

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



**PUBLIC PROTECTOR
SOUTH AFRICA**

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT
AND MALADMINISTRATION RELATING TO THE FAILURE BY THE SOL PLAATJE
MUNICIPALITY TO TAKE ACTION TO STOP THE CONSTANT SEWERAGE SPILLAGE AT
TEBOGO MASENG STREET, KAGISHO, GALESHEWE, IN KIMBERLEY**

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LIST OF ACRONYMS

| | |
|----------------|-------------------------------------------------------------------------------------|
| PPSA | Public Protector South Africa |
| COGHSTA | Department of Co-operative Governance, Human Settlement and Traditional Affairs. |
| MFMA | Municipal Finance Management Act |
| AGSA | Auditor General South Africa |

EXECUTIVE SUMMARY

- (i) This is a report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, (the Constitution) and section 8(1) of the Public Protector Act 23 of 1994 (the Public Protector Act).
- (ii) The report communicates the findings and appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, following an investigation into allegations of improper conduct and maladministration relating to failure by the Sol Plaatje Local Municipality (Municipality) in the Northern Cape Province to take action to stop the constant sewerage spillage at Tebogo Maseng Street, Kagisho, Galeshewe in Kimberley.
- (iii) The investigation originated from a complaint lodged on 20 March 2019 at the Northern Cape Provincial Office of the Public Protector South Africa in Kimberley, by an anonymous Complainant (the Complainant).
- (iv) In the main, the Complainant alleged that she/he resides in Galeshewe and that for the past eight (8) years, sewerage constantly flows down the street. Further that, the matter was reported to the Municipality and Municipal Councillors, to no avail.
- (v) In essence, the Complainant that alleged the failure by the Municipality to take action to stop the constant spillage of sewerage in the street where she/he resides is improper, constitutes maladministration and prejudice.
- (vi) Based on the analysis of the complaint, the following issue was identified and investigated:
 - (a) Whether the Sol Plaatje Municipality failed to take action to stop the constant spillage of sewerage in Tebogo Maseng Street, Kagiso, Galeshewe and if yes, whether the conduct of the Municipality is improper,**

amounts to maladministration and causes prejudice as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a) of the Public Protector Act.

(vii) The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act 23 of 1994. It included correspondence with the Municipality, an analysis of the relevant documents and information obtained during the investigation; and consideration and application of the relevant laws and prescripts.

(viii) During the investigation, the following applicable legislation was used:

(a) **The Constitution of the Republic of South Africa, 1996**

(aa) Section 24 of the Constitution provides that:

“Everyone has the right-

(a) to an environment that is not harmful to their health or well-being; and

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures-

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”

(bb) Section 156(1) of the Constitution provides that a municipality has executive authority in respect of, and has the right to administer, *inter alia*, the local government matters listed in part B of Schedule 4 and part B of Schedule 5.

- (cc) Section 195 of the Constitution provides that the public administration must be governed by the democratic values and principles enshrined in the Constitution including, *inter alia*, the following principles:
 - (i) A high standard of professional ethics must be promoted and maintained; efficient, economic and effective use of resources must be promoted; and
 - (ii) Public administration must be accountable.

- (dd) Part B of Schedule 4 of the Constitution includes “*water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems.*”

- (b) **The Local Government: Municipal Systems Act, 32 to 2000**
 - (i) In terms of section 55(1) of the Local Government: Municipal Systems Act, the head of the administration of a municipality, the municipal manager is, subject to the policy directions of the municipal council, responsible and accountable for, *inter alia*, the management of the provision of services to the local community in a sustainable and equitable manner.

- (c) **The Sol Plaatje Municipality Water Services By Law, 2006**
 - (i) The Sol Plaatje Water Municipality Services By-Law (By-Law) provides for the provision of water services for the Municipality, and matters related thereto. Chapter III regulates, *inter alia* that standards for sanitation services provided by the Municipality.
 - (ii) Section 56 of the By-Law provides that *sanitation services provided by the Municipality shall comply with the minimum standards set for the provision of sanitation services in terms of section 9 of the Act (Water Services Act).*

(d) **The Water Services Act, 108 of 1997**

(i) The Minister of Water Affairs and Forestry made the *Regulations relating to compulsory National Standards and Measures to Conserve Water*, in terms of sections 9(1) and section 73(1)(j) of the Water Services Act, on 8 June 2001 (Regulations).

