

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION
182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH
AFRICA, 1996 AND SECTION 3 OF THE EXECUTIVE MEMBERS'
ETHICS ACT, 1998**



**PUBLIC PROTECTOR
SOUTH AFRICA**

FALSE ALARM

REPORT NO. 14 OF 2012/13

**REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF A BREACH OF
THE EXECUTIVE ETHICS CODE BY THE PREMIER OF THE NORTHERN CAPE
PROVINCE, MS H JENKINS, RELATING TO THE SALE OF MUNICIPAL LAND
BY THE SOL PLAATJE MUNICIPALITY IN KIMBERLEY**

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Executive summary

- (i) *FALSE ALARM* is a Report of the Public Protector on an investigation into an alleged breach of the Executive Ethics Code by the Premier of the Northern Cape Province, Ms H Jenkins.
- (ii) The investigation was the result of an integrated complaint lodged by Mr F Wyngaard, a Member of the Northern Cape Provincial Legislature, inter alia, in terms of section 4 of the Executive Members' Ethics Act, 1998. The complaint was based on an article published by *Noseweek* on 1 April 2010, which stated that:
 - (a) The Sol Plaatje Municipality in Kimberley (the Municipality) sold municipal land to a property developer, Mr T Crawford, for R2,11 million (in 2004). Mr Crawford apparently intended to develop the property for low cost housing.
 - (b) Subsequent to the sale, the Sol Plaatje Municipal Council (the Municipal Council) resolved to place a moratorium on the sale of all municipal land.
 - (c) On 5 February 2009, the Municipal Council cancelled the sale, after Mr Crawford failed to pay the purchase price.
 - (d) Messrs George Mtshiza and Mr Philip Mahau, who allegedly were involved with the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Legislature, Mr J Block, (the MEC) subsequently offered to purchase the land from Mr Crawford for R8 million. He refused the offer.
 - (e) Early in June 2009, Mr Crawford informed Ms M Bakker, a property broker who was also interested in the land on behalf of a client, that he had a meeting with the Premier of the Northern Cape Province, Ms H Jenkins, Mr J Block and the Provincial Secretary of the African National Congress (ANC) in the Northern Cape Province, Mr Zamani Saul. At the meeting, Mr Saul undertook to instruct the former Municipal Manager, Mr F Mashilo, to reinstate Mr Crawford's deal.
 - (f) Ms Bakker made further enquiries from the legal department of the Municipality and was informed that the sale of the land to Mr Crawford had indeed been cancelled.

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- (g) As her client was still interested in investing in property development in Kimberley, she approached another property developer, Mr L Du Plessis, who indicated that he had what she was looking for, i.e. land that could be developed with some services already installed. An offer of R28,5 million was agreed upon. Ms Bakker signed the offer on behalf of her client on 22 July 2009. She noted that the seller, as represented by Mr Du Plessis, was Silver Lake Trading 652 (Pty) Ltd (Silver Lake Trading).
- (h) When she shortly thereafter received the township layout of the property concerned, she discovered that it was exactly the same land she tried to purchase from Mr Crawford, on behalf of her clients.
- (i) Ms Bakker approached the then Acting Municipal Manager and was informed that the land in question was resold to a company called Fastpulse Trading 534 (Pty) Ltd (Fastpulse) after the sale to Mr Crawford was cancelled and that the Municipality was not aware of the involvement of Silver Lake Trading. The Acting Municipal Manager also hinted that Mr J Block was connected to Fastpulse and that he was also very close to Mr Mashilo, the former Municipal Manager of the Municipality.
- (j) The “CIPRO” records showed that Messrs Mtshiza and Mahau were directors of Fastpulse, but not Mr Block.
- (k) When Ms Bakker informed Mr Crawford that the Municipality had resold the land concerned to Fastpulse, he approached the High Court and obtained an interdict stopping the Municipality from alienating the land, on 31 July 2009.
- (i) In his complaint, Mr Wyngaard requested the Public Protector to investigate the alleged improper and unethical involvement of Premier Jenkins and the MEC in the land transaction, and the improper conduct of the Municipality. His complaints against the Premier and the MEC were lodged in terms of section 4 of the Executive Members’ Ethics Act, 1998 and alleged a violation of the Executive Ethics Code.
- (ii) The complaints lodged against Mr Block and the Municipality, are the subject of separate investigations and reports by the Public Protector, due to the provisions of the Executive Members’ Ethics Act, in terms of which a report on an investigation of a

complaint against a Premier must be submitted to the President and in the case of a MEC to the Premier.

