
PUBLIC PROTECTOR
SOUTH AFRICA

"Allegations of failure by the South African Social Security Agency in Mpumalanga Province to pay the service provider for services rendered"

REPORT NO: 65 of 2019/20
ISBN: 978-1-928507-26-0

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF FAILURE BY THE SOUTH AFRICAN SOCIAL SECURITY AGENCY (SASSA) IN MPUMALANGA TO PAY FOR SERVICES RENDERED BY NTSHOVELO TRADING ENTERPRISE
# TABLE OF CONTENTS

**EXECUTIVE SUMMARY**

3

1. **INTRODUCTION**

8

2. **THE COMPLAINT**

9

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

10

4. **THE INVESTIGATION**

14

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

19

6. **FINDINGS**

32

7. **REMEDIAL ACTION**

34

8. **MONITORING**

35
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, and published in terms section 8(1) of the Public Protector Act, 1994.

(ii) The report communicates my findings and appropriate remedial action I am taking in terms of section 182(1)(c) of the Constitution following an investigation into allegations of improper conduct, maladministration and prejudice suffered by the Complainant relating to a failure by the South African Social Security Agency (SASSA) in Mpumalanga to pay for services rendered by the Complainant's company.

(iii) On 20 July 2015, I received a complaint from Ms MM Madonsela (the Complainant) who is the owner and Director of Ntshovelo Trading Enterprise, a small black owned business registered under registration number CK2004/006805/23.

(iv) In essence the Complainant alleged that:

(aa) On 15 December 2014, she received a telephone call from SASSA in Nelspruit requesting a quotation for catering services for three hundred and fifty (350) people on 18 December 2014. She submitted the quotation to SASSA on the same day;

(bb) She prepared the food as specified and it was inspected by Mr Mokone, a Health Inspector appointed by SASSA, to inspect the food prepared by the service providers for the ministerial event; and

(cc) When she submitted her invoice after having rendered the catering services, she was informed by SASSA Finance Unit that she rendered services without a
valid order number. SASSA had promised to investigate and report to her, but they did not provide her with feedback regarding their investigation.

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

(a) Whether SASSA unduly failed to pay the Complainant for the catering services rendered at a Ministerial Event organised by SASSA held at Thulamahashe stadium in Bushbuckridge and, if so, did such failure accordingly constitute improper conduct and maladministration; and

(b) Whether the Complainant suffered prejudice as a result of the conduct of SASSA in the circumstances.

(vi) The investigation process commenced with an attempt to resolve the dispute by means of Alternative Dispute Resolution (ADR) as the matter was capable of resolution by way of a conciliation process or mediation in line with section 6(4)(b) of the Public Protector Act. However, the mediation process failed to reach any form of settlement between the Complainant and the SASSA which compelled me to proceed with a formal investigation with a view of making a determination of maladministration, prejudice and impropriety in terms of the powers conferred upon me by the Public Protector Act and the Constitution.

(vii) The investigation process included an exchange of correspondence, inspection and analysis of all relevant documents and application of all relevant laws, policies and related prescripts and interviews were also conducted with the Complainant, witnesses and relevant officials of SASSA.

(viii) Key laws and policies taken into account to determine if there had been maladministration, prejudice and/or improper conduct by SASSA, were principally those imposing administrative standards and procedures that should have been complied with by SASSA, such as Treasury Regulation 8.2.3 which requires
SASSA to settle all payments due to creditors within 30 days after receipt of an invoice.

(ix) Having regard to the evidence uncovered during the investigation, the regulatory framework determining the standard SASSA should have complied with and the impact on the Complainant, I therefore make the following findings:

(a) Regarding Whether SASSA unduly failed to pay the Complainant for the catering services rendered at a Ministerial Event organised by SASSA held at Thulamahashe stadium in Bushbuckridge and, if so, did such failure accordingly constitute improper conduct and maladministration.

(aa) The allegation that SASSA unduly failed to pay the Complainant for the catering services rendered at a ministerial event organised by SASSA held at Thulamahashe Stadium in Bushbuckridge is substantiated.

(bb) SASSA failed to contract for the catering services in accordance with a system which is fair, equitable and transparent amongst others and ignored the fact that the Complainant did serve lunch at Thulamahashe stadium on 18 December 2014, which led to them not paying her for the services rendered. SASSA paid some of the service providers who were not provided with order numbers but failed to pay the Complainant which is not fair and it amounted to discrimination against the Complainant.

(cc) SASSA's process in the procurement of the Complainant's services, was not properly managed and it led to them having to benefit unduly from the services rendered by the Complainant which is contrary to their own Procurement Policy.

(dd) The conduct of SASSA was in violation of item 1.1 and 2 of their own Procurement Policy number SCM/PP/02/09/2012 version 02, and section
217(1) of the Constitution, section 38(1)(a)(iii) of the Public Finance Management Act and regulation 8.2.3 of the Treasury Regulations.

