 364/2011 dated 6 February 2012. The tender "for the appointment of financial and legal advisors to assist with funding opportunities for City of Tshwane: with effect from 1 March 2012 or nearest date" and the budget for this was R2 000 000.00 per annum. It was recommended that Messrs. Dlamini Attorneys accepted the contract at the following rates: "Advice on the restructuring/ establishment of redemption fund/sinking fund at a variable price of R 1 687,50 per hour (exclusive of vat); Advice on alternative project finance at a variable price of R 1 687,50 per hour (exclusive of vat); Explore and advice on PPP/BOT/PPI at a variable price of R 1 687,50 per hour (exclusive of vat); Advice on structured finance products at a variable price of R 1 687,50 per hour (exclusive of vat)..."

5.2.2. Furthermore, in the letter dated 3 June 2013 from the CTMM to Dlamini Attorneys, it was stated, inter alia, that Dlamini Attorneys was accepted by the former CM on 30 May 2013 as part of the panel of attorneys for the CTMM as and when required, over a three year period with effect from 1 June 2013. The
tender was CB 209/2012: The tender for the appointment of a panel of attorneys for the City of Tshwane.

**Issues in dispute**

5.2.3. The Complainant alleged that Dlamini Attorneys was paid a monthly retainer and that Dlamini Attorneys received payments for litigation work even though they were not appointed on the legal panel of the CTMM, prior to 30 May 2013.

5.2.4. Furthermore, the Complainant reported that the former CM personally knew Ms Nthabiseng Dlamini, a Director at Dlamini Attorneys, prior to Dlamini Attorneys being appointed to conduct work for the CTMM. Because of this alleged relationship, Dlamini Attorneys received the lion’s share of legal work from the CTMM. For the period 8 October 2012 until 18 August 2014, Dlamini Attorneys allegedly received R22 519 374.18 in payment from the CTMM. He maintained that the total budget for litigation at the CTMM was R25 million and that Dlamini Attorneys were paid 90% of the total legal litigation budget.

5.2.5. The Complainant further submitted that you had provided the following letter to the former CM before your suspension alerting him of the irregularities against Dlamini Attorneys:
5.2.6. In a letter dated 19 August 2016 from the former CM to the my office, he, *inter alia*, denied that the reason the Complainant was suspended was because he had raised official concerns regarding payments to Dlamini Attorneys; Njabzen Media; and other service providers. He stated that the letter the Complainant claimed to have submitted to him was never received by the CTMM or himself.

5.2.7. In a letter dated 29 December 2016, from the Group Legal Services Department, it was stated, *inter alia*, that Dlamini Attorneys were appointed to the CTMM’s panel of attorneys under tender CB209/2012. Furthermore, the CTMM maintained that Dlamini Attorneys were already on the CTMM’s list of service providers before being appointed on the 2012 legal panel. Therefore, Dlamini Attorneys were within this context requested to assist with litigation.
5.2.8. The CTMM denied that Dlamini Attorneys were given the lion’s share of the work and stated that the firm was given work just like any other firm for their professional services. No other consideration influenced their usage other than their ability to provide the required professional services. According to the CTMM, Dlamini Attorneys were not paid 90% of the legal litigation budget, and amounts paid to Dlamini Attorneys did not emanate from the Group Legal Services Department only. The CTMM further denied that the Group Legal Services Department paid a retainer of R1 500 000.00 to Dlamini Attorneys.

5.2.9. According to the CTMM, work was distributed as evenly as possible and the legal department worked on a monthly roster-system, although there were deviations from the roster, given the nature and complexity of each legal matter. The CTMM also indicated that the various attorneys on the panel "turned out not to be equally competent and naturally there would be an inclination towards particular firms that prove to be competent and valued".