- (iii) As far as Premier Jenkins is concerned, he specifically requested the Public Protector to investigate the nature and extend of her involvement in the land transaction and whether or not it constituted conduct that amounted to a breach of the Executive Ethics Code.
- (iv) Based on analysis of Mr Wyngaard's complaint and the reference to Premier Jenkins in the newspaper article, it was decided to investigate the following issues:
 - (a) Was Premier Jenkins present at a meeting held early in July 2009 where a land transaction between Mr Crawford and the Municipality was discussed?
 - (b) What was the involvement of Premier Jenkins in the discussions and the land transaction?
 - (c) Did the involvement of Premier Jenkins in the discussions at the meeting and/or in the land transaction constitute conduct in violation of the provisions of the Executive Ethics Code?
- (v) The investigation included interviews with Mr Crawford and his business partner at the time, Mr B Van Wyk, Mr J Block, the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Legislature (the MEC), Premier Jenkins and the former Municipal Manager of the Municipality, Mr F Mashilo. Correspondence between the Public Protector and the role players and the relevant provisions of the legal framework regulating the ethical conduct of Members of the Executive were also considered.
- (vi) During the course of the investigation, Mr Crawford met with the Public Protector and provided her with a recording, which according to him backed the allegation that he was threatened by persons associated with the MEC. He also undertook to ensure that Ms Bakker availed herself to be interviewed. However, Mr Crawford could not be traced during the latter part of the investigation and the information that he provided could therefore not be verified. The recording only provided support for the allegation that a meeting took place between him, Premier Jenkins and Mr Van Wyk.

- (vii) From an analysis of the evidence and information obtained during the investigation and the applicable legal framework, the Public Protector concluded that:
- (a) Messrs Crawford and Van Wyk approached Premier Jenkins in her capacity as a leader of the ANC with the request that she intervenes and assists them in their dispute with the Municipality relating to a land transaction that pertained to development in the Northern Cape Province.
 - (b) Premier Jenkins gave them audience and it was agreed that the matter would be further discussed with the Municipality and other provincial leaders of the ANC, which in fact happened.
 - (c) No evidence was presented or could be found that Premier Jenkins was in any way involved in the land transaction or that she attempted to interfere in the dispute between Messrs Van Wyk and Crawford and the Municipality.
 - (d) It was required by the Constitution and the Executive Ethics Code of Premier Jenkins to act in a manner that was consistent with her office.
 - (e) The evidence and information obtained during the investigation did not disclose or point at any violation by Premier Jenkins of this requirement.
- (viii) The findings of the Public Protector are that:

Finding 1: Was Premier Jenkins present at a meeting held early in July 2009 where a land transaction between Mr Crawford and the Municipality was discussed?

- (a) Premier Jenkins was approached by Messrs Van Wyk and Crawford and met with them in connection with the land transaction in July 2009.

Finding 2: What was the involvement of Premier Jenkins in the discussions and the land transaction?

- (b) Except for discussing the land transaction with Messrs Van Wyk and Crawford, Premier Jenkins was not involved.

Finding 3: Did the involvement of Premier Jenkins in the discussions at the meeting and/or in the land transaction constitute conduct in violation of the provisions of the Executive Ethics Code?

- (c) The meeting between Premier Jenkins and Messrs Van Wyk and Crawford and the discussion relating to the land transaction did not constitute conduct in violation of the provisions of the Executive Ethics Code.