(ee) Failure by SASSA to pay the Complainant despite the fact that she rendered the catering service is in violation of section 38(1)(f) of the PFMA, read with regulation 8.2.3 of the Treasury Regulations, which require state organs to pay the service providers within 30 days of receipt of an invoice.

(ff) Such conduct constitute improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

(b) **Regarding whether the Complainant suffered prejudice as a result of the conduct of SASSA in the circumstances.**

(aa) The allegations that the Complainant suffered prejudice as a result of SASSA’s conduct is substantiated.

(bb) SASSA treated the Complainant differently from Ms Motlou and Ms Makamu who were also service providers and were in a similar position as the Complainant in that they rendered the services without an order number but were ultimately paid an amount of R41 650 each.

(cc) The Complainant was prejudiced by the conduct of SASSA as envisaged in section 182(1)(a) of the Constitution because it failed to effect payment on the invoice she submitted, not only leaving an amount of R41 650.00 owed to her, but also putting her in a disadvantaged position where she was actually unable to carry over any benefits from the project to future endeavours that could have assisted in her development as an emerging small business enterprise.
(dd) The Complainant was treated unfairly and discriminated against in that all other service providers were paid the R41 650.00 including those who were not issued with the order numbers. The Complainant was actually punished for the lack of diligence on the part of SASSA officials.

(ee) Furthermore, the Complainant could not meet her financial obligations with her creditors as a result of the failure by SASSA to pay or settle the outstanding amount due to her company.

(xii) The appropriate remedial action I am taking in terms of section 182(1)(c) of the Constitution, with a view of placing the Complainant as close as possible to where she would have been had the improper conduct and maladministration not occurred, is the following:

(a) The Acting Regional Executive Manager, Mrs G.S.K. Mathebula must:

(aa) Within thirty (30) working days from the date of the issuing of this report, effect payment of the improperly withheld money due to the Complainant amounting to not less than R41 650.00 with interest calculated in terms of the Prescribed Rate of Interest Act 55 of 1976 from the date of the last invoice submitted; and

(bb) Write a letter of apology to the Complainant for the above mentioned prejudice caused to her and her family, within thirty (30) working days from the date of this report.

(cc) Within sixty (60) working days, take appropriate action against all officials who were involved in the procurement process that resulted in the Complainant not paid on time.

(dd) Within fifteen (15) working days submit an implementation plan to my office on how the remedial actions will be implemented.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF FAILURE BY THE SOUTH AFRICAN SOCIAL SECURITY AGENCY (SASSA) IN MPUMALANGA TO PAY FOR SERVICES RENDERED BY NTSHOVELO TRADING ENTERPRISE.

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(1) and 8(3) of the Public Protector Act to the following people to note the outcome of my investigation and implement remedial action:

1.2.1. Member of the Executive Council (MEC) for Social Development in Mpumalanga Province, Ms T Shongwe;

1.2.2. The Acting Regional Executive Manager of South African Social Security Agency, Mrs GSK Mathebula.

1.2.3. A copy of the report is also provided to the Complainant, Mrs MM Madonsela, to inform her of the outcome of my investigation.

1.3. The report relates to an investigation into allegations of improper conduct, maladministration and prejudice suffered by the Complainant relating to a failure by the South African Social Security Agency (SASSA) to pay for services rendered by Ntshovelo Trading Enterprise.
2. **THE COMPLAINT**

2.1 On 20 July 2015, my office received a complaint from Ms MM Madonsela (the Complainant) who is the owner and Managing Director of Ntshovelvo Trading Enterprise. She alleged that, she rendered a catering service at an event organised by SASSA in December 2014 for an amount of R41 650.00 (Forty One Thousand Six Hundred and Fifty Rand only) for providing catering services for three hundred and fifty (350) people on 18 December 2014;

2.2 On 15 December 2014, she received a telephone call from SASSA in Nelspruit requesting a quotation for catering services for three hundred and fifty (350) people on 18 December 2014. She submitted the quotation to SASSA on the same day;

2.3 She was later invited by SASSA to a briefing session after sending the quotation. At the briefing session, it was indicated by a SASSA official, Ms Carol Phoku that she was in possession of a few quotations from service providers. She also indicated that she had few order numbers which would be issued to the relevant companies, but other companies would be issued with order numbers at a later stage;

2.4 She prepared the food as specified and it was inspected by Mr Mokone, a Health Inspector appointed by SASSA, to inspect the food prepared by the service providers for the ministerial event; and

2.5 When she submitted her invoice after having rendered the catering services, she was informed by the SASSA Finance Unit that she rendered services without a valid order number. SASSA had promised to investigate and report to her, but they did not provide her with feedback regarding their investigation.
2.7 The Complainant has not been paid for the catering service she rendered and as a result she struggled to pay her creditors.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

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

3.2 Section 182(1) of the Constitution provides that:

"The Public Protector has the power as regulated by national legislation:-

(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
(b) to report on that conduct; and
(c) to take appropriate remedial action".