(ii) Regulation 12 of the Regulations provides as follows:

“A water services institution (municipality) must repair any major, visible or reported leak in its water services system within 48 hours of becoming aware thereof.”

(aa) *Water services*” in terms of section 1 of the Water Services Act, means water supply services and sanitation services.

(bb) Section 1 of the Water Services Act defines *“water services authority”* as including any municipality. A *“water services institution*, includes a *“water services authority”*.

(cc) It, therefore, follows that the Municipality was obligated by law to repair the leak in the sewerage reticulation system in Tebogo Maseng Street within 48 hours of becoming aware thereof. According to the Complainant, the sewerage spillage has been constant for 8 years and was reported to the Municipality, but no action was taken.

(dd) This was not denied by the Municipality during the investigation. The former acting Municipal Manager confirmed that the Municipality has been having challenges with sewerage spillage from the water sanitation system for years and it has not been resolved. The Municipality is constitutionally obliged to ensure that it has a proper water sanitation system that guarantees an environment that is not harmful to its residents’ health or wellbeing.

(e) **The Local Government Municipal Systems Act, 32 to 2000**

(aa) A Code of Conduct for Municipal Staff Members (Code) is provided for in Schedule 2 to the Municipal Systems Act. Item 2 of the Code provides that a staff member of a municipality must at all times-

(a) loyally execute the lawful policies of the municipal council;

(b) perform the functions of office in good faith, diligently, honestly and in a transparent manner;

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

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

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

(bb) Breaches of the Code must, by virtue of item 14, be dealt with in terms of the disciplinary procedures of the Municipality. In this case, the officials of the Municipality responsible for the failure of the Municipality to repair the water sewerage system acted at variance with the standard required of the public administration in section 195 of the Constitution and the Code of Conduct for Municipal Staff Members.

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

(a) Regarding whether the Sol Plaatje Municipality failed to take action to stop the constant spillage of sewerage in Tebogo Maseng Street, Kagiso, Galeshewe and if yes, whether

the conduct of the Municipality is improper, amounts to maladministration and causes prejudice:

- (aa) The allegation that Sol Plaatje Municipality failed to take action to stop the constant spillage of sewerage in Tebogo Street Maseng, Kagisho, in Galeshewe is substantiated.
 - (bb) It is not disputed that the Municipality has been experiencing sewerage spillage in Tebogo Maseng Street for years and that it has not been resolved. The Municipality was obliged by the provisions of the Constitution, the Water Services Act 108 of 1997, the Regulations and the By-Law (referred to above) to have repaired the leak in the water sewerage system within 48 hours of becoming aware of it, but dismally failed to do so.
 - (cc) The Municipality's conduct accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(ii) of the Public Protector Act. It also prejudices the residents of Tebogo Maseng Street.
- (x) The appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution is the following:

(a) The Municipal Manager of the Municipality to:

- (aa) Initiate a process to ensure that the leak in the water sewerage network causing the constant spillage of sewerage in Tebogo Maseng Street is repaired as contemplated by Regulation 12 of the Water Services Act, the Regulations and the By-Law **within sixty (60) working days** from the date of this report.
- (bb) Conduct a systemic investigation into the water sewerage network challenges in Tebogo Maseng Street in order to address the systemic sewer challenges in the

area as contemplated by section 55(1) of the Local Government: Municipal Systems Act **within ninety (90) working days** from the date of this report.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION RELATING TO THE FAILURE BY THE SOL PLAATJE MUNICIPALITY TO TAKE ACTION TO STOP THE CONSTANT SEWERAGE SPILLAGE AT TEBOGO MASENG STREET, KAGISHO, GALESHEWE, IN KIMBERLEY