5.2.10. In a letter dated 17 July 2017, Group Legal: CTMM stated, inter alia, that they confirmed that there was a payment processed for Dlamini Attorneys for an amount of R1 500 000.00 on 8 October 2012. The payment was made in respect of the Tshwane Rapid Transit project. Dlamini Attorneys were on the Finance Department’s panel of service providers. During the 2012/13 financial year, the Group Legal Service Department paid Dlamini Attorneys an amount of R2 904 494.43. Furthermore, the CTMM stated that it is not accurate that from 8 October 2012 until 18 August 2014 Dlamini Attorneys received R22 519 374.18 from the CTMM. During the above-mentioned financial years, the Group Legal Services Department paid Dlamini Attorneys R14 675 538.00. The difference of R7 843 836.18 was paid by other CTMM Departments. It is, therefore, not correct that Dlamini Attorneys was allocated 90% of the budget.

5.2.11. The CTMM stated that the approved budget for the 3 years was R69 097 763.00 and of the budgeted amount, the Group Legal Services Department paid Dlamini Attorneys an amount of R14 675 538.00. Furthermore, the CTMM stated that Dlamini Attorneys were already on the CTMM’s list of service
providers providing legal services to the Finance Department and were within this context requested to assist with litigation. The Group Legal Services Department’s previous panel had lapsed in September 2012 and the decision was taken that the Group Legal Services Department should use the attorneys on the finance department’s panel to assist with litigation cases. The previous panel had been extended by deviation until September 2012. Their tender had actually lapsed in June 2012. Subsequent to June 2012, the panel was extended by deviation.

Correspondence with Dlamini Attorneys

5.2.12. On 19 August 2019, Dlamini Attorneys, through a letter, advised my office, *inter alia*, as follows:

5.2.12.1. On 23 February 2012, the CTMM Finance Department appointed Dlamini Attorneys on the panel for financial and legal advisors, to assist with funding opportunities for the CTMM. Subsequent to the above appointment, on 24 May 2012, the CTMM’s Roads and Transport Department also appointed Dlamini Attorneys to act as Legal Advisors to the Bus Operating Company (BOC). This appointment was based on the proposal received on 18 May 2012. The appointment letter was signed by Ms Lungile Madiala, the CTMM’S Strategic Executive Director: Transport; and

5.2.12.2. On 1 February 2013, the CTMM’S Group Legal Services appointed Dlamini Attorneys together with 3M Consulting and BPS Capital who were Trustees of the BOC Trust to act as Transaction Advisors effective from 1 August 2012. This appointment letter was signed by Mr Bruno Seabela, the former CTMM’s Group Legal Head.

5.2.13. On 28 August 2019, Dlamini Attorneys submitted the following documents to my office:
A copy of proposal that was submitted to the CTMM by Dlamini Attorneys on 19 August 2012;

A copy of invoice reconciliation of Dlamini Attorneys for Transaction Advisory Retainer for the period 3 September 2012 to 23 August 2017 and the total amount paid was R15 000 000.00; and

A copy of the letter dated 18 May 2012 from Dlamini Attorneys to the CTMM with regard to FEE PROPOSAL: BUS RAPID TRANSPORT NETWORK.

5.2.14. On 17 September 2019, the former CM responded to my section 7 (9) notice and denied receiving the Complainant’s letter regarding irregularities against Dlamini Attorneys dated 26 May 2014. He has advised that he has also registered criminal cases against the Complainant for fraud, forgery, defeating the ends of justice and perjury. He indicated that it was not his oversight responsibility in the allocation of work that was referred to Dlamini Attorneys. It would have been the various Heads of Departments to manage the allocation of work from the panels of the different service providers. Dlamini Attorneys were appointed as part of a consortium as transaction advisors.

5.2.15. The Complainant could not substantiate his complaint that the former CM was conflicted in the appointment process of Dlamini Attorneys because of the close relationship between him and Ms Dlamini.

Application of the relevant legal prescripts

5.2.16. From the evidence gathered, it is not in dispute that Dlamini Attorneys were properly appointed to provide legal advice to any unit or department of the CTMM, whether it be the Legal or Finance Department in terms of the tender. Information presented before me about the role of the Dlamini Attorneys indicate that they provided the services as per the contract.

5.2.17. I also considered the possibility that the complaint could be substantiated and looked at the applicable relevant legislation.
5.2.18. The Municipal Finance Management Act, 2003 (the MFMA) provides for measures for the management of municipal finances.