3.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by legislation.

3.4 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 upon the Public Protector to resolve 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.
3.5 In the constitutional court, (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 (CCT 143/15; CCT 171/15) [2016] ZACC 11(5); 2016(5) BCLR 618 (CC); 2016(3) SA 580 (CC) (31 March 2016), Chief Justice Mogoeng stated the following, when confirming the powers of the public protector:

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

3.5.2 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the value underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (paragraph 67);

3.5.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the interim Constitution. However, sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68);

3.5.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (paragraph 69);

3.5.5 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (paragraph 70);
3.5.6 The Public Protector’s power to take appropriate 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);

3.5.7 Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence (paragraph 71(a));

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

3.5.9 “Appropriate” means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (paragraph 71(e)).

3.6 The Constitutional Court further held that the remedial action taken by the Public Protector has a binding effect, “When remedial action is binding, compliance is not optional, and 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”.

3.7 In the matter of the President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017), the court held as follows, when confirming the powers of the Public Protector:
3.7.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the constitution (paragraph 71);

3.7.2 The Public Protector has the power to take remedial action, which include instructing the President to exercise powers entrusted on them under the constitution if that is required to remedy the harm in question (paragraph 82);

3.7.3 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.

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

3.7.5 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);

3.7.6 The fact that there is no firm findings on the wrong doing, this does not prohibit the public protector form taking remedial action. The Public Protector’s observations constitute prima facie findings that point to serious misconduct (paragraphs 107 – 108);

3.7.7 Prima facie evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action (paragraph 112);
3.9 SASSA is an organ of state and its conduct amounts to conduct in state affairs, as a result the matter falls within the ambit of the Public Protector’s mandate to investigate.

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

4. THE INVESTIGATION

4.1. Methodology

4.1.1 The rationale of this report is to identify possible maladministration by SASSA, to determine if the Complainant was prejudiced, and to direct remedial action to remedy the identified maladministration and prejudice, if any is found.

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

4.1.3 The investigation process commenced with a preliminary investigation in terms of section 7(1) of the Public Protector Act, which revealed that the complaint arose out of a contractual dispute between the Complainant and SASSA.

4.1.4 The investigation process proceeded with correspondence and communication with Ms GSK Mathebula, the Acting SASSA Regional Executive Manager and her predecessors, Ms AR Malope and Mr Mogane, as well as a meeting with Ms Y Lusibane, the former SASSA General-Manager of Finance and her team of Investigators, analysis of the relevant documentation, research and consideration and application of the relevant laws and regulatory framework.

4.1.5 An attempt was made to resolve the dispute by means of an Alternative Dispute Resolution (ADR) in line with section 6(4)(b) of the Public Protector Act.
4.1.6 The mediation process failed to reach any form of settlement between the Complainant and SASSA which compelled me to proceed with a formal investigation with a view of making a determination of maladministration, prejudice and impropriety in terms of the powers conferred upon me by the Public Protector Act and the Constitution.

4.2 Approach to the investigation

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

4.2.2.1 What happened?

4.2.2.2 What should have happened?

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

4.2.2.4 In the event of improper conduct or maladministration, what would it take to remedy the wrong or to place the Complainant as close as possible to where they would have been but for the improper conduct or maladministration?

4.2.3 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 or not SASSA acted improperly when they failed to pay the Complainant for the services rendered.

4.2.4 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by SASSA to prevent any improper conduct, maladministration and prejudice.
4.2.5 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and maladministration. 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 SASSA 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 SASSA unduly failed to pay the Complainant for the catering services rendered at a Ministerial Event organised by SASSA held at Thulamahashe stadium in Bushbuckridge and, if so, did such failure accordingly constitute improper conduct and maladministration; and

4.3.2 Whether the Complainant suffered prejudice as a result of the conduct of SASSA in the circumstances.

4.4 The Key Sources of information

4.4.1 Documents

4.4.1.1 Copy of an email requesting the Complainant to submit a quotation;

4.4.1.2 A report addressed to me from the then Acting Regional Executive Manager, Mr AR Malope dated 26 August 2016;

4.4.1.3 Affidavits made by witnesses (service providers and SASSA Officials);

4.4.1.4 Letter received from a witness dated 7 April 2016;
4.4.2 Interviews conducted

4.4.2.1 Interview conducted on 6 June 2016 at Dwaarsloop, Mpumalanga with witnesses who are service providers who confirmed to have rendered the catering services with the Complainant on the day of the event, namely:

(a) Mr SS Dube of Executive Tipfuxeni Trading;
(b) Ms D Makamu of Hlulani Trading; and
(c) Ms DV Motlou of Malewu Investment.

4.4.2.2 An interview conducted on 8 September 2016 at SASSA Offices in Nelspruit with a witness who is a SASSA Official that was involved in the organisation of the event, namely:

(a) Ms BP Mthomboti who was then a secretary to the General Manager for Grants administrator.