1. INTRODUCTION

1.1 *FALSE ALARM* 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), sections 3(2)(a) and 3(3) of the Executive Members' Ethics Act, 1998 (Executive Members' Ethics Act) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act), on an investigation into the alleged breach of the Executive Ethics Code by the Premier of the Northern Cape Province, Ms H Jenkins.

1.2 The Report is submitted to the President of the Republic of South Africa, Mr J Zuma.

1.3 Copies of the report are presented to:

1.3.1 Ms H Jenkins, the Premier of the Northern Cape Province; and

1.3.2 Mr F Wyngaard, a Member of the Northern Cape Provincial Legislature and the Chairperson of the Congress of the People in the Northern Cape, who lodged the complaints.

2 THE COMPLAINTS

2.1 Mr Wyngaard (the Complainant) approached the Public Protector on 13 April 2010 in connection with an article that was published by *Nosweek* on 1 April 2010.

2.2 According to the article:

2.2.1 The Sol Plaatje Municipality in Kimberley (the Municipality) sold municipal land to a property developer, Mr T Crawford, for R2,11 million, in 2004. Mr Crawford apparently intended to develop the property for low cost housing.

2.2.2 Subsequent to the sale, the Sol Plaatje Municipal Council (the Municipal Council) resolved to place a moratorium on the sale of all municipal land.

2.2.3 On 5 February 2009, the Municipal Council cancelled the sale, after Mr Crawford failed to pay the purchase price.

- 2.2.4 Messrs George Mtshiza and Mr Philip Mahau (who allegedly were involved with Mr J Block, the Member responsible for Finance, Economic Affairs and Tourism of the Executive Council of the Northern Cape Provincial Legislature (the MEC)) subsequently offered to purchase the land from Mr Crawford for R8 million. He refused the offer.
- 2.2.5 Early in June 2009, Mr Crawford informed Ms M Bakker, a property broker who was also interested in the land on behalf of a client, that he had a meeting with the Premier of the Northern Cape Province, Ms H Jenkins, Mr J Block and the Provincial Secretary of the African National Congress (ANC) in the Northern Cape Province, Mr Zamani Saul. At the meeting Mr Saul undertook to instruct the former Municipal Manager, Mr F Mashilo to reinstate Mr Crawford's deal.
- 2.2.6 Ms Bakker made further enquiries from the legal department of the Municipality and was informed that the sale of the land to Mr Crawford had indeed been cancelled.
- 2.2.7 As her client was still interested in investing in property development in Kimberley, she approached another property developer, Mr L Du Plessis, who indicated that he had what she was looking for, i.e. land that could be developed with some services already installed. An offer of R28,5 million was agreed upon. Ms Bakker signed the offer on behalf of her client on 22 July 2009. She noted that the seller, as represented by Mr Du Plessis, was Silver Lake Trading 652 (Pty) Ltd (Silver Lake Trading).
- 2.2.8 When she shortly thereafter received the township layout of the property concerned, she discovered that it was exactly the same land she tried to purchase from Mr Crawford, on behalf of her client.
- 2.2.9 Ms Bakker approached the then Acting Municipal Manager and was informed that the land in question was resold to a company called Fast Pulse Trading 534 (Pty) Ltd (Fast Pulse) after the sale to Mr Crawford was cancelled and that the Municipality was not aware of the involvement of Silver Lake Trading. The Acting Municipal Manager also hinted that Mr J Block was connected to Fast Pulse and that he was also very close to Mr Mashilo, the former Municipal Manager.
- 2.2.10 The "CIPRO" records showed that Messrs Mshiza and Mahau were directors of Fast Pulse, but not Mr Block.

2.2.11 When Ms Bakker informed Mr Crawford that the Municipality had resold the land concerned to Fast Pulse, he approached the High Court and obtained an interdict stopping the Municipality from alienating the land, on 31 July 2009.

