
PUBLIC PROTECTOR
SOUTH AFRICA

REPORT NO: 116 OF 2019/2020
ISBN NO: 978-1-928507-76-5

"Allegations of maladministration against the Greater Letaba Local Municipality regarding tender number GLM030/2011 for the rehabilitation of streets in ModjadjiSkloof Phase 2"

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION BY THE GREATER LETABA LOCAL MUNICIPALITY RELATING TO TENDER NUMBER GLM030/2011 FOR THE REHABILITATION OF STREETS IN MODJADJISKLOOF PHASE 2
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Executive Summary

(i) This is my report 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).

(ii) The report communicates my findings and appropriate remedial action that I am taking in terms of section 182(1)(c) of the Constitution, following an investigation into allegations of maladministration against the Greater Letaba Local Municipality (the Municipality) regarding tender number GLM030/2011, for the rehabilitation of streets in Modjadjiskloof Phase 2.

(iii) On 24 January 2017, I received a complaint from Mr Isaac Moshweu Mankga (the Complainant). The Complainant is the Managing Director of Star Mirls Construction and Development cc (Star Mirls).

(iv) In the main, the Complainant alleged that:

(aa) On 03 May 2011, Star Mirls was awarded tender number GLM030/2011 by the Municipality, for the rehabilitation of streets in Modjadjiskloof Phase 2;

(bb) The Complainant appointed Mr Lucky Steve Shiloane (Mr Shiloane) the owner of Mapuputla General Trading cc (Mapuputla Trading) to manage the project and tender awarded to his company;

(cc) The Project Manager, Mr Shiloane submitted claim number one (1) on behalf of Star Mirls to the Municipality for payment of services rendered, and payment was effected into the bank account of Star Mirls;

(dd) Mr Shiloane, together with the site manager of Mapuputla Trading, Mr Oscar Mulovhedzi, thereafter colluded with officials of the Municipality and presented a fraudulent cession between Star Mirls and Mapuputla Trading;
(ee) Mr Shiloane and Mr Oscar Mulovhedzi fraudulently submitted claims number two (2) and three (3) to the Municipality for payment and the money was improperly paid into the bank account of Mapuputla Trading on 27 July 2011 and 29 August 2011, respectively;

(ff) The Complainant maintained that there was no valid cession agreement entered into between Star Mirls, the Municipality and Mapuputla Trading;

(gg) He lodged a complaint with the Municipality on 20 September 2011, regarding the fraudulent cession agreement entered into between Mr Shiloane and the Municipality and requested the Municipality to immediately cancel the agreement and, that future payments be made directly into the bank account of Star Mirls;

(hh) He also appointed attorneys, Messrs. Thomas and Swanepoel Inc., who instructed the Municipality to stop Mapuputla Trading from continuing with the project and also to claim payments from the Municipality; and

(ii) Complainant had brought an application before the High Court of South Africa, Limpopo Division, but could not proceed with the litigation due to lack of funds.

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

(vi) On analysis of the complaint, the following issues were identified and investigated:

(aa) Whether the Municipality irregularly effected two payments on tender number GLM030/2011 to Mapuputla Trading?

(bb) Whether the Complainant was prejudiced by the conduct of the Municipality in the circumstances?

(vii) Key laws and policies taken into account to determine if there had been improper conduct and maladministration by the Municipality and prejudice caused to the Complainant were
principally those imposing administrative standards that should have been complied with by the Municipality when processing payments on this project. Those are the following:

(aa) The Constitution of the Republic of South Africa, 1996 (the Constitution);

(bb) The Municipal Finance Management Act, 56 of 2003 (MFMA); and

(cc) The Prescribed Rate of Interest Act 55 of 1975 (PRIA).

(viii) On 20 August 2019, I issued notices (Notice) in terms of section 7(9)(a) of the Public Protector Act 1994 to, amongst others, the Mayor of the Greater Letaba Local Municipality, the Speaker of the Municipal Council of Greater Letaba Local Municipality, and the Municipal Manager of the Greater Letaba Local Municipality to enable them to respond within ten (10) working days of receipt thereof.

(ix) Having considered the evidence uncovered during the investigation against the applicable law and related prescripts, I make the following findings:

(a) Regarding whether the Municipality irregularly effected two payments on tender number GLM030/2011 to Maputula Trading.

(aa) The allegation that the Municipality effected two irregular payments of claims number two (2) and three (3) to Maputula Trading, is substantiated.

(bb) The Municipality awarded tender number GLM030/2011 to Star Mirls for the rehabilitation of streets in Modjadjiskloof Phase 2.

(cc) There was no valid cession agreement between Star Mirls, Maputula Trading and the Municipality. The cession agreement had to be signed by the contractor, the client (the Municipality) and the sub-contractor for it to be valid.
(dd) The Municipality failed to execute its functions diligently and irregularly paid claims two (2) and three (3), amounting to R950 861.52 (nine hundred and fifty thousand eight hundred and sixty one rand and fifty two cents) to Mapuputla Trading in terms of a fraudulent cession agreement and under the impression that such payments were due and payable to Mapuputla since Mr Shiloane was dealing with all related administrative issues as the project manager.

(ee) The Municipality should have satisfied itself that there was indeed a valid cession agreement in place, as prescribed in its legislation, before making any payment to Mapuputla Trading, instead of Star Mirls.

(ff) The failure by the Municipality to verify the existence of a cession agreement prior to effecting payment to Mapuputla Trading, is in violation of clause 14 of the Service Level Agreement (SLA) and section 65(2) (d)(i) of the MFMA.

(gg) The conduct of the Municipality constitutes maladministration as envisaged in 6(4)(a)(i) of the Public Protector Act, 23 of 1994 and improper conduct as envisaged in section 182(1) of the Constitution.