4.4.2.3 Interview conducted on 21 October 2016 at the Public Protector, Mpumalanga Provincial Office with witnesses who are SASSA Officials that were involved in the organisation of the event, namely:

(a) Mr T Serage who is an official that was appointed to assist with the event to register elderly people who were present at the stadium; and
(b) Mr T Sibiya who is an official who was appointed to assist with the counting of drinks according to the list of suppliers.

4.4.3 Correspondence sent and received

4.4.3.1 An enquiry letter from my office dated 11 August 2015 to SASSA.
4.4.3.2 A follow-up email from my office dated 14 September 2015 to SASSA.

4.4.3.3 A follow-up email from my office dated 20 October 2015 to SASSA.

4.4.3.4 An email in response to the enquiry dated 22 October 2015 from SASSA.

4.4.3.5 A letter dated 7 April 2016 received from a witness, Ms L Sihlangu.

4.4.3.6 A letter requesting a meeting from my office dated 22 April 2016 to SASSA.

4.4.3.7 An email requesting a second meeting from my office dated 17 June 2016 to SASSA.

4.4.3.8 A report issued by the Acting Regional Executive Manager, Mr AR Malope to my office dated 26 August 2016.

4.4.3.9 An email from my office dated 9 September 2016 to SASSA requesting more information outstanding from the report.

4.4.3.10 An email to my office dated 21 October 2016 from SASSA.

4.4.3.11 A letter from my office dated 6 March 2017 requesting the procurement policy and regulations to SASSA.

4.4.3.12 A letter dated 26 June 2017 providing a list of caterers appointed by SASSA for the event received from SASSA.

4.4.3.13 A letter from my office dated 10 July 2018 to SASSA requesting the following information:

a) A copy of the project charter for the event of 18 December 2014;

b) A copy of the attendance register of the briefing session for the event;

c) A copy of the report submitted by the health inspector on the caterers whose food he had tasted;
d) The alleged handwritten loose piece of paper which was used to register service providers who were present at the event; and

e) A copy of SASSA’s Supply Chain Policy.

4.4.4 Legislation and other prescripts

4.4.4.1 The Constitution of the Republic of South Africa; 1996;

4.4.4.2 The Public Protector Act 23 of 1994;

4.4.4.3 The Public Finance Management Act 1 of 1999;

4.4.4.4 The Prescribed Rate of Interest Act; 55 of 1975;

4.4.4.5 Treasury Regulations, 2005; and

4.4.4.6 Procurement Policy NUMBER SCM/PP/02/09/2012, version 02.

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

5.1. Regarding whether SASSA unduly failed to pay the Complainant for the catering services rendered at a Ministerial Event organised by SASSA held at Thulamahashe stadium in Bushbuckridge and, if so, did such action accordingly constitute improper conduct and maladministration.

Common cause issues

5.1.1 It is common cause that SASSA Mpumalanga Region hosted a ministerial event for elderly people at Thulamahashe Stadium in Bushbuckridge on 18 December 2014.
5.1.2 It is also common cause that on 14 December 2014 the Complainant received an email from a SASSA official named Nomshado Shube and on 15 December 2014, she received a telephone call from SASSA Mpumalanga Provincial Office in Nelspruit requesting a quotation for catering service for 350 (three hundred and fifty) people to be held on 18 December 2014. She submitted the quotation to SASSA on the same day.

5.1.3 The Complainant was the only service provider that did not receive any payment from SASSA.

5.1.4 It is not disputed that on 16 December 2014, the Complainant and other service providers attended a catering briefing session hosted by SASSA at Thulamahashe Stadium as contained in paragraph 8.1 of the second report of SASSA dated 26 August 2016.

5.1.5 It is also common cause that on 18 December 2014, Mr D J Mokone, the Health Inspector tasted food samples which were cooked by the Complainant for the ministerial event. The food tasting took place at Ms Olga Minisi’s place where it was prepared. Ms Olga Mnisi is one of the employees of Ntshovelo Enterprise.

Issues in dispute

5.1.6 It is disputed whether SASSA unduly failed to pay the Complainant for the catering services rendered at a Ministerial Event for the elderly organised by SASSA held at Thulamahashe stadium in Bushbuckridge on 18 December 2014 or alternatively whether she had the valid order number to render catering services.

5.1.7 The Complainant alleged that she was invited to submit a quotation for the catering of 350 people at the ministerial event organised by SASSA. She attended the briefing session on 16 December 2014 and then rendered the catering services on 18 December 2014 at Thulamahashe stadium.
5.1.8 It is also disputed that the Complainant together with others were not issued with the order numbers at the briefing session as the order numbers were not enough but they were all informed to start preparing to cook for the event. Some of them were given order numbers and the rest were informed that they would be given order numbers at a later stage.