2.2.12 Ms Bakker lodged criminal charges against Mr Du Plessis *“and everybody else she thought was part of the scheme to defraud her.”*

2.3 In his letter of complaint, Mr Wyngaard requested the Public Protector to investigate the events described in the said article published by *Noseweek*. He further stated that:

“In accordance with sections three and four of the Executive Members’ Ethics Act No 82 of 1998, we also request that the Public Protector consider in the investigation allegations concerning the conduct of Premier Hazel Jenkins and MEC John Block as far as it pertains to the possible violation of the Executive Members’ Ethics Code prescribed by the Act.

It is requested that your institution investigate the following allegations:

- *that municipal land was sold by the Sol Plaatjie municipality during a period when a moratorium on all municipal property sales was meant to be enforced*
 - *that Sol Plaatjie officials were requested to transfer the land to Fast Pulse Trading S34 (Pty) Ltd by MEC John Block*
 - *that John Block is in any way linked with the above-mentioned entity, be it financially or otherwise;*
 - *that Premier Hazel Jenkins was involved in negotiations surrounding this transaction or had any knowledge of the transaction without taking the proper course of action befitting of her office*
 - *the exact nature of the alleged involvement of the former Municipal Manager Mr Frank Mashilo, MEC John Block, Premier Hazel Jenkins and Mayor Patrick Everyday*
 - *that the leadership of the African National Congress in the Northern Cape improperly interfered in the administrative matters of the Sol Plaatjie municipality*
- The Congress of the People wishes this transaction to be investigated in its entirety including all events surrounding it (those that have been made public and those your institution may yet discover). In addition, we request the Public Protector to*

investigate whether any other municipal land has been sold during the moratorium period including the possibility of the back-dating of “permission to purchase” notions to a date prior to the commencement of the moratorium in order to facilitate these transactions.”

3. THE ISSUES INVESTIGATED BY THE PUBLIC PROTECTOR

- 3.1 Mr Wyngaard requested an investigation against both the Premier of the Northern Cape and Mr John Block, the MEC, in terms of sections 3 and 4 of the Executive Members’ Ethics Act. He also requested an investigation into the conduct of the Municipality and the former Municipal Manager, Mr F Mashilo.
- 3.2 The report of the Public Protector on an investigation into an alleged breach of the Executive Ethics Code by a Premier has, in terms of sections 3(2)(a) and 3(3) of the Executive Members’ Ethics Act to be submitted to the President.
- 3.3 However, in terms of section 3(2)(b) of the Act, the report of the Public Protector on an investigation into the alleged breach of the Executive Ethics Code by Member of the Executive Council, has to be submitted to the relevant Premier.
- 3.4 Under the circumstances, it was decided to divide the investigation requested by Mr Wyngaard into three parts, each to be covered by a separate report.
- 3.5 This report only deals with the request to investigate whether the conduct of the Premier, as alleged and reported by the article published by *Noseweek* on 1 April 2010, violated any of the provisions of the Executive Ethics Code.
- 3.6 The only reference in the said article to Premier Jenkins was the following:

“...in early July 2009, Crawford phoned Mandy Bakker in high spirits to say that he’d just had a meeting with the great and good of the Northern Cape-Premier Hazel Jenkins, ANC Northern Cape secretary-general (sic) Zamani Saul and John Block himself- and Saul would instruct municipal manager Mashilo to reinstate Crawford’s deal, if for no reason other than that the ANC did not want any more scandals in the Northern Cape.”

3.7 Based on analysis of Mr Wyngaard's complaint and the reference to Premier Jenkins in the newspaper article, it was decided to investigate the following issues:

3.7.1 Was Premier Jenkins present at a meeting held early in July 2009 where a land transaction between Mr Crawford and the Municipality was discussed?

3.7.2 What was the involvement of Premier Jenkins in the discussions and the land transaction?

3.7.3 Did the involvement of Premier Jenkins in the discussions at the meeting and/or in the land transaction constitute conduct in violation of the provisions of the Executive Ethics Code?

4. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT LODGED AGAINST PREMIER JENKINS

4.1 Mandate of the Public Protector

4.1.1 The Public Protector is an independent institution, established under section 181 of the Constitution. Section 182(1) of the Constitution provides that the Public Protector has the power to:

4.1.1.1 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;

4.1.1.2 Report on that conduct; and

4.1.1.3 Take appropriate remedial action.

4.1.2 In terms of section 182(2) of the Constitution, the Public Protector has the additional powers and functions prescribed by national legislation. Such legislation includes the Public Protector Act and the Executive Members' Ethics Act.

4.1.3 The complaint against Premier Jenkins was lodged in terms of sections 3 and 4 of the Executive Members' Ethics Act, read with the Executive Ethics Code, by a member of the Northern Cape Provincial Legislature.

- 4.1.4 The jurisdiction of the Public Protector in this regard is spelt out in sections 3(1) and 4(1)(b) of the Executive Members' Ethics Act, which provide that the Public Protector must investigate any alleged breach of Executive Ethics Code by a Member of the Executive Council of a Provincial Legislature (which includes the Premier) on receipt of a complaint by a Member of the Provincial Legislature. If the complaint is against the Premier, the Public Protector must submit the report on the investigation to the President.
- 4.1.5 Section 3(4) of the Executive Members' Ethics Act states that when conducting an investigation, the Public Protector has all the powers vested in her/him under the Public Protector Act.

5. THE INVESTIGATION

The investigation was conducted in terms of section 182 of the Constitution, sections 3 and 4 of the Executive Members' Ethics Act and sections 6 and 7 of the Public Protector Act.

5.1 Scope of the investigation

The scope of the investigation was limited to a meeting held between Premier Jenkins and Messrs Crawford and Van Wyk early in July 2009.

5.2 Methods of gathering evidence

The following methods of gathering and analysing evidence and information were employed:

5.2.1 Interviews conducted

Interviews (including telephonic interviews) were conducted with

5.2.1.1 Mr B A Van Wyk;

5.2.1.2 Mr T Crawford

5.2.1.3 Premier H Jenkins;

5.2.1.4 Mr J Block, the MEC; and

5.2.1.5 Mr F Mashilo, the former Municipal Manager of the Municipality.

5.2.2 Correspondence

Correspondence between the Public Protector and:

5.2.2.1 Ms M Bakker, who was referred to in the *Noseweek* article;

5.2.2.2 Mr B A Van Wyk, who also provided the Public Protector with statements regarding the matters investigated

5.2.2.3 The Office of the Premier.

5.2.3 Legislation and other prescripts and precedents

Relevant provisions of the following legislation and other prescripts were considered and applied, where appropriate:

5.2.3.1 The Constitution of the Republic of South Africa, 1996;

5.2.3.2 The Public Protector Act, 1994;

5.2.3.3 The Executive Members Ethics Act, 1998 and

5.2.3.4 The Executive Ethics Code;

5.3 **Approach to the investigation.**

5.3.1 In terms of the mandate given to the Public Protector, the Public Protector's investigations and findings transcend lawfulness. The focus is on good administration and proper conduct. Such enquiry has three components:

5.3.1.1 What happened?

5.3.1.2 What should have happened? and

5.3.1.3 Is there a discrepancy between the two and does this constitute improper conduct as envisaged in section 182(1) of the Constitution, maladministration, abuse of power, improper enrichment or conduct resulting in unlawful or improper prejudice to any person, as envisaged in the Public Protector Act, and/or, as in this case, a violation of the Executive Ethics Code?

5.3.2 In determining whether conduct was improper or constituted maladministration or any of the violations envisaged in the Public Protector Act and the Executive Ethics Code, the Public Protector compares the conduct of government entities and officials complained of against the relevant legislation and other prescripts, to ascertain whether such conduct complied with the constitutional requirements of fairness, reasonableness, transparency, ethical standards and local and international best practices. .

5.3.3 The complaints lodged with the Public Protector and the allegations made against Premier Jenkins, referred to in this report, accordingly fall within the jurisdiction and powers of the Public Protector as envisaged under the Executive Members' Ethics Act, read with the Executive Ethics Code.