(b) **Whether the Complainant was prejudiced by the conduct of the Municipality in the circumstances.**

(aa) The allegation that the Complainant was improperly prejudiced by the conduct of the Municipality, is substantiated.

(bb) The Complainant suffered financial loss amounting to R950 861.52 (nine hundred and fifty thousand eight hundred and sixty one rand and fifty two cents), which was improperly paid to Mapuputla Trading as follows:

(i) R411 029.31 (four hundred and eleven thousand twenty nine rand and thirty one cents) on 27 July 2011; and
(ii) R539 832.21 (five hundred and thirty nine thousand eight hundred and thirty two rand and twenty one cents) paid on 29 August 2011.

(x) The appropriate remedial action that I am taking in pursuit of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, is as follows:

(aa) The Speaker of the Municipal Council must ensure that within thirty (30) working days from the date of receipt of this report, the Municipal Council, in consultation with the Municipal Manager, declare as an irregular payment the amount of R950 861.52 (nine hundred and fifty thousand eight hundred and sixty one rand and fifty two cents), which was improperly paid to Mapuputla Trading.

(bb) The Speaker of the Municipal Council must ensure that within thirty (30) working days from the date of receipt of this report, the Municipal Council, in consultation with the Municipal Manager, institute civil action against Mapuputla Trading to recover the amount of R950 861.52 (nine hundred and fifty thousand eight hundred and sixty one rand and fifty two cents) which was improperly paid to them;

(cc) The Speaker of the Municipal Council must ensure that within thirty (30) working days from the date of receipt of this report, the Municipal Council in consultation with the Municipal Manager, consider to pay the Complainant an amount of R950 861.52 (nine hundred and fifty thousand eight hundred and sixty one rand and fifty two cents) with interest; and

(dd) The Speaker of the Municipal Council must ensure that within thirty (30) working days from the date of receipt of this report, the Municipal Council in consultation with the Municipal Manager institutes disciplinary action against any official(s) who were involved in the irregular payment to Mapuputla Trading.
1. INTRODUCTION

1.1. This is my report 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 section 8(3) of the Public Protector Act to the following people to note the outcome of my investigation:

1.2.1 The Member of the Executive Council for the Limpopo Department of Cooperative Governance, Human Settlements and Traditional Affairs, Mr J Ndou;

1.2.2 The Mayor of the Greater Letaba Local Municipality, Cllr. MP Matlou;

1.2.3 The Speaker of the Municipal Council of the Greater Letaba Local Municipality, Cllr. MD Makhananisa;

1.2.4 The Municipal Manager of the Greater Letaba Local Municipality, Dr KI Sirovha; and

1.3 A copy of the report is also provided to the Complainant, Mr Isaac Moshewu Mankga to inform him of the outcome of my investigation.

1.4 The report relates to an investigation into allegations of maladministration against the Greater Letaba Local Municipality regarding tender number GLM030/2011 for the rehabilitation of Streets in Modjadjiskloof Phase 2.
2. THE COMPLAINT

2.1 On 24 January 2017, I received a complaint from Mr Isaac Moshweu Mankga (the Complainant) who is the Managing Director of Star Mirls Construction and Development cc (Star Mirls). The Complainant requested that I must intervene and investigate what he perceived as maladministration relating to tender number GLM030/2011 for the rehabilitation of Streets in Modjadjiskloof Phase 2 by the Greater Letaba Local Municipality (the Municipality). He alleged that:

2.1.1 Star Mirls was awarded tender number GLM030/2011 by the Municipality on 03 May 2011, for the rehabilitation of streets in Modjadjiskloof Phase 2;

2.1.2 The Complainant appointed Mr Lucky Steve Shiloane (Mr Shiloane) the owner of Mapuputla General Trading cc (Mapuputla Trading) to manage the project and tender awarded to his company;

2.1.3 The Project Manager, Mr Shiloane submitted claim one (1) on behalf of Star Mirls to the Municipality for payment for services rendered, and the claimed amount was paid into the bank account of Star Mirls;

2.1.4 Mr Shiloane, together with the site manager of Mapuputla Trading, Mr Oscar Mulovhedzi, thereafter colluded with officials of the Municipality and presented a fraudulent cession between Star Mirls and Mapuputla Trading;

2.1.5 Mr Shiloane and Mr Oscar Mulovhedzi fraudulently submitted claims number two (2) and three (3) to the Municipality for payment and the money was improperly paid into the bank account of Mapuputla Trading on 27 July 2011 and 29 August 2011, respectively;

2.1.6 The Complainant maintained that there was no valid cession agreement entered into between Star Mirls, the Municipality and Mapuputla Trading;
2.1.7 He lodged a complaint with the Municipality on 20 September 2011 about the fraudulent cession agreement entered into between Mr Shiloane and the Municipality and requested the Municipality to immediately cancel the agreement and, that future payments should be paid directly into the bank account of Star Mirls;

2.1.8 He also appointed attorneys, Messrs. Thomas and Swanepoel Inc. who instructed the Municipality to stop Maputuha Trading from continuing with the project and also to claim payments from the Municipality; and

2.1.9 The Complainant had brought an application before the High Court of South Africa, Limpopo Division, but could not proceed with the litigation due to lack of funds.

3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

3.1 **The mandate of the Public Protector**

3.1.1 The Public Protector is an independent constitutional institution established in terms of section 181(1)(a) of the Constitution to support and strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.1.2 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."

3.1.3 Section 182(2) directs that the Public Protector has additional powers prescribed in legislation.
3.1.4 The Public Protector’s powers are regulated and amplified by the Public Protector Act, which states, among others, that the Public Protector has the power to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector Act also confers power to resolve the disputes through conciliation, mediation, negotiation or any other appropriate dispute resolution mechanism as well as subpoena persons and information from any person in the Republic for the purposes of an investigation.