5.1.9 In response to the above allegations that were raised in my letter of enquiry dated 11 August 2015, SASSA provided my office with a report issued by the Acting Regional Executive Manager, Mr AR Malope, dated 26 August 2016 in which SASSA, contended the following:

5.1.9.1 That the Complainant’s quotation was not approved due to an error which was caused by a SASSA official namely Ms Phuti Malabe who was then a Practitioner for Supply Chain and who did not sign and date the nomination register. The Complainant was not informed to discontinue with the preparation of the food and again she cannot be punished for the mistakes committed by the SASSA officials. However, SASSA later argued that the reason she was not paid was because she did not render catering services at the stadium on 18 December 2014.

5.1.9.2 That no purchase order was issued for Ntshovelo Trading Enterprise. Further that the service provider did not provide lunch on 18 December 2014, no evidence was produced by the said company to prove that it provided catering services and it was not found in the company list which was used as an attendance register during the ministerial event.

5.1.10 SASSA stated further that Ntshovelo Trading Enterprise invoiced SASSA an amount of R41 650.00 for services which were not rendered. The Complainant could not provide a purchase order, name of SASSA official, telephone number or a letter from SASSA signed by a delegated authority that warranted her to
provide catering services on 18 December 2014, hence she did not provide catering services.

5.1.12 Ms Phoku who is a Manager of Customer Care at SASSA indicated that on 16 December 2014, several service providers were invited to attend a briefing session headed by the Senior Manager: Finance, Mr Vusi Mhaule. The service providers were informed to provide catering services at Thulamahashe Stadium and she was assigned to manage catering services for VIPs, older people and staff of all departments represented at the event. She was assisted by SASSA officials and the National Development Agency.

5.1.13 She indicated that there was a marquee for caterers at the Stadium and that every caterer coming inside was checked and verified by the team against a list of appointed service providers. They checked food and counted drinks brought by service providers against approved specifications.

5.1.14 Ms Phoku added that she submitted the list of verified service providers who rendered catering services to Ms Kedibone Mathebula who was the General Manager for Grants Administration on 22 December 2014. According to Ms Phoku, the Complainant was not on-site and she did not present herself to the verification team as she was not on the list of verified service providers.

5.1.15 During the course of my Investigation, some witnesses were interviewed and they confirmed that the Complainant served lunch at the event and there were other service providers who were catering alongside the Complainant. The witnesses were interviewed on 6 June 2016.

5.1.16 My investigation team interviewed Mr SS Dube of Executive Tipfuxeni Trading on 6 June 2016 who stated that he received an invitation to attend a briefing session from SASSA where service providers were requested to provide catering services for breakfast and lunch on 18 December 2014 at Thulamahashe Stadium.
5.1.17 He explained that some service providers were issued with order numbers at the briefing session and those who did not receive order numbers were told that they would be issued at a later stage. Mr Dube confirmed that the Complainant was part of the team of service providers who provided catering at the event because she was allocated a service point next to his and that he borrowed some of her utensils. Mr Dube also confirmed this information to SASSA by means of an affidavit.

5.1.18 Ms D Makamu of Hululani Trading, a company owned by her mother, but was assisting her at this particular event, was also interviewed on 6 June 2016. She stated that on 15 December 2014, she received a call from one Sydney from SASSA who requested a quotation for catering. She was also invited to the briefing session which she attended on 16 December 2014 where they were advised that each service provider would be catering for 350 (three hundred and fifty) people.

5.1.19 She mentioned that she was one of the people who did not receive an order number at the briefing session and was informed that it would be provided at a later stage before the event. Despite not having received an order number, she proceeded with the necessary preparations given that the event was in two days’ time.

5.1.20 On 18 December 2014, she assisted her mother to serve lunch at the event and she confirmed that the Complainant also rendered the same service. She also indicated that she did not know the Complainant personally, but met her on the day of the event. Ms Makamu was paid for the services she had rendered. Hululani Trading was not on the list, but was paid.

5.1.21 Ms Linneth Sihlangu confirmed in a letter dated 7 April 2016 that she saw the Complainant cater for people at the event in Thulamahashe on 18 December 2014. She indicated that the Complainant’s two tables were placed on her left
hand side and when she arrived at the Stadium, the Complainant had already set up her tables and her food and drinks were counted. The information was also confirmed in an affidavit to SASSA during their own investigations.

5.1.22 Ms D V Motlou, trading as Malewu Investment, stated during the interview with my investigation team that she was contacted by SASSA officials to attend a briefing session on 16 December 2014 for an event hosted by SASSA for the elderly people at Thulamahashe. After the briefing session, order numbers were issued to the attendees, but they were not enough and she was one of the people who were not issued with an order number.

5.1.23 On the day of the event i.e. on 18 December 2014, she attended the event to render catering services, serving breakfast. She arrived at the Stadium at 11:00am and saw the Complainant’s vehicle parked inside a tent, the Complainant was standing next to a white man. She also submitted a sworn statement to the SASSA investigators.