5.4 The obligation of the Public Protector to follow due process

5.4.1 Due process was complied with during the course of the investigation referred to in this report. Interested and affected parties were also afforded an opportunity to respond to the contents of the Provisional Report of the Public Protector pertaining to the matters investigated to ensure fairness and transparency.

6 THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION.

6.1 **Mr B A Van Wyk** is a self-employed and resident in Kimberley. He is a former business partner of Mr T Crawford and became involved in the development of the land sold to Mr Crawford by the Municipality, referred to this report (erf 36926).

6.1.1 He explained in this regard that:

“At the time Crawford nominated Tremaine Crawford Property Portfolio CC as the purchaser of erf 36926 (he did this to allow him to trade with the asset without it having to go through the deeds office). On the 13th of March the sale agreement was duly concluded between the nominated CC and Sol Plaatjie. After the sale agreement was signed we immediately requested the Municipality for the Surveyor General’s diagram so to enable us to take transfer of this land. For the following year the municipality could not provide the diagram; hence we could not pay the purchase amount. Early in the year 2009 the Municipality instituted legal action against Tremaine Crawford Property Portfolio CC to declare the contract and the preceding council resolutions null and void.

...

Around March/April/May we tried to avoid getting involved with Sol Plaatjie Municipality in a protracted legal battle (around the sale of erf 36926) especially since we knew that we were not at fault. Crawford wanted to use the general elections to pressurize the ANC (African National Congress) to intervene on our behalf by making public statements against prominent ANC politicians. Amongst others Crawford claimed that a high ranking official of the Provincial ANC sent individuals to him to threaten his life if he does not pay a bribe. Other than Crawford’s word I could not corroborate this allegation. He however told me that at the right time he would reveal the evidence. At that stage I also had no reason not to believe him either.

... I personally arranged a meeting with the Premier since we were acquaintances from my time working in De Aar. We met with the Premier around June 2009. She indicated to us that she feels those issues would be better resolved by the Provincial ANC office bearers since accusations were levelled against a prominent member.”

6.1.2 According to Mr Van Wyk, a subsequent meeting was arranged at the ANC Provincial Officer. At this meeting: *“...Crawford could not present a convincing argument in the presence of the person he accused of threatening him, in fact Crawford almost did not say a word. Crawford also could not claim that he was intimidated during the meeting because the meeting was chaired by the Provincial Secretary and (not) the person he accused of extortion. After the meeting I*

reprimanded him for compromising our development by making allegations that he could not prove or defend. I realised that this stunt of Crawford might also have diminished my standing in the community as well as my professional status. I told Crawford that I did not want to hear and speak about these allegations again since it was clouding the real matter of transferring erf 36926 into Tremaine Crawford Property Portfolio CC. Crawford did not agree with me on that issue. This was the start of the end of our business relationship.”

- 6.2 **Mr T Crawford** is a property developer who was at the time when the investigation commenced, resident in Kimberley. During the latter course of the investigation, several attempts were made to contact him for more information and to verify evidence and information that was obtained, including the issuing of a subpoena, but he could not be traced.
- 6.2.1 When he was interviewed telephonically on 16 July 2010, Mr Crawford could not recall the date of the meeting with Premier Jenkins. However, he confirmed that the only other person present at the meeting was Mr Van Wyk. According to his recollection, the Premier suggested that he obtain assistance from a facilitator to resolve his issues with the Municipality. She also undertook to arrange a meeting for him with a Mr Saul of the ANC.
- 6.2.2 During the course of the investigation, Mr Crawford met with the Public Protector and provided her with a recording, which according to him backed the allegation that he was threatened by persons associated with the MEC. He also undertook to ensure that Ms Bakker availed herself to be interviewed. As indicated above, Mr Crawford could not be traced during the latter part of the investigation and the information that he provided could therefore not be verified. The recording only provided support for the allegation that a meeting took place between him, Premier Jenkins and Mr Van Wyk.
- 6.3 **Ms H Jenkins** became the Premier of the Northern Cape on 11 May 2009. She confirmed that she met with Messrs Crawford and Van Wyk in connection with the sale of the land concerned to Mr Crawford by the Municipality, early in July 2009.