5.2.19. Of particular relevance in this matter is Chapter 9 of the MFMA which makes provision for Municipal budget and treasury offices.

5.2.20. Section 80 of the MFMA provides that:

(1) "Every municipality must have a budget and treasury office.
(2) A budget and treasury office consists of-
(a) a chief financial officer designated by the accounting officer of the municipality…
(b) officials of the municipality allocated by the chief executive officer to the chief financial officer…"

5.2.21. It is clear from section 80 that a Municipal’s Chief Financial Officer heads the budget and treasury office of a municipality. The Complainant was the CTMM’s CFO at the time when Dlamini Attorneys were appointed to the CTMM’s legal advisors’ panel.

5.2.22. Section 81 provides the role of a municipal’s chief financial officer. It provides as follows:

"81 (1) The chief financial officer of a municipality-

(a) is administratively in charge of the budget and treasury office;

(b) must advise the accounting officer on the exercise of powers and duties assigned to the accounting officer in terms of this Act…"

5.2.23. It is expected in terms of the section that a chief financial officer of a municipality is responsible for management of the municipal budget and finances such as
the payment of service providers. He is expected to ensure that payments are
effected regularly to prevent any irregular, wasteful and fruitless expenditure.

5.2.24. Evidence at my disposal is that as part of exercising the Complainant’s
responsibilities as the CFO, he claimed to have written to the former CM alerting
him of the irregularities against Dlamini Attorneys. However, on the other hand
the former CM denies ever receiving any correspondence from the Complainant
regarding the alleged irregularities. According to the former CM, he has even
opened a criminal case against the Complainant about fraud and related cases
about the alleged correspondence.

Conclusion

5.2.25. Based on the evidence gathered, it can be concluded that the CTMM did not
contravene any applicable legal prescripts regulating the contract between it
and the Dlamini Attorneys.

5.3. **Regarding whether services provided by Njabzen Media were within the
scope of their contract; and if not; whether payment of said services
constitutes maladministration:**

_common cause issues_

5.3.1. The CTMM appointed Njabzen Media on 5 November 2012 as per tender
number CB83/2012, The tender was for the appointment of consulting services
to render high level publicity, profiling, advertorial and editorial services as and
when required for a 3 year period with effect from 1 November 2012 and
according to the resolution of the CTMM’s Bid Adjudication Committee on 2
November 2012, the rates were fixed as per a price schedule. The total tender
amount was R3 000 000.00. A copy of the tender is referred to below:
CITY OF TSHWANE

CONFIDENTIAL

BID COMMITTEE SUBMISSION

DEPARTMENT

OFFICE OF THE CITY MANAGER

DIVISION

COMMUNICATION, MARKETING AND EVENTS

TENDER REFERENCE NO

CB 85/2012

DESCRIPTION

TENDERT FOR THE APPOINTMENT OF

CONSULTANT SERVICES TO RENDER HIGH

LEVEL PUBLICITY, PROFILING, ADVERTISING

AND EDITORIAL SERVICES AS AND WHEN

REQUIRED WITH EFFECT FROM 01 AUGUST

2012 OR YEAR NEXT FALLING

THREE YEARS

PRICE SCHEDULE

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<th>Excluding VAT</th>
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<td>-</td>
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<tr>
<td>Communications Services</td>
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*Note: All rates are subject to a 15% VAT.*
5.3.2. The appointment letter of Njabzen Media by the CTMM is referred to below:
5.3.3. The issue for my determination is whether services provided by Njabzen Media were within the scope of their contract.

5.3.4. The Complainant alleged that he had raised issues about possible money laundering by Njabzen Media, a service provider appointed in the office of the former Executive Mayor. He had submitted that he had handed in the letter below to the former CM on 12 June 2014:
5.3.5. The former CM responded through a letter dated 19 August 2016 stating, *inter alia*, that his office did not receive any letters from the Complainant raising official concerns regarding Njabzeni Media and that his office could not find any record of such.
5.3.6. On 7 May 2019 my investigation team held a meeting with the CTMM officials to discuss the allegations relating to the Njabzen Media’s contract. The CTMM was represented by Dr M Mosola, the former City Manager; Mr Umar Banda, the CTMM’s CFO; Mr Tommy Ngwenya, the CTMM’s Finance Director; Ms Thembeka Mpheju, from the CTMM Finance; and Mr Thivhulawi Nyambeni, also from the CTMM’s office of the Mayor.