5.1.24 Ms Motlou also stated in an affidavit that she signed on 1 July 2016 that even though she did not see the Complainant serve lunch she knew that to be the reason for the presence of her vehicle at the venue because she had seen her during the preparatory stages as stated above and also because she shared a recipe for dumplings with her.

5.1.25 Ms Motlou indicated that when she arrived at the venue to serve breakfast, her name was registered on a piece of paper as were other service providers. She also stated that SASSA paid her soon after providing the service even though she did not have an order number.

5.1.26 Other witnesses who were interviewed and confirmed that the Complainant served lunch as alleged are Ms Nannette Euginia Mnisi and Ms Olga Mnisi who were employed by Ntshoveko Trading Enterprise and were assisting the Complainant to serve lunch at the event. When interviewed by SASSA
Investigators, they both stated that they were temporarily employed by the Complainant's company to cook food for the ministerial event. They further stated that on 18 December 2014, they arrived at the Thulamahashe Stadium at 11.00 am and they proceeded to serve lunch.

5.1.27 On 8 September 2016, Ms B P Mthombothi who was the Secretary to the General Manager for Grants Administration, indicated during the interview with my investigation team, that on 18 December 2014 she was assigned as Project Coordinator at the SASSA ministerial event in Thulamahashe and she worked alongside Ms Phoku. She was responsible for preparing specifications for the catering services that were provided by various service providers and the handing out of gifts to the attendees of the event. She was also responsible for checking the food and drinks of all service providers who were present to ensure that their services complied with the prescribed specifications.

5.1.28 The verification of the presence of service providers was done by use of a register of appointed suppliers. In the event that a supplier did not appear on the list, the supplier would be requested to provide the team with an order number as proof that they were appointed to provide a service.

5.1.29 She added that other suppliers were noted on a separate piece of paper by other members of the verification team to ensure that all service providers who were on-site on that day were captured. This was also confirmed in her email of 15 September 2016. Ms Mthombothi added in the email of 3 October 2016 that, by the other members, she was referring to Messrs Tshepo Serage and Thulani Sibiya and other two ladies from NDA whose names she did not know.

5.1.30 Mr T Serage, an official from SASSA, indicated during the interview held on 21 October 2016 that he attended the event and his role was to register elders who were present. He was also requested to assist in receiving service providers and also with the counting of drinks brought by them. He recorded the names of the service providers on a piece of paper which was later submitted to Ms Phoku.
who was supervising the process. He was not aware of the identities of the service providers and he could not state if the Complainant was in attendance or not. This is the same information he gave to the SASSA investigators and is contained in the SASSA report signed on 26 August 2016. He basically concurred with Ms Mthombothi by confirming that some service providers were registered on a piece of paper.

5.1.31 Mr T Sibiya, also an official of SASSA, stated during the interview conducted on 21 October 2016 that his role at the event was to assist with the counting of drinks which was done according to a list of suppliers. Some suppliers were not on the list and their names were inserted by hand.

5.1.32 On 26 June 2019, I issued a section 7(9) notice to the Acting Regional Executive Manager of SASSA, Mrs Mathebula and afforded her an opportunity to respond to my intended adverse findings against her. However, she failed to respond.

Application of the relevant legal prescripts

5.1.33 SASSA Procurement Policy number SCM/PP/02/09/2012, version 02, Item 1.1 states that “the following principle will be followed when acquiring goods and services”

Value for money
Open and effective competition
Ethics and fair dealing
Accountability and reporting
Equity

Item 2(ii) states that officials of SASSA, any third parties, any contractors or individuals / entities conducting purchases for or on behalf of the Agency shall observe the following ethical standards, principles and behaviours:
Accept responsibilities, be fully accountable and maintain comprehensive
documentation and justifiable evaluation criteria.

(iv) ensure that every process is transparent, free of bias or the perception of
bias........

(xii) honour contractual obligations

(xiii) repudiate all business practice which is improper and which is in discord
with accepted moral principles”.

5.1.34 SASSA did not deal with the Complainant in a manner that is fair and ethical
because they did not inform her that her quotation was not approved so that she
could stop preparing for the Ministerial event.

5.1.35 The Complainant was not even given reasons for the disapproval of her
quotation. It can also be mentioned that the Complainant’s quotation was not
deprecated as a result of any omission or act on her part but it was due to the
negligence of a SASSA official.

5.1.36 There was no accountability because proper registers were not kept and service
providers were noted on a piece of paper which later could not be produced.

5.1.37 SASSA failed to discharge its contractual obligation to pay the Complainant
within 30 days after rendering the service.

5.1.38 Section 217(1) of the Constitution states that “when an organ of state in the
national, provincial or local sphere of government, or any other institution
identified in national legislation, contracts for goods or services, it must do so in
accordance with a system which is fair, equitable, transparent, competitive and
cost-effective”.