3.1.5 In the matter of 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: “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.”\(^2\)

3.1.6 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65);

3.1.7 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);

3.1.8 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 the effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68);

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1. [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].
2. Supra at para [73].
3.1.9 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);

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

3.1.11 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);

3.1.12 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));

3.1.13 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d)); and

3.1.14 “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)).

3.1.15 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:

3.1.15.1 The Public Protector, in appropriate circumstances, have the power to direct the president to appoint a commission of enquiry and to direct the manner of its
implementation. Any contrary interpretation will be unconstitutional as it will render the power to take remedial action meaningless or ineffective. (Paragraphs 85 and 152);

3.1.15.2 There is nothing in the Public Protector Act that prohibits the Public Protector from instructing another entity to conduct further investigation, as she is empowered by section 6(4)(c)(ii) of the Public Protector Act (paragraphs 91 and 92);

3.1.15.3 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.

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

3.1.15.5 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. (Paragraph 105).

3.1.16 To this end, I would like to emphasise that adjudicative functions and pure litigation which relates to a claim for special or general damages are lawsuits which are judicial in nature. A court of law is best suited to hear and adjudicate on such matters. Accordingly, the Public Protector is not inclined to recommend remedial action ordering payment of civil damages or sorry money given its adjudicative and judicial nature. The office of the Public Protector is an office modelled on an institution of an ombudsman whose function is to ensure that government officials carry out their tasks effectively, fairly and without corruption,

3 Sedumo et al vs Rustenburg Platinum Mines Limited et al, 2008(2) SA 24 (CC) at 235.
maladministration and prejudice. It is therefore trite that the decisions of the Public Protector are administrative actions.

3.1.17 The fact that there is 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);

3.1.18 Prima facie evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action. (Paragraph 112);

3.1.19 The Greater Letaba Local Municipality is an organ of state and its conduct amounts to conduct in state affairs. This matter, falls squarely within the ambit of the Public Protector’s mandate.

3.1.20 The jurisdiction of the Public Protector was not disputed by any of the parties in this matter.

3.1.21 Regarding the exercise of my discretion in terms of section 6(9) to entertain matters which arose more than two (2) years from the occurrence of the incident, and in deciding what constitute ‘special circumstances’, some of the special circumstances that I took into account to exercise my 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 I would be able to successfully investigate the matter with due consideration to the availability of evidence and/or records relating to the incident(s); whether there are any competent alternative remedies available to the Complainant and the overall impact of the investigation; whether the prejudice suffered by the complainant persists; whether my refusal to investigate perpetuates the violation of section 195 of Constitution; whether my remedial action will redress the imbalances of the past. What constitute ‘special circumstances’ depends on the merits of each case.

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4 Ex Parte Chairperson of the Constitutional Assembly; In re: Certification of the Constitution of the Republic of South Africa 1996(4) SA744 (CC) at 16.
5 Minister of Home Affairs et al vs Public Protector et al 2017(2) SA 597 (GP).
3.1.22 On 20 August 2019, I issued notices (Notice) in terms of section 7(9)(a) of the Public Protector Act 1994 to, amongst others, the Mayor of the Greater Letaba Local Municipality, the Speaker of the Municipal Council of Greater Letaba Local Municipality, and the Municipal Manager of the Greater Letaba Local Municipality to enable them to respond within ten (10) working days of receipt thereof.

4. THE INVESTIGATION

4.1 Methodology

4.1.1 My investigation of the complaint was conducted in terms of section 182(1)(a) of the Constitution which gives me 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; to report on that conduct; and to take appropriate remedial action; and in terms of section 6(4) of the Public Protector Act, that regulates the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of government at any level.

4.1.2 The Public Protector Act confers on me the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration. Section 6 of the Public Protector Act gives me the authority to resolve a matter without conducting an investigation and resolve a complaint through Alternative Dispute Resolution (ADR) measures such as conciliation, mediation and negotiation.

4.1.3 The investigation was conducted by way of correspondence, meetings and interviews with the Complainant and the relevant Municipal officials, analysis of the relevant documentation and consideration and application of the relevant laws, and regulatory framework.

4.2 Approach to the investigation

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:
(a) What happened?
(b) What should have happened?
(c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration or other improper conduct?
(d) In the event of maladministration or improper conduct, what would it take to remedy the wrong or to place the Complainant as close as possible to where she would have been but for the maladministration or improper conduct?

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. Evidence was evaluated and a determination made on what happened based on a balance of probabilities. The Supreme Court of Appeals\(^6\) (SCA) made it clear that it is the Public Protector’s duty to actively search for the truth and not to wait for parties to provide all of the evidence as judicial officers do.

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 or complied with by the Municipality to prevent maladministration and prejudice.

4.2.4 The enquiry regarding the remedial or corrective action seeks to explore options for redressing the consequences of maladministration or improper conduct. Where a Complainant has suffered prejudice, the idea is to place him or her as close as possible to where they would have been had a state organ complied with the regulatory framework setting the applicable standards for good administration.

4.3 On analysis of the complaint, the following issues were considered and investigated:

4.3.1 Whether the Municipality irregularly effected two payments on tender number GLM030/2011 to Mapututla Trading?

\(^6\) Public Protector versus Mail and Guardian, 2011(4) SA 420 (SCA).
4.3.2 Whether the Complainant was prejudiced by the conduct of the Municipality in the circumstances?