1. INTRODUCTION

- 1.1. This is a report of the Public Protector, issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act 23 of 1994 (the Public Protector Act).
- 1.2. The report is submitted in terms of sections 8(1) and 8(3) of the Public Protector Act to the following persons to inform them of the outcome of the investigation and the remedial action taken:
 - 1.2.1 Mr Thapelo Matlala, the Municipal Manager of the Sol Plaatje Local Municipality (Municipality);
 - 1.2.2 Mr Bentley Vass, the Member of Northern Cape Provincial Executive Committee responsible for Cooperative Governance, Human Settlements and Traditional Affairs (COGHSTA);
 - 1.2.3 Mr Bafedile Lenkoe, the Head of the Northern Cape Department of COGHSTA;
 - 1.2.4 Dr Zamani Saul, the Premier of the Northern Cape Province;
 - 1.2.5 Ms Nomizizi Maputle, the Speaker of the Municipality; and
 - 1.2.6 Mr Kagisho Dante Sonyoni, the Executive Mayor of the Municipality.
- 1.3. The report relates to an investigation into allegations of improper conduct and maladministration relating to the failure by the Sol Plaatje Local Municipality

(Municipality) in the Northern Cape Province to take action to stop the constant sewerage spillage at Tebogo Maseng Street, Kagisho, Galeshewe in Kimberley.

2. THE COMPLAINT

- 2.1. The complaint was lodged on 20 March 2019 at the Northern Cape Provincial Office of the Public Protector South Africa in Kimberley by a Complainant who requested his identity be kept anonymous.
- 2.2. In the main, the Complainant alleged that she/he resides at an address known to the Public Protector in Galeshewe and that for the past eight (8) years, the sewerage constantly flows down the street. Further, that the matter was reported to the Municipality and Municipal Councillors, to no avail.
- 2.3. In essence, the Complainant alleged failure by the Municipality to take action to stop the constant spillage of sewerage in the street where she/he resides is improper, constitutes maladministration and prejudice.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

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

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

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*

(b) to report on that conduct; and

(c) to take appropriate remedial action.”

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

- 3.7 In the case between *South African Bureau of Standards v The Public Protector*¹, the North Gauteng High Court held that, as with most claims and complaints, there is for good reason, time-frames within which such must be instituted or laid. In this instance, the Public Protector Act has set a time limit of two years. Entertaining a complaint which is older than two years certainly calls for exceptional circumstances. The underlying reason for time-frames is the trite maxim; justice delayed is justice denied. Underpinning this principle is the prejudice parties suffer when time has lapsed. To mention, but a few; no finality of a matter, evidence lost, memories failing and legislation and policies evolving.
- 3.8 Similarly in the case between *Gordhan v Public Protector and Others*² the North Gauteng High Court held that, in view of the provisions of section 6(9) and the fact that the complaints emanate from a decade ago, one would expect the Public Protector to set out why she had jurisdiction to entertain this complaint.
- 3.9 In this specific case, the Public Protector contends that it is alleged that the Municipality is failing to attend to and stop the sewerage spillage that has been flowing constantly in Tebogo Maseng Street, Kagisho in Galeshewe for a period of eight (8) years, obviously resulting in a health hazard and prejudicing the residents in the area.
- 3.10 Therefore, the investigation required that the Public Protector explores the prevailing conditions and prejudice and whether such failure by the Municipality was improper, constitutes maladministration and causes prejudice.
- 3.11 The Public Protector accordingly decided to exercise her discretion in favour of this complaint. Conscious to all these reasons, the Public Protector concluded that it is in the interest of justice and in the public interest to investigate and determine the merits or demerits thereof.

¹ [2019]ZAGPPHC 101 (27 March 2019)

² [2020]ZAGPPHC 777 (17 December 2020)

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

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

4. ISSUES IDENTIFIED AND INVESTIGATED

4.1. On analysis of the complaint, the following issue was identified to inform and focus the investigation:

4.1.1. Whether the Sol Plaatje Municipality failed to take action to stop the constant spillage of sewerage in Tebogo Maseng Street, Kagiso, Galeshewe and if yes, whether the conduct of the Municipality is improper, amounts to maladministration and causes prejudice as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a) of the Public Protector Act.

5. THE INVESTIGATION

5.1. Methodology

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

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

5.2. Approach to the investigation

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

5.2.1.1. What happened?

5.2.1.2. What should have happened?

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

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

5.2.2. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether the Sol Plaatje Municipality failed to take action to stop the constant spillage of sewerage in Tebogo Maseng Street, Kagiso, Galeshewe and if yes, whether the conduct of the Municipality is improper, amounts to maladministration and causes prejudice.

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

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

5.3. The Key Sources of Information

5.3.1. Documents and correspondence

5.3.1.1. A copy of the letter from Mr Boy Dihuwayo, the then acting Municipal Manager of the Municipality, dated 22 October 2020.