5.1.39 Section 38(1)(f) of the Public Finance Management Act 1 of 1999 (the PFMA)
states that “The accounting officer for a department, trading entity or
constitutional institution must settle all contractual obligations and pay all money
owing, including inter-governmental claims, within the prescribed or agreed period;"

5.1.40 Treasury Regulation 8.2.3 provides that “Unless determined otherwise in a contract or other agreement, all payments due to creditors must be settled within 30 days from receipt of an invoice or, in the case of civil claims, from the date of settlement or court judgment”.

5.1.41 SASSA had an obligation and was therefore expected in terms of section 38(1)(f) of the PFMA, read with Treasury Regulation 8.2.3, to pay the Complainant within 30 days of receipt of her invoice. In this case SASSA failed to pay the Complainant and therefore failed to discharge the above obligation.

5.1.42 The above is supported by section 38(1)(a)(iii) of the Public Finance Management Act of 1 of 1999 which states that “The accounting officer for a department, trading entity or constitutional institution must ensure that that department, trading entity or constitutional institution has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective”.

5.1.43 SASSA did not procure the services of the caterers in accordance with a system which is fair, equitable, competitive and transparent because there were anomalies in the manner in which they procured the catering services. The process was clumsy and not properly managed which is contrary to their Procurement Policy.

5.1.44 There were no proper recording systems, service providers were recorded on pieces of paper which were later lost or misplaced and could therefore not be verified against the main register. They also did not have a proper registration station.
5.1.45 The Complainant was not the only one who did not have an order number, other service providers such as Ms Makamu of Hululani Trading and Mrs Motlou of Malewu Investments did not have order numbers yet they were paid. The Complainant was not the only one who did not appear on the list provided by SASSA, that is why some had to be added on the list by hand and some on a piece of paper. There are no valid reasons advanced by SASSA for not paying the Complainant.

5.1.46 There was poor communication between the service providers and SASSA as telephone calls confirming approval of quotations were not followed by confirmation letters, the Complainant was expected to recall the officials she spoke to back in 2014 whereas a confirmation letter could have easily resolved the issue.

5.1.47 SASSA could not produce a project charter for the event which is a document that could have been used to verify the number of service providers and the projected amount to be used for the event.

Conclusion

5.1.48 Based on the evidence gathered, it is clear that the decision not to pay the Complainant based on the fact that she was not issued with an order number is unfair, unethical, bias and without base and it was not in compliance with the principles espoused in item 1.1 of the Procurement Policy of SASSA, more so that other service providers who were not issued with order numbers were paid.

5.1.49 It can also be concluded that the decision not to pay the Complainant on the grounds that the Complainant was not at the stadium to render the catering services is not supported by witness evidence obtained during the investigation and is also unfair and not in line with SASSA's own policy which promotes the honouring of its contractual obligations.
5.1.50 The said decision was also not in compliance with section 217(1) of the Constitution and 38(1)(a)(ii) of the PFMA.

5.1.51 From the evidence gathered it can also be concluded that an order number could not be issued because the Complainant’s quotation was not approved as a result of non-compliance by a SASSA official in processing the quotation which had nothing to do with the Complainant. Nevertheless, the Complainant rendered the service and SASSA unjustifiably benefited at the expense of the Complainant.

5.2 **Regarding whether the Complainant suffered prejudice as a result of the conduct of SASSA in the circumstances.**

*Common cause issues*

5.2.1 It is common cause that the Complainant suffered prejudice as a result of the conduct of SASSA in failing to pay her for the catering services she rendered at the ministerial event held on 18 December 2014 at Thulamahashe stadium in Bushbuckridge.

5.2.2 SASSA neglected its duty to ensure that the Complainant was paid what is due to her in order to become a viable and self-sustaining emerging small business enterprise.

5.2.3 Furthermore, the Complainant borrowed money in order to provide the catering service and she was unable to pay back her creditors because she was not paid as expected and this negatively affected her business and relations with the people who had given her loans.
Application of the relevant legal prescripts

5.2.4 Section 38 (1)(f) of the Public Finance Management Act no. 1 of 1999 states that “The accounting officer for a department, trading entity or constitutional institution must settle all contractual obligations and pay all money owing, including intergovernmental claims, within the prescribed or agreed period”.

5.2.5 Treasury Regulation 8.2.3 provides that “Unless determined otherwise in a contract or other agreement, all payments due to creditors must be settled within 30 days from receipt of an invoice or, in the case of civil claims, from the date of settlement or court judgment”.

5.2.6 The Regional Executive Manager of SASSA in Mpumalanga was therefore duty bound to settle all the invoices submitted by service providers after services were rendered and this had to be done within a period of 30 days upon receipt of an invoice by the service provider, including the Complainant.

5.2.7 The evidence obtained and the application of the relevant prescripts to the established facts as discussed above, does indicate that SASSA caused the Complainant to suffer prejudice.

Conclusion

5.2.8 Based on the evidence gathered, it can be concluded that the decision not to pay the Complainant was not lawful and in compliance with legal prescripts regulating procurement process by SASSA.