5.3.7. Dr Mosola confirmed that the Njabzen Media’s issue occurred before his appointment to the CTMM and that some of the information requested could not be provided as documents could not be traced. He reported that most of the officials who were involved in the project have since left the CTMM. He, however, confirmed that according to the CTMM records it was established that Njabzen Media was paid approximately R127 576 612.14 from invoice date 30 April 2013 to invoice date 19 August 2015 despite the contract budget of R3 000 000.00, but could not provide the breakdown due to the fact that some of the records could not be traced.

Application of the relevant legal prescripts

The Constitution

5.3.8. Section 195 of the Constitution enjoins the CTMM to ensure efficiency and effectiveness in its administration as a public entity. It specifically provides that public administration must be governed by democratic values and principles enshrined in the Constitution, including the following principles:

"...

(a) a high standard of professional ethic must be promoted and maintained;

(b) efficient, economic and effective use of resources must be promoted;

(c) ... 

(d) ...

(e) ..."
5.3.9. When conducting its business, the CTMM is expected to promote and maintain a high standard of professional ethics by keeping records, particularly financial records and its administration is also expected to be efficient, economic and is able to promote its effective use of its resources. The CTMM is also expected to be accountable when called upon to explain how resources were used efficiently and effectively.

5.3.10. Evidence at my disposal indicates that not all financial records on the Njabzen Media contract could be made available by the CTMM in order to account on the usage of the resources. It was also not possible for my office to determine how the Municipality paid over R127 million to Njabzen Media, when the contract was budgeted for R3 million.

The Municipal Finance Management Act (MFMA)

5.3.11. As indicated above the MFMA regulates municipalities and municipal entities and aims to secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local government sphere.

5.3.12. Of particular significance in this issue is section 80 of the MFMA which provides that:

(1) “Every municipality must have a budget and treasury office.

(2) A budget and treasury office consists of-
(a) a chief financial officer designated by the accounting officer of the municipality...
(b) officials of the municipality allocated by the chief executive officer to the chief financial officer…”

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5.3.13. As indicated above, section 80 renders a municipal’s chief financial officer the head of the budget and treasury office of a municipality. The Complainant was the CTMM’s CFO at the time of the appointment of Njabzen Media in 2012.

5.3.14. Section 81 provides the role of a municipal’s chief financial officer. It provides as follows:

"81 (1) The chief financial officer of a municipality-
(a) is administratively in charge of the budget and treasury office;

(b) must advise the accounting officer on the exercise of powers and duties assigned to the accounting officer in terms of this Act…"

5.3.15. In terms of the section, a chief financial officer of a municipality is responsible for management of the municipal budget and finances such as the payment of service providers. He/she is expected to ensure that payments are effected regularly to prevent any irregular, wasteful and fruitless expenditure.

5.3.16. Evidence at my disposal is that the Njabzen Media contract was budgeted for R3 million and over R127 million was paid to the service provider under the Complainant’s watch and notwithstanding the fact that the Complainant allegedly wrote to the former CM about the matter. According to section 81 responsibilities, it is a chief financial officer’s responsibility to ensure that payments to service providers are paid in line with the signed agreement. No evidence has been provided to my office on your role in preventing authorization of alleged overpayments to Njabzen Media.

Conclusion

5.3.17. Based on the evidence before me, no conclusion can be drawn on whether the services provided by Njabzen Media were within the scope of their contract because the relevant financial records, under the Complainant’s supervision as
the then CFO, cannot be traced. No conclusion can also be made on the reasons why Njabzen Media was allegedly paid over R127 million, also under the Complainant’s watch as the then CFO, which is way above the R3 million budgeted for the contract.