5.3.2 Meeting(s) held

5.3.2.1 Meeting held on 3 February 2022 with Mr Goolam Akharwaray, the then Municipal Manager of the Municipality.

5.3.3 Legislation and other prescripts

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

5.3.3.2 The Public Protector Act, No 23 of 1994.

5.3.3.3 The Local Government: Municipal Finance Management Act 56 of 2003.

5.3.3.4 The Local Government: Municipal Systems Act No 32 of 2000.

5.3.3.5 The Sol Plaatje Water Services By-Law, 2006.

5.3.3.6 The Water Services Act, 108 of 1997.

5.3.4 Notices issued in terms of section 7(9) of the Public Protector Act

5.3.4.1 A Notice was issued in terms of section 7(9) of the Public Protector Act to Mr Goolam Akharwaray, the former Municipal Manager of the Municipality, and Mr Matlala, the Municipal Manager of the Municipality on 6 January 2022 and 12 August 2022 respectively affording them an opportunity to respond to the evidence obtained during the investigation.

5.3.4.2 Section 7(9) Notices were also sent on 6 January 2022 to Dr Zamani Saul, the Premier of the Northern Cape, Mr Bafedile Lenkoe, the Head of Department of COGHSTA, and Mr Bentley Vaas, the MEC for COGHSTA providing them with an

opportunity to respond thereto, however, no responses to section 7(9) Notices were received.

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

6.1. Regarding whether the Sol Plaatje Municipality failed to take action to stop the constant spillage of sewerage in Tebogo Maseng Street, Kagiso, Galeshewe and if yes, whether the conduct of the Municipality is improper, amounts to maladministration and causes prejudice as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a) of the Public Protector Act:

Common cause

6.1.1. There are sewerage blockages in Tebogo Maseng Street in the Kagiso area in, Galeshewe in Kimberley, resulting in constant spillage of sewerage in the street.

Issue in dispute

6.1.2. That the Municipality failed to attend to and stop the sewerage spillage that is flowing constantly in Tebogo Maseng Street, in the Kagiso area.

Responses

6.1.3. At the commencement of the investigation, the complaint was raised with the then acting Municipal Manager, Mr Boy Dihuwayo, but no response was received.

6.1.4. A subpoena was then issued in terms of section 7 of the Public Protector Act to Mr Boy Dihuwayo, the then acting Municipal Manager, on 28 September 2020. Mr Dihuwayo responded to the subpoena in a letter dated 22 October 2020 stating that:

- 6.1.4.1. The Municipality had experienced challenges over the last couple of years with sewer blockages in the Kagisho area, more so in Tebogo Maseng Street;
- 6.1.4.2. A large contributor to the ailing infrastructure resulting in sewer blockages is the extension of houses over the sewer reticulation network;
- 6.1.4.3. Over time, structures built on top of sewer lines cause the pipes to collapse which causes sewer blockages;
- 6.1.4.4. A site investigation was conducted on 22 October 2020 at 15009 Tebogo Maseng Street and it was found that the owners of Erven Numbers 15014 and 15015 had built over the existing Municipal sewer line running in the rear of their Erven; and
- 6.1.4.5. The building plans of Erven 15014 and 15015 were verified to confirm that the structures were actually approved and it was determined that:
 - (a) The owner of Erf 15014 has an approved plan for the rear structures, however, he failed to keep the 2m servitude distance from the existing municipal sewer line;
 - (b) The owner of Erf 15015 has no approved building plan for the structure at the rear of the erf; and
 - (c) From the site investigation it was also concluded that:
 - (i) Both Erven encroached the sewer servitude and that the owners of Erven 15014 and 15015 did not have approved plans for outbuildings;
 - (ii) The structures over sewer lines caused the sewer pipes to sag over time, causing the sewer to block;

(iii) The structures built without approved building plans are in contravention with the National Building Regulations Act; and

(iv) As a corrective measure, the Municipality would adopt a systemic approach to address the sewer challenges. The first step would be to fix all benching within the manholes and replace broken manhole covers. Then, the second step would be to clean the entire network with a high-pressure machine and should the problem persist a sewer line would be constructed in the street.

6.1.5. In a meeting held on 3 February 2022, Mr Goolam Akharwaray, the then Municipal Manager, undertook to respond to the section 7(9) notice on 9 February 2022, but the response was never received. The section 7(9) notice was subsequently sent to the current Municipal Manager, Mr Matlala, on 12 August 2022 and no response was received.