- 6.3.1 Messrs Crawford and Van Wyk explained to her they were business partners in property development and requested her intervention in their dispute with the Municipality about the cancellation of the sale agreement.
- 6.3.2 She advised them to take the matter up with the Municipality and make their own arrangements, should they wish to meet with Mr Saul of the ANC Provincial Leadership in connection with the matter.
- 6.3.3 She denied attending a subsequent meeting with Mr Saul, Mr Crawford and Mr Van Wyk and did not enquire into the outcome of the meeting
- 6.3.4 After the *Noseweek* publication, she discussed the matter with Mr Block. He denied any involvement in the land transaction.
- 6.4 **Mr J Block** is the Northern Cape MEC for Finance, Economic Affairs and Tourism.
- 6.4.1 He recalled that Premier Jenkins discussed the matter concerned with him informally after the article relating to his involvement was published by *Noseweek*. He denied any involvement and referred the matter to his attorneys to deal with. He was not aware of the meeting between Premier Jenkins and Messrs Van Wyk and Crawford.
- 6.5 **Mr F Mashilo** was the Municipal Manager of the Municipality from 1 January 2005 to 17 July 2009.
- 6.5.1 He explained that the land in question was sold to Mr Crawford by the Municipality after a tender process. It was industrial land.
- 6.5.2 Mr Crawford failed to pay the full purchase price for the land in terms of the agreement of sale and he (Mashilo) cancelled the contract. He not was aware of the meeting between Premier Jenkins and Messrs Crawford and Van Wyk.
- 6.6 **Ms M Bakker** was the Managing Director of Care Financial Management Services (Pty) Ltd at the times relevant to the investigation. She approached Mr Crawford in April 2009 in connection with investment in the development of the land that he bought from the Municipality, referred to in this report.

6.6.1 Mr Crawford was interested in her proposal, but informed her that he was involved in a legal dispute with the Municipality in connection with the land, as a result of which he was not able to continue with the development, but that he hoped to resolve the issue soon.

6.6.2 In a copy of a affidavit that she provided to the Public Protector during the investigation, Ms Bakker stated:

“On July 2009 (sic) I received a telephone call from Mister Crawford, informing me that he had held a meeting with the Northern Cape Government and that they informed him that his rights to his development would be reinstated shortly.”

6.6.3 However, in letter addressed to the Public Protector on 26 April 2010, she stated that:

“The meeting that took place early in July 2009-in attendance was Zamani (sic) Saul, John Block, Hazel Jenkins and Tremaine Crawford. I spoke to Mr Saul myself and was placed on speakerphone in the meeting. Mr Saul guaranteed me that I could proceed with the deal and my investors (sic). He stated that the ‘capital investment into the area was needed and that the Deed of Sale for Crawford will (sic) going to be

7 EVALUATION OF THE INFORMATION AND EVIDENCE OBTAINED DURING THE INVESTIGATION

7.1 COMMON CAUSE

From the investigation it was established that it is common cause that:

7.1.1 Messrs Van Wyk and Crawford met with Premier Jenkins at her office in July 2009 to request her assistance or intervention to resolve their dispute relating to a land transaction with the Municipality; and

7.1.2 At the said meeting it was decided that the concerns raised by Messrs Van Wyk and Crawford would be further discussed with the Municipality and members of the Provincial Leadership of the ANC.