4.4 The key sources of information

4.4.1 Documents

4.4.1.1 A copy of the appointment letter from the Municipality to Star-Mirls dated 03 May 2011.

4.4.1.2 Service Level Agreement dated 31 May 2011.

4.4.1.3 A copy of an affidavit from Mr Lucky Steve Shiloane dated 09 February 2016.

4.4.1.4 A copy of the investigation report from the Provincial Treasury to the Director, Bathopele in the Office of the Premier dated 11 February 2016.

4.4.1.5 A copy of an affidavit from Mr Chuene William Molokomme dated 22 January 2016.

4.4.1.6 A copy of an undated Direct Payment Agreement between Star-Mirls Construction and Developers cc and Maputuila General Trading.

4.4.1.7 Copies of invoices no.1 and no. 2 amounting to R411 029.31 and R539 832.21 from Mr Oscar Mulovhedzi dated 27 July 2011 and 29 August 2011 respectively.

4.4.1.8 A copy of the contract payment cover sheets from Mr Oscar Mulovhedzi dated 27 July 2011 and 29 August 2011, respectively.

4.4.1.9 A copy of the complaint form dated 24 January 2017.

4.4.2 Correspondence sent and received
4.4.2.1 A copy of a letter from Messrs. Thomas and Swanepoel Incorporated to the Municipality dated 09 November 2011.

4.4.2.2 A copy of a letter from Star-Mirls to the Municipality dated 20 September 2011.

4.4.2.3 A copy of a letter of enquiry from my Office to the Municipality dated 06 February 2017.

4.4.2.4 A copy of a letter from the Municipality to my Office dated 22 March 2017.

4.4.2.5 A copy of correspondence from my Office to the Municipality dated 11 October 2017.

4.4.2.6 A copy of correspondence from the Municipality to my Office dated 29 January 2018.

4.4.2.7 Copies of the section 7(9) Notices signed by me on 20 August 2019 addressed to the Mayor; the Speaker; and the Municipal Manager.

4.4.2.8 A response to the section 7(9) Notice signed by the Municipal Manager dated 28 August 2019.

4.4.3 Legislation and other prescripts

4.4.3.1 The Constitution of the Republic of South Africa, 1996

4.4.3.2 The Public Protector Act, 23 of 1994

4.4.3.3 The Municipal Finance Management Act 56 of 2003 (MFMA).

4.4.3.4 The Prescribed Rate of Interest Act 55 of 1975 (PRIA).

4.4.4 Interviews
4.4.1 Meeting with the Municipal Manager, Ms G Mashaba; Director Corporate Services, Dr MB Letsoalo; Legal Advisor, Ms. Khomotso Chuene; and the Complainant on 02 February 2017.

4.4.5 Case Law

4.4.5.1 *Economic Freedom Fighters v Speaker of the National Assembly and Others*; *Democratic Alliance v Speaker of the National Assembly and Others* 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC).

4.4.5.2 *Sedumo et al v Rustenburg Platinum Mines Limited et al* 2008(2) SA 24 (CC) at 235.

4.4.5.3 *Ex Parte Chairperson of the Constitutional Assembly; In re; Certificate of the Constitution of the Republic of South Africa* 1996(4) SA744 (CC) at 161.

4.4.5.4 *Minister of Home Affairs et al v Public Protector et al* 2017(2) SA 597 (GP).

4.4.5.5 *President of the Republic of South Africa v Office of the Public Protector and Others* Case no. 91139/2016 [2017] ZAGPPHC 747.

4.4.5.6 *Public Protector v Mail and Guardian* 2011(4) SA 420 (SCA).

4.4.5.7 *Mercuria Energy Trading South Africa (Pty) Ltd v TSH Coal (Pty) Ltd* Case no. 43104/2016.

4.4.5.8 *Johnson v Incorporated General Insurance Ltd* 1983 (1) SA 318 (A)

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

5.1 Regarding whether the Municipality irregularly effected two payments on tender number GLM030/2011 to Mapuputla Trading.
Common cause issues

5.1.1 Star Mirls was awarded tender number GLM 030/2011 by the Municipality on 03 May 2011, for the rehabilitation of streets in Modjadjiskloof Phase 2;

5.1.2 The parties (Star Mirls and the Municipality) entered into a Service Level Agreement (SLA) signed by Mr Isaac Pandelani Mutshinyali (Mr Mutshinyali) on 31 May 2011 on behalf of the Municipality and Mr Isaac Moshweu Mankga on 31 May 2011 on behalf of his company, Star Mirls.

5.1.3 Mr Shiloane submitted claim number one (1) on behalf of Star Mirls to the Municipality for payment for services rendered and the claimed amount was paid into the account of Star Mirls.

5.1.4 Mr Shiloane and Mr Oscar Mulovhedzi submitted claims number two (2) and three (3) to the Municipality for payment and the money was paid into the account of Mapuputla Trading on 27 July 2011 and 29 August 2011, respectively.

5.1.5 In October 2011, Star Mirls appointed MAC P Construction (Pty) Ltd (MAC P Construction) as a subcontractor to complete the project. The parties also entered into a subcontract agreement which was duly signed by Mr Mankga on behalf of Star Mirls, an official from the Municipality and Ms MF Tsheoga (Ms Tsheoga) on behalf of MAC P Construction.

Issues in dispute

5.1.6 The Complainant argued that the Municipality improperly paid Mapuputla Trading instead of Star Mirls for claims number two (2) and three (3). He indicated that there was never a signed cession agreement between Star Mirls, Mapuputla Trading and the Municipality, neither was there a sub-contractor agreement between Star Mirls and Mapuputla Trading.
5.1.7 In response to my section 7(9) Notice, the Municipal Manager, Dr Ki Sirovha (Municipal Manager) rejected the Complainant’s allegation that the Municipality improperly paid claims number two (2) and three (3) to Mapuputla Trading instead of Star Mirls and indicated in a letter dated 28 August 2019 as follows:

“That the complainant was hardly on site and that all affairs of the company pertaining to the project were handled by Mr Shiloane. That there was a special relationship between Star Mirls Construction and Mapuputla General Trading. That prior to kick starting of the project, Mr Lucky Shiloane of Mapuputla Trading Enterprise submitted compulsory documents in the name of proof of surety and insurance certificate. That the latter expected to have been aware that Mr Shiloane is running his affairs in relation to the referred project. In fact, that is the arrangement as per letters between their respective attorneys in the attempts to resolve their difference amicably.