5.3.18. On 10 January 2020, this issue was referred to the Directorate for Priority Crime Investigation (DPCI) for a criminal investigation to be conducted. On 13 January 2020, through a letter from the DPCI, the referral was acknowledged.

6. **COMPLAINANT’S RESPONSE TO THE DISCRETIONARY NOTICE:**

6.1. Having considered the evidence gathered in this matter, a Notice in terms of Rule 42(1) of the "Public Protector Rules relating to investigations by the Public Protector and Matters Incidental thereto", 2018 was served on the Complainant. The rule states that “when the Public Protector intends concluding a complaint by means of a closing report provided for in rule 41(b), the Complainant shall be informed in writing accordingly and be given an opportunity to make representations in connection with the intended closure of the complaint within 14 days of delivery of the notification.”

6.2. A discretionary notice was served on the Complainant, dated 10 January 2020, informing him, that I intended closing the matter in accordance with Rule 42(1) of the Public Protector Investigation Rules published in Government Gazette No. 41903 dated 14 September 2018, however, the Complainant was afforded an opportunity to submit further representations on why I should not proceed to close this matter at his earliest convenience preferably not later than fourteen (14) working days of receipt of the letter.

6.3. The Complainant did not respond to the notice which was served through email, and did not respond to telephonic attempts to contact him.
7. REASON FOR CLOSURE

7.1. Regarding whether the CTMM unduly delayed to finalise the Complainant’s disciplinary process, and whether such delay constitutes maladministration:

7.1.1 The allegation that the CTMM unduly delayed to finalise the Complainant’s disciplinary hearing is unsubstantiated.

7.1.2 My investigation revealed that there were lots of legal formalities which were involved in this matter between the Complainant and the CTMM which impacted on the finalisation of the disciplinary hearing. These were legal formalities which had nothing to do with the administration of the CTMM.

7.1.3 Both parties were involved in legal disputes which in some instance led the matter to be referred to the Labour Court. The delay to finalise the Complainant’s disciplinary hearing was not as a result of the administration of the CTMM.

7.1.4 The conduct of the CTMM, particularly of Mr Ngobeni, does not constitute improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

7.2. Regarding whether or not there was maladministration by the CTMM in the allocation of work to Messrs. Dlamini Attorneys:

7.2.1. The allegation that there was maladministration in the allocation of work to Dlamini Attorneys, is unsubstantiated.

7.2.2. My investigation revealed that Dlamini Attorneys were appointed to provide legal advice to any unit or department of the CTMM, whether it be the Legal or Finance Department in terms of the tender. Information presented before me about the role of the Dlamini Attorneys indicates that they provided the services as per the contract.
7.2.3. Notwithstanding the above finding, even if there were irregularities relating to the Dlamini Attorneys’ contract, it was the Complainant’s responsibility, as the then CFO of the CTMM, to ensure that payments to service providers were effected in line with the contracts. Failure to do so, the Complainant would have be in contravention of section 81 of the MFMA.

7.2.4. With reference to paragraph 7.2.2, the conduct of the CTMM, particularly of Mr Ngobeni, does not constitute improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

7.3. Regarding whether services provided by Njabzen Media were within the scope of their contract; and if not; whether payment of said services constitutes maladministration:

7.3.1. No conclusion could be made regarding the allegation whether services provided by Njabzen Media were within the scope of their contract; and if payment of the said services constitutes maladministration because the relevant financial records relating to the contract, under the Complainant’s supervision as the then CFO, cannot be traced.

7.3.2. My investigation revealed that the Njabzen Media contract was budgeted for R3 million, but information provided to my office by the CTMM’s officials is that it was instead paid R127 576 612.14, under the Complainant’s watch as the then CFO. Due to unavailability of documentary evidence, I could not make a finding until further information is provided by the Complainant as the former CFO, in compliance with section 81 of the MFMA.

7.3.3. Furthermore this matter has now been referred to the DPCI.
8. CONCLUSION

8.1 In view of the above, this investigation is therefore closed.

ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 10/03/2020