6.1.6. However, during a telephonic conversation with Mr Matlala, on 18 September 2022, he agreed with the remedial action proposed by the Public Protector, as contained in the s7(9) notice; and also indicated that since the owners of two (2) Erven referred to in the report, built structures on the sewerage infrastructure which contributes to sewerage blockages in the area, action must also be taken against them to deal with their conduct, that is building outside the scope of building plans, to enforce municipal bylaws.

Application of the relevant law

The Constitution of the Republic of South Africa, 1996

6.1.7. Section 24(a)(b)(i) of the Constitution provides that:

“Everyone has the right-

(a) to an environment that is not harmful to their health or well-being; and

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures-

(i) prevent pollution and ecological degradation.”

6.1.8. Section 156(1) of the Constitution provides that a municipality has executive authority in respect of, and has the right to administer, *inter alia*, the local government matters listed in part B of Schedule 4 and Part B of Schedule 5. Part B of Schedule 4 of the Constitution includes *“water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems.*

6.1.9. The Constitution gives everyone a right to an environment that is not harmful to their health and well-being and gives the municipality the power to deal with domestic wastewater and sewerage disposal systems. In this case, the Municipality failed to ensure that the rights of Kagisho residents to an environment that is not harmful to their health and wellbeing is realised by failing to deal with the constant sewer spillage at Tebogo Maseng Street, Kagisho, Galeshewe, in Kimberley over more than eight years.

6.1.10. Section 195 of the *Constitution* provides that the public administration must be governed by the democratic values and principles enshrined in the Constitution including, *inter alia*, the following principles:

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

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

(c) Public administration must be accountable.

6.1.10. In this case the Municipality failed to promote and maintain a high standard of professional ethics in dealing with the constant sewerage spillage at Tebogo Maseng Street, Kagisho, Galeshewe, in Kimberley. The Municipality failed to perform its work diligently and without delay.

The Sol Plaatje Water Services By-Law, 2006

6.1.11. The Sol Plaatje Water Services By-Law (By-Law) provides for the provision of water services for the Municipality, and matters related thereto. Chapter III regulates, *inter alia*, the standards for sanitation services provided by the Municipality.

6.1.12. Section 56 of the By-Law provides that *sanitation services provided by the Municipality shall comply with the minimum standards set for the provision of sanitation services in terms of section 9 of the Act (Water Services Act).*

6.1.13. In this case, the Municipality failed to comply with *the minimum standards set for the provision of sanitation services in terms of section 9 of the Water Services Act.* The Municipality failed to attend to the sewerage leak within 48 hours when the matter was first reported to the Municipality, as per the Water Services Act discussed below.

The Water Services Act, 108 of 1997

6.1.14. The Minister of Water Affairs and Forestry made the *Regulations relating to compulsory National Standards and Measures to Conserve Water*, in terms of sections 9(1) and section 73(1)(j) of the Water Services Act, on 8 June 2001 (Regulations). Regulation 12 of the Regulations provides as follows:

“A water services institution (municipality) must repair any major, visible or reported leak in its water services system within 48 hours of becoming aware thereof.”

- 6.1.15. *Water services* in terms of section 1 of the Water Services Act; refer to water supply services and sanitation services.
- 6.1.16. Section 1 of the Water Services Act defines “*water services authority*” as including any municipality. A “*water services institution*”, includes a “*water services authority*”.
- 6.1.17. It, therefore, follows that the Municipality was obligated by law to repair the leak in the sewerage reticulation system in Tebogo Maseng Street within 48 hours of becoming aware thereof. According to the Complainant, the sewerage spillage has been constant for eight years and was reported to the Municipality, but no action was taken.
- 6.1.18. This was not denied by the Municipality during the investigation. The former Acting Municipal Manager confirmed that the Municipality has been having challenges with sewerage spillage from the water sanitation system for years and it has not been resolved. The Municipality is constitutionally obliged to ensure that it has a proper water sanitation system that guarantees an environment that is not harmful to its residents’ health or wellbeing.

The Local Government: Municipal Systems Act

- 6.1.19. In terms of section 55(1) of the Local Government: Municipal Systems Act, the head of the administration of a municipality, the Municipal Manager is, subject to the policy directions of the municipal council, responsible and accountable for, *inter alia*, the management of the provision of services to the local community in a sustainable and equitable manner.