The assertion that the complainant does not know Oscar Molovhedzi can’t be correct because there were meetings held between the municipality and the Star Mirls Construction officials represented by Oscar Molovhedzi. There was a specific meeting where the complainant attended them together with Oscar Molovhedzi.

It is confirmed that the complainant had at some stage attempted to litigate the municipality on the two claims however cannot tell what reasons for withdrawal therefore. The municipality has however received a new set of summons issued by the complainant at the High Court of South Africa, Limpopo Division under case number 3822/2018 which the matter is still in court and at the pleading stages.

That the municipality had no reason to doubt if Mr Luck Shiloane had no authority to enter into that cession as he was an active participant during the execution of the project. The complainant was hardly on site.

The municipality was working with Mapuputla Trading throughout the project and the complainant was aware of that until their relationship became sour on non-accountability on some of the transactions”
5.1.8 The Municipal Manager argued that the Municipality paid Maputula Trading since all the affairs of Star Mirls pertaining to the project were handled by Mr Shiloane as the Complainant was hardly on site.

5.1.9 This argument is rejected in its entirety. It is irrelevant whether or not the Complainant was on site at all material times. Of importance is that the Service Level Agreement was entered into between Star Mirls and the Municipality and therefore all the payments relating to the project ought to have been paid directly to Star Mirls.

5.1.10 Mr Shiloane submitted claim number one (1) to the Municipality on behalf of Star Mirls for payment for services rendered and the claimed amount was paid into the account of Star Mirls.

5.1.11 In his affidavit dated 13 January 2016 submitted to the Investigator of the Provincial Treasury, Mr MP Monashane (Mr Monashane), the Complainant indicated that:

"...I have appointed Lucky Shiloane as my site agent (Manager). The project continued on 1st claim was paid to Star Mirls account. The second claim amounting to R411 029.31 and third (3rd) claim amount R539 832.21 were incorrectly or fraudulently paid to unknown company called Maputula General Trading cc. The whole amount paid to this company was R950 861.52. I have conducted my own investigation and it was discovered that the company belongs to Lucky Shiloane my site agent. I did not sign any cession form allowing Letaba Municipality to pay my money to company Maputula General Trading. It was further discovered that signatures on claim no. 2 and cession form are not mine but Oscar Mulovhedzi who is unknown to me".

5.1.12 Contrary to the version proffered by Mr Monashane, Ms Chuene and Ms Mashaba from the Municipality, Mr Shiloane indicated in his affidavit submitted to Mr Monashane dated 09 February 2016 as follows:
"...I confirm that I had a verbal agreement with Star Mirls Construction and Developments cc to assist them secure (tender) projects as a subcontractor as they were not having financial capacity to run the projects. I then engaged my site manager Mr Oscar Mulovhedzi to prepare the necessary tender documents for all projects which Star Mirls Constructions and Developers and it was agreed that Mr Oscar Mulovhedzi will sign all tender documents and payment certificates. We also prepared cession agreements to effect direct payments as I had sought loans to present financial guarantees to the various Municipalities as well as cash flow funds. Payments were also effected into my accounts so that I can repay the loans and hire the machines for purpose of such projects."

5.1.13 My investigation team raised the matter with the Municipality on 11 October 2017 and in a letter dated 29 January 2018, the former Acting Municipal Manager, Mr D Mhangwana (Mr Mhangwana), indicated as follows:

"...The Municipality was at all times interacting with the representative of the company (Star Mirls Construction and Developers cc) and both payments were effected in line with a cession signed by the parties. The Municipality did not at any given time questioned the authenticity of the cession because it was signed and submitted by the person who has been monitoring the day to day running of the project on behalf of the company and that the very same person was liaising with the municipality on project related issues not relating to finances. The municipality in effecting payments on claim 2 and 3, it relied on firstly the cession agreement signed by the representatives of both Mapututla and Star Mirls as well as the invoices submitted by the subcontractor."

5.1.14 An Alternative Dispute Resolution (ADR) meeting was arranged with the Municipality on 02 March 2017 to resolve the matter. During the ADR session, the Municipality’s Legal Adviser, Ms Khomotso Chuene (Ms Chuene) indicated that:

"...The Municipality was under the impression that at all material times, Mr Shiloane as the project manager on the project was dealing with everything related to the project hence they processed claims 2 and 3 and paid directly to Mapuputla Trading instead of Star Mirls. She
presented a cession agreement which according to the Municipality gave Mr Shiloane permission to collect payments from the Municipality”.

5.1.15 After the ADR meeting on 02 March 2017, the Municipality furnished my investigation team with a letter dated 22 March 2017 wherein the former Municipal Manager, Ms TG Mashaba, indicated that:

“... Mr Mankga was always aware that Lucky Shiloane and Mulovhedzi were representing the company in relation to the matters affecting the company on the project. That all mandatory documents were presented by Lucky Shiloane which inter alia includes the OHS plan, risk insurance documents and the profile of the company employees. That Mr Shiloane Lucky is the owner of Ramaputla and was also involved in running of the project. The municipality is still of the view that Maputula General Trading was duly authorised to represent Star Mirls in this project and further that it seems their relationship became sour along the way hence Mac P was subcontracted to finalize the project”.