7.2 THE EVIDENCE OF MS M BAKKER

- 7.2.1 The statement made by Ms Bakker during the investigation that she telephonically participated in the July 2009 meeting and that it was attended by Mr Saul, Premier Jenkins, Mr Block and Mr Crawford is inconsistent with the evidence of all the other witnesses interviewed during the investigation. Their evidence was that the meeting with Premier Jenkins only involved Messrs Van Wyk and Crawford. It was also denied that Ms Bakker was at any time involved in any manner.
- 7.2.2 Her evidence in this regard is also inconsistent with the statement that she made in a copy of an affidavit that she submitted to the Public Protector in which she explained that she was informed of the meeting that was held with the “*Northern Cape Government*” by Mr Crawford.
- 7.2.3 It was noted from the contents of the article published by the *Noseweek*, referred to in paragraph 2 above, that the information on which it was based clearly came from Ms Bakker. As indicated above, the only reference to a meeting involving Premier Jenkins was to a telephone call that Ms Bakker apparently received from Mr Crawford early in July 2009, telling her that he had met with, *inter alia*, the Premier. No reference was made in the article to a discussion between Ms Bakker and Mr Saul during which he made certain commitments to her. If it indeed happened, one would have expected detailed reference thereto in the article published by *Noseweek* .
- 7.2.4 Under the circumstances, the credibility of Ms Bakker’s versions of the meeting with the Premier in July 2009 are questionable and cannot be regarded as evidence supporting the probabilities of what happened.

8 THE LEGAL AND POLICY FRAMEWORK REGULATING ETHICAL CONDUCT BY MEMBERS OF THE EXECUTIVE

8.1 The Constitution

8.1.1. Section 136(1) provides that members of the Executive Council of a province (which include the Premier) must act in accordance with a code of ethics prescribed by national legislation.

8.1.2. In terms of section 136(2), members may not:

8.1.1.1 Act in a way that is inconsistent with their office or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or

8.1.1.2 Use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.

8.2 The Executive Ethics Code

8.2.1 The Executive Ethics Code, issued by virtue of the provisions of the Executive Members' Ethics Act, prescribes the standard of ethical conduct of members of the executive.

8.2.2 In terms of paragraph 2.1, members must:

8.2.2.1 Perform their duties and exercise their powers diligently and honestly;

8.2.2.2 Act in good faith and in the best interests of good governance; and

8.2.2.3 Act in all respects in a manner that is consistent with the integrity of their office or the government.

9 ANALYSIS OF THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

- 9.1 Messrs Van Wyk and Crawford approached Premier Jenkins in her capacity as a leader of the ANC with the request that she intervenes and assists them in their dispute with the Municipality relating to a land transaction that pertained to development in the Northern Cape Province.
- 9.2 Premier Jenkins gave them audience and it was agreed that the matter would be further discussed with the Municipality and other provincial leaders of the ANC, which in fact happened.
- 9.3 No evidence was presented or could be found that Premier Jenkins was in any way involved in the land transaction or that she attempted to interfere in the dispute between Messrs Van Wyk and Crawford and the Municipality.
- 9.4 It was required by the Constitution and the Executive Ethics Code of Premier Jenkins to act in a manner that was consistent with her office.
- 9.5 The evidence and information obtained during the investigation did not disclose or point at any violation by Premier Jenkins of this requirement.

10 FINDINGS

The findings of the Public Protector are that:

Finding 1: Was Premier Jenkins present at a meeting held early in July 2009 where a land transaction between Mr Crawford and the Municipality was discussed?

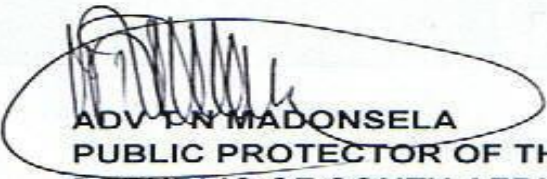
- 10.1 Premier Jenkins was approached by Messrs Van Wyk and Crawford and met with them in connection with the land transaction in July 2009.

Finding 2: What was the involvement of Premier Jenkins in the discussions and the land transaction?

10.2 Except for discussing the land transaction with Messrs Van Wyk and Crawford, Premier Jenkins was not involved.

Finding 3: Did the involvement of Premier Jenkins in the discussions at the meeting and/or in the land transaction constitute conduct in violation of the provisions of the Executive Ethics Code?

10.3 The meeting between Premier Jenkins and Messrs Van Wyk and Crawford and the discussion relating to the land transaction did not constitute conduct in violation of the provisions of the Executive Ethics Code.



ADV. N. MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

Date: 26 November 2012