6.1.20. In this case, the Municipal Manager failed to deal with the constant sewerage spillage at Tebogo Maseng Street, Kagisho, Galeshewe, in Kimberley.

6.1.21. A Code of Conduct for Municipal Staff Members (Code) is provided for in Schedule 2 to the Municipal Systems Act. Item 2 of the Code provides that a staff member of a municipality must at all times-

(f) loyally execute the lawful policies of the municipal council;

(g) perform the functions of office in good faith, diligently, honestly and in a transparent manner;

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

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

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

6.1.22. In this case, the Municipal officials dealing with sewerage and storm water at the Municipality, failed to perform their functions in good faith, diligently, honestly and in a transparent manner.

6.1.23. Breaches of the Code must, by virtue of item 14, be dealt with in terms of the disciplinary procedures of the Municipality. In this case, the officials of the Municipality responsible for the failure by the Municipality to repair the water sewerage system acted at variance with the standard required of the public administration in section 195 of the Constitution and the Code of Conduct for Municipal Staff Members.

Conclusion

- 6.1.24. The evidence shows that it is not in dispute that there has been a sewerage spillage in Tebogo Maseng Street, in the Kagisho area for years and that it has not been repaired by the Municipality.
- 6.1.25. The Municipality identified some of the challenges causing damages to the sewerage infrastructure, including the unlawful encroaching of buildings onto the sewerage network, but no action was taken.
- 6.1.26. It is also not in dispute and requires no argument that the leaking of sewerage into Tebogo Maseng Street impacts the environment of the residents in the area and their health and well-being.
- 6.1.27. The failure by the Municipality to repair the sewerage water network leaking into Tebogo Maseng Street known for years; is improper and constitutes maladministration. It also prejudices the residents in that area.

7. FINDINGS

- 7.1. Having regard to the evidence, the regulatory framework determining the standard that the Municipality should have complied with, the Public Protector makes the following findings:
- 7.1.1. Regarding whether the Sol Plaatje Municipality failed to take action to stop the constant spillage of sewerage in Tebogo Maseng Street, Kagisho, Galeshewe and if yes, whether the conduct of the Municipality is improper, amounts to maladministration and causes prejudice as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a) of the Public Protector Act:**

- 7.1.1.1. The allegation that the Municipality failed to take action to stop the constant spillage of sewerage Tebogo Street Maseng, Kagisho, in Galeshewe is substantiated.
- 7.1.1.2. It is not disputed that the Municipality has been experiencing sewerage spillage in Tebogo Maseng Street for years and that it has not been resolved. The Municipality was obliged by the provisions of the Constitution, the Water Services Act, the Regulations and the By-Law (referred to above) to have repaired the leak in the water sewerage system within 48 hours of becoming aware of it, but failed to do so.
- 7.1.1.3. The Municipality's conduct accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(ii) of the Public Protector Act. It also prejudices the residents of Tebogo Maseng Street.

8. REMEDIAL ACTION

8.1. The appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, is the following:

8.1.1. The Municipal Manager of the Municipality is to:

- 8.1.1.1. Initiate a process to ensure that the leak in the water sewerage network causing the constant spillage of sewerage in Tebogo Maseng Street is repaired as contemplated by Regulation 12 of the Water Services Act, the Regulations and the By-Law **within sixty (60) working days** from the date of this report.
- 8.1.1.2. Conduct a systemic investigation into the water sewerage network challenges in Tebogo Maseng Street to address the sewer challenges in the area as

contemplated by section 55(1) of the Local Government: Municipal Systems Act **within ninety (90) working days** from the date of this report.

9. MONITORING

- 9.1. The Municipal Manager is to submit an action plan to the Public Protector within thirty (30) working days from the date of this report on the implementation of the remedial action referred to in paragraph 8.1 above.
- 9.2. The submission of the implementation plan and the implementation of the remedial action shall, in the absence of a court order, be complied with within the period prescribed in this report to avoid being in contempt of the Public Protector.



ADV KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR OF
THE REPUBLIC OF SOUTH AFRICA
DATE: 30 SEPTEMBER 2022

Assisted by: Mr M Khanya
Northern Cape Provincial Representative