5.1.16 There was no cession agreement between Star Mirls, Maputula Trading and the Municipality and also that there was no sub-contractor agreement between Star Mirls and Maputula Trading.

5.1.17 The Municipality paid claims number two (2) and three (3), directly into the account of Maputula Trading.

5.1.18 The argument that the Municipality had no reason to doubt that Mr Shiloane had no authority to enter into a cession as he was an active participant during the execution of the project is without merit. The Municipality ought to have taken reasonable steps to investigate the claim in order to ensure that payment is made directly to the relevant service provider to whom it is due and has concluded an SLA.

5.1.19 The submission that the matter is currently pending at the High Court is not disputed. However, nothing stops the Public Protector from investigating a complaint which is before
the court as long as the court has not adjudicated on the complaint. The Complainant abandoned the legal process due to financial constraints.

5.1.20 This matter has been dragging for far too long in the hands of the Municipality since 20 September 2011 and the Municipality has failed to resolve the matter. Moreover, the Complainant is willing to abandon the civil litigation if he gets the relief sought.

Application of the relevant law

5.1.21 Section 195(1) (a) and (f) of the Constitution provides that:

"Public Administration must be governed by the democratic values and principles enshrined in the Constitution including the following principles:

(a) A high standard of professional ethics must be promoted and maintained.
(b) ...
(c) ...
(d) ...
(e) ...
(f) Public administration must be accountable".

5.1.22 These principles enjoin the Municipality and its officials to exercise a high level of professionalism and ethics including accountability in the performance of their duties. The Municipality and its officials should also strive to be above reproach.

5.1.23 Section 182(3) of the Constitution provides that: "The Public Protector may not investigate court decisions".

5.1.24 This section empowers the Public Protector to investigate complaints where the court has not adjudicated on the matter. In this case the matter was not adjudicated by the court subsequent to the Complainant had abandoning the legal process due to financial constraints.
5.1.25 The principles governing the contract of cession are briefly set out in *Lynn & Main Incorporated v Brits Community Sandworks CC*, as follows: "[6] It is trite that a cession is a method by which incorporeal rights are transferred from one party to another. It is an act of transfer from a creditor, as cedent, to the cessionary, of a right to recover a debt (vorderingsreg) from a debtor. Although it entails a triangle of parties, viz the cedent, cessionary and debtor, the cession takes place without the concurrence of the debtor. The transfer of the right is effected by the mere agreement between the transferor (cedent) and the transferee (cessionary). Notice to the debtor is not a prerequisite for the validity of the cession but a precaution to pre-empt the debtor from dealing with the cedent to the detriment of the cessionary".

5.1.26 In the matter of *Mercuria Energy Trading South Africa (Pty) Ltd v TSH Coal (Pty) Ltd* the High Court of South Africa, Gauteng Division, Pretoria, per Willis AJ held that: "Generally there are no formalities required for a cession which may validly be made orally or tacitly even if the right ceded formed part of a written contract. Of course parties can agree that a cession cannot take place without the debtors consent or at all or only on specific terms such as in writing, or the debtor must be informed in a certain manner.

A right may not be ceded without the consent of the debtor if the performance the debtor is to render to the cessionary would differ in character from the performance to the current creditor i.e. the cession must neither weaken the debtors position nor render it more onerous. See *Van Zyl v Credit Corporation of South Africa 1960 (4) SA 582 (A) 588*; *FW Knowles (Pty) Ltd v Cash-In (Pty) Ltd 1986 (4) SA 641 (C) 651*; *Scott Cession par 10.3.1 fn 26.*

A transaction comprising both a cession and delegation requires the consent of all three different parties. As Christie puts it: "Since the lesser is included in the greater it follows that the whole process of substitution cannot take place without the consent of the other party to the contract". Or as was stated by Corbett AJA (as he then was) in *Froman v Robbertson 1971 (1) SA 115 (A) at 122E*: "There is no doubt that, generally speaking, a contractual obligation cannot effectively be transferred from the debtor to a third person by agreement unless the creditor consents thereto and agrees to accepts the third person as his debtor in substitution for the original debtor. (See *Voet, 46.2.11 and 12*; *Brenner v Hart, 1913 TPD*
607; Van Achterberg v Walters 1950 (3) SA 734 (T) at 745. Such a transfer, therefore, involves the concurrence of the three parties concerned and is properly termed a ‘delegation’, which is a species of novation”.

5.1.27 The cession agreement is clearly defined in Johnson v Incorporated General Insurance Ltd, 1983 (1) SA 318 (A) as: “An act of transfer to enable the transfer of the right to claim to take place. Accomplished by means of an agreement of transfer entered into between the cedent and the cessionary arising out of a justa causa, from which the intention of the cedent to transfer the right to claim appears or can be inferred and from which the intention of the cessionary to become the holder of the right appears or can be inferred”.

5.1.28 On perusal of the cession agreement, the following discrepancies were discovered:

(a) The full names and signature of Mr Oscar Mulovhedzi appear under the Contractor and the full names and signature of Mr Lucky Shiloane appear under the Sub-Contractor.

(b) At the end, it was signed by another person on behalf of Mr Mutshinyali, for the Municipality and co-signed by a witness.

(c) The full names of the Complainant appear under the Contractor but the signature is that of Mr Mulovhedzi and not co-signed by a witness.

5.1.29 The Complainant has denied any knowledge of the alleged cession agreement and also that he gave Mr Mulovhedzi the authority to sign on his behalf.

5.1.30 The alleged cession agreement did not meet the requirements of a valid cession in that the Complainant did not sign as the Contractor.