5.2.9 Failure by SASSA to act lawfully in terms of the Constitution and in accordance with their own policy in the procurement of goods and services for the ministerial event caused the Complainant to suffer financial prejudice.
6. FINDINGS

Having regard to the evidence uncovered during the investigation, the regulatory framework determining the standard SASSA should have complied with and the impact on the Complainant, I therefore make the following findings:

Regarding Whether SASSA unduly failed to pay the Complainant for the catering services rendered at a Ministerial Event organised by SASSA held at Thulamahashe stadium in Bushbuckridge and, if so, did such failure accordingly constitute improper conduct and maladministration.

6.1.1 The allegation that SASSA unduly failed to pay the Complainant for the catering services rendered at a ministerial event organised by SASSA held at Thulamahashe Stadium in Bushbuckridge is substantiated.

6.1.2. SASSA failed to contract for the catering services in a manner that was fair, accountable, equitable and transparent amongst others and ignored the fact that the Complainant did serve lunch at Thulamahashe stadium on 18 December 2014, which led to them not paying her for the services rendered. SASSA paid some of the service providers who were not provided with order numbers but failed to pay the Complainant which is unfair and also discriminatory against the Complainant.

6.1.3. SASSA’s process in the procurement of the Complainant’s services, was inept and not properly managed and it led to them having to benefit unduly from the services rendered by the Complainant which is contrary to their own Procurement Policy.

6.1.4. The conduct of SASSA was in violation of item 1.1 and 2 of their own Procurement Policy number SCM/PP/02/09/2012, version 02, item 1.1 and section 217(1) of the Constitution, section 38(1)(a)(iii) of the Public Finance Management Act and regulation 8.2.3 of the Treasury Regulations.
6.1.5. Failure by SASSA to pay the Complainant despite the fact that she rendered the catering service is in violation of section 38(1)(f) of the PFMA, read with Treasury Regulation 8.2.3, which require state organs to pay the service providers within 30 days of receipt of an invoice.

6.1.6. Such conduct constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

6.2. Regarding whether the Complainant suffered prejudice as a result of the conduct of SASSA in the circumstances

6.2.1. The allegations that the Complainant suffered prejudice as a result of SASSA’s conduct is substantiated.

6.2.2. SASSA treated the Complainant differently from Ms Motlou and Ms Makamu who were also service providers and who were in a similar position as the Complainant in that they rendered the service without an order number but were ultimately paid an amount of R41 650 each.

6.2.3. The Complainant was prejudiced by the conduct of SASSA as envisaged in section 182(1)(a) of the Constitution because it failed to effect payment on the invoice she submitted, not only leaving an amount of R41 650.00 owed to her, but also putting her in a disadvantaged position where she was actually unable to carry over any benefits from the project to future endeavours that could have assisted in her development as an emerging small business enterprise.

6.2.4. The Complainant was treated unfairly and discriminated against in that all other service providers were paid the R41 650.00 including those who were not issued
with the order numbers. The Complainant was actually punished for the incompetence or mistake of the officials of SASSA which is also very unfair.

6.2.5 Furthermore, the Complainant could not meet her financial obligations with her creditors as a result of the failure by SASSA to pay or settle the outstanding amount due to her company.

7. REMEDIAL ACTION

The appropriate remedial actions I am taking in terms of section 182(1)(c) of the Constitution, with a view of placing the Complainant as close as possible to where she would have been had the improper conduct and maladministration not occurred, is the following:

7.1. The Acting Regional Executive Manager, Mrs G.S.K. Mathebula must:

7.1.1 Within thirty (30) working days from the date of the issuing of this report, effect payment of the improperly withheld money due to the Complainant amounting to not less than R41 650.00 with interest calculated in terms of the Prescribed Rate of Interest Act 55 of 1975 from the date of the last invoice submitted; and

7.1.2 Write a letter of apology to the Complainant for the above mentioned prejudice caused to her and her family, within thirty (30) working days from the date of this report.

7.1.3 Within sixty (60) working days, take appropriate action against all officials who were involved in the procurement process that resulted in the Complainant not paid on time

7.1.4 Within thirty (30) working days submit an implementation plan to my office on how the remedial actions will be implemented
8. MONITORING AND IMPLEMENTATION OF THE REMEDIAL ACTION

8.1 The Acting Regional Executive Manager must, within fifteen (15) working days from the date of the issuing of this report, submit to my office an implementation plan indicating how the remedial action referred to in paragraph 7 above will be implemented.

8.2 I wish to bring to your attention that in line with the Constitutional Court judgement in the matter of Economic Freedom Fighters v Speaker of the National Assembly and Other; Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11, and in order to ensure the effectiveness of the Office of the Public Protector, the remedial actions prescribed in this Report are legally binding on the Acting Regional Executive Manager of SASSA, unless they obtain a Court order directing otherwise.

ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 20/08/2019