5.1.31 The cession agreement allegedly in place was not entered into between three parties, Star-Mirls as the contractor, the Municipality as the employer/client and Mapuputla Trading as the sub-contractor.
5.1.32 In the absence of any justification or legal authority allowing the Municipality to pay claims number two (2) and three (3) directly into the account of Mapuputla Trading, the subsequent payments were in contravention of the SLA, the MFMA and the Constitution.

5.1.33 Clause 14 of the SLA entered into between the Municipality and Star-Mirls on 31 May 2011 provide that:

“The contractor may not without first obtaining the Municipality’s written permission to cede, transfer, pledge or in any way alienate any of its rights in terms of this agreement”.

5.1.34 This clause requires the contractor, Star Mirls to notify and obtain a written permission from the Municipality before ceding any of its rights in terms of the agreement. According to the Complainant, the decision to cede, transfer or alienate the rights of Star Mirls in terms of the SLA was taken without his knowledge and consent.

5.1.35 Section 62(1) (d) of the Municipal Finance Management Act 56 of 2003 (MFMA) provides that:

“The Accounting Officer is responsible for managing the financial administration of the municipality, and must for this purpose take all reasonable steps to ensure that unauthorised, irregular or fruitless and wasteful expenditure and other losses are prevented.”

5.1.36 Section 65(2) (d) (i) of the MFMA provides that:

“The Accounting Officer must take all reasonable steps to ensure that payments by the municipality are made directly to the person to whom it is due unless agreed otherwise for reasons as may be prescribed”.

5.1.37 Section 171(1) MFMA provides that, “The accounting officer of a municipality commits an act of financial misconduct if that accounting officer deliberately or negligently-
(a) contravenes a provision of this Act;

(b) fails to comply with a duty imposed by a provision of this Act on the accounting officer of a municipality”.

5.1.38 These provisions thus require the Municipal Manager to exercise due diligence prior to making any payments in order to ensure that the Municipality pays the relevant service provider to whom payment is due to avoid financial misconduct.

5.1.39 Section 61(1) (a) of the MFMA provides that:

“The accounting officer of a municipality must act with fidelity, honesty, integrity and in the best interests of the municipality in managing its financial affairs”.

5.1.40 Section 173(2) (a) (ii) of the MFMA provides that:

(2) “The Accounting Officer of a municipality is guilty of an offence if that accounting officer –

(a) deliberately or in a grossly negligent way –

(ii) fails to take all reasonable steps to prevent unauthorised, irregular or fruitless and wasteful expenditure”.

5.1.41 Section 1 of the Prescribed Rate of Interest Act No. 55 of 1975 (PRIA) provides for interest on a debt to be calculated at a prescribed rate in certain circumstances.

5.1.42 Section 1(1) of the PRIA provides that:

“...if a debt bears interest and the rate at which the interest is to be calculated is not governed by any other law or by an agreement or a trade custom or in any other manner, such interest shall be calculated at the rate prescribed under subsection 2 as at the time when such
interest begins to run, unless a court of law, on the ground of special circumstances relating to that debt, orders otherwise”.

5.1.43 Section 1(2) of the PRIA provides that:

"The Minister of Justice may from time to time prescribe a rate of interest for the purpose of subsection (1) by notice in the Gazette”.

5.1.44 In the absence of any agreement between the parties, the rate of interest applicable to this matter for the purpose of subsection (1) of the PRIA was prescribed at 15.5% per annum by Government Notice R1814 in Government Gazette 15143 of 1 October 1993.

5.1.45 The Complainant is within his right in terms of section 1 of the PRIA to charge interest at the rate of 15.5% even though interest is not provided for in the contract entered into between the parties.

**Conclusion**

5.1.46 Based on the evidence gathered, it can be concluded that the Municipality did not comply with the MFMA in that it failed to exercise due diligence by verifying the validity of claims number two (2) and three (3) before making payment to Mapuputla Trading in order to ensure that payment is made to the relevant service provider, Star Mirls.

5.2 Regarding whether the Complainant was prejudiced by the conduct of the Municipality in the circumstances

**Common cause issues**

5.2.1 The Municipality paid claims number two (2) and three (3) to Mapuputla Trading.
5.2.2 The Municipality effectively paid Maputula Trading an amount of R950 861.52 (nine hundred and fifty thousand eight hundred and sixty one rand and fifty two cents) which was made up as follows:

(a) R411 029.31 (four hundred and eleven thousand twenty nine rand and thirty one cents) on 27 July 2011; and

(b) R539 832.21 (five hundred and thirty nine thousand eight hundred and thirty two rand and twenty one cents) on 29 August 2011.

5.2.3 The Complainant appointed attorneys in order to assist him to recover payment in respect of claims numbers two (2) and three (3) due to his company for services rendered, irregularly effected by the Municipality to Maputula Trading, but he abandoned the legal process due to financial constraints.

5.2.4 The Complainant paid an amount of R46 614.77 (forty six thousand six hundred and fourteen rand and seventy seven cents) and R40 000.00 (forty thousand rand) in respect of legal costs, to Besler Becker Attorneys and Moseamo Papola Incorporated respectively, while trying to recover payment due to his company.

Issues in dispute

5.2.5 The Complainant argued that Star Mirls has been prejudiced financially as a result of the Municipality's failure to apply due diligence irregularly making payment of R950 861.52 (nine hundred and fifty thousand eight hundred and sixty one rand and fifty two cents), to Maputula Trading.

5.2.6 The Municipality on the other hand argued in a letter dated 29 January 2018 that:

“...The municipality in effecting payment on claim 2 and 3, it relied on firstly the cession agreement signed by the representatives of both Maputula and Star Mirls as well as the invoices submitted by the subcontractor".
5.2.7 Section 32 of the MFMA regulates the process of reporting and recovery of unauthorised, irregular or fruitless and wasteful expenditure. Section 32(2)(4)(a)(b)(c) and (6)(a) of the MFMA provides that:

(2) "A municipality must recover unauthorized, irregular or fruitless and wasteful expenditure from the person liable for that expenditure…"

(4) The accounting officer must promptly inform the mayor, the MEC for local government in the province and the Auditor-General, in writing of –
(a) any unauthorised, irregular or fruitless and wasteful expenditure incurred by the municipality;
(b) whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure; and
(c) the steps that have been taken:
(i) to recover or rectify such expenditure; and
(ii) to prevent a recurrence of such expenditure.

(6) The accounting officer must report to the South African Police Service all cases of alleged-
(a) Irregular expenditure that constitute a criminal offence…".

5.2.8 The above provisions obliges the Municipal Manager to report to the relevant authorities and recover any unauthorised, irregular or fruitless and wasteful expenditure that constitute a crime.

5.2.9 Section 65(2) (d) (i) of the MFMA provides that:
"The Accounting Officer must take all reasonable steps to ensure that payments by the municipality are made directly to the person to whom it is due unless agreed otherwise for reasons as may be prescribed".

5.2.10 These provisions require the Municipal Manager to exercise due diligence prior to making any payments in order to ensure that the Municipality pays the relevant service provider to whom payment is due to avoid financial misconduct.

Conclusion

5.2.11 The Complainant suffered prejudice as a result of the failure by the Municipality to exercise due diligence and verify the validity of claims number two (2) and three (3) to ensure that payment is made to the relevant service provider.

6. FINDINGS

Having regard to the evidence, and the regulatory framework setting the standard that should have been upheld by the Municipality and the impact on the Complainant, I therefore make the following findings:

6.1 Regarding whether the Municipality irregularly effected two payments on tender number GLM030/2011 to Mapuputla Trading.

6.1.1 The allegation that the Municipality effected two irregular payments of claims number two (2) and three (3) to Mapuputla Trading, is substantiated.

6.1.2 The Municipality awarded tender number GLM030/2011 to Star Mirls for the rehabilitation of streets in Modjadjiskloof Phase 2.

6.1.3 There was no valid cession agreement between Star Mirls, Mapuputla Trading and the Municipality. The cession agreement had to be signed by the contractor, the client (the Municipality) and the sub-contractor for it to be valid.
6.1.4 The Municipality failed to execute its functions diligently and irregularly paid claims two (2) and three (3), amounting to R950 861.52 (nine hundred and fifty thousand eight hundred and sixty one rand and fifty two cents) to Maputuiba Trading in terms of a fraudulent cession agreement and under the impression that such payments were due and payable to Maputuiba since Mr Shiloane was dealing with all related administrative issues as the project manager.

6.1.5 The Municipality should have satisfied itself that there was indeed a valid cession agreement in place, as prescribed in its legislation, before making any payment to Maputuiba Trading, instead of Star Mirls.

6.1.6 The failure by the Municipality to verify the existence of a cession agreement prior to effecting payment to Maputuiba Trading, is in violation of clause 14 of the Service Level Agreement (SLA) and section 65(2) (d)(i) of the MFMA.

6.1.7 The conduct of the Municipality constitutes maladministration as envisaged in 6(4)(a)(i) of the Public Protector Act, 23 of 1994 and improper conduct as envisaged in section 182(1) of the Constitution.

6.2 Regarding whether the Complainant was prejudiced by the conduct of the Municipality in the circumstances

6.2.1 The allegation that the Complainant was improperly prejudiced by the Municipality’s conduct is substantiated.

6.2.2 The Complainant suffered financial loss amounting to R950 861.52 (nine hundred and fifty thousand eight hundred and sixty one rand and fifty two cents) which was improperly paid to Maputuiba Trading as follows:

(a) R411 029.31 (four hundred and eleven thousand twenty nine rand and thirty one cents) on 27 July 2011; and
R539 832.21 (five hundred and thirty nine thousand eight hundred and thirty two rand and twenty one cents) paid to Maputula Trading on 29 August 2011.

7. REMEDIAL ACTION

7.1 The appropriate remedial action that I am taking is in pursuit of section 182(1)(c) of the Constitution and section 6(4)(c)(i) of the Public Protector Act, is as follows:

7.1.1 The Speaker of the Municipal Council must ensure that within thirty (30) working days from the date of receipt of this report, the Municipal Council in consultation with the Municipal Manager declare as irregular payment of an amount of R950 861.52 (nine hundred and fifty thousand eight hundred and sixty one rand and fifty two cents) which was improperly paid to Maputula Trading.

7.1.2 The Speaker of the Municipal Council must ensure that within thirty (30) working days from the date of receipt of this report, the Municipal Council in consultation with the Municipal Manager institute civil action against Maputula Trading to recover the amount of R950 861.52 (nine hundred and fifty thousand eight hundred and sixty one rand and fifty two cents) which was improperly paid to them;

7.1.3 The Speaker of the Municipal Council must ensure that within thirty (30) working days from the date of receipt of this report, the Municipal Council in consultation with the Municipal Manager consider to pay the Complainant an amount of R950 861.52 (nine hundred and fifty thousand eight hundred and sixty one rand and fifty two cents) with interest; and

7.1.4 The Speaker of the Municipal Council must ensure that within thirty (30) working days from the date of receipt of this report, the Municipal Council in consultation with the Municipal Manager institutes disciplinary action against any official who caused the irregular payment to Maputula Trading.
8. MONITORING

8.1 I will require the Municipal Manager to submit the implementation Plans to my office within fifteen (15) working days from the date of this report indicating how the remedial actions referred to in paragraph seven (7) above will be implemented.

8.2 The submission of the Implementation Plan and the implementation of my remedial actions shall, in the absence of the 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: 24/01/2020