

**INTERNAL REVIEW DECISION IN TERMS OF RULE 44(4) OF THE PUBLIC
PROTECTOR RULES RELATING TO INVESTIGATIONS BY THE PUBLIC
PROTECTOR AND MATTERS INCIDENTAL THERETO, 2018, AS AMENDED**



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**INVESTIGATIONS BY THE PUBLIC PROTECTOR AND MATTERS INCIDENTAL
THERETO, 2018: DR GOGWANA**

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1. INTRODUCTION

- 1.1 This is a report of the Public Protector in terms of Rule 44(4) of the Public Protector *Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018*, as amended (the Public Protector Rules). Rule 44(4) of the Public Protector Rules empowers the Public Protector to make a determination following the consideration of an application for an internal review lodged in terms of Rule 44(1) of the Public Protector Rules.
- 1.2 Rule 44(1) of the Public Protector Rules provides that “*Complainants who are dissatisfied with a decision of any official of the Office of the Public Protector or the Public Protector to close or refuse the investigation of a complaint, may, except where the Public Protector has released a final report in terms of 182(1)(b) of the Constitution, 1996 and section 8(1) of the Act, request an internal review of that decision*”.
- 1.3 The report communicates the outcome of an application for an internal review that was lodged by Doctor Pumeza Gogwana (Dr Gogwana), in terms of Rule 44(1) of the Public Protector Rules relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018¹, as amended (the Public Protector Rules).

2. THE COMPLAINT

- 2.1. Dr Gogwana lodged a complaint with the Western Cape Provincial Office of the Public Protector on 05 February 2020, against functionaries of the University of Cape Town in which she, *inter alia*, alleged that:

¹ Published in Government Gazette 41903 dated 14 September 2018 and amended in Government Notice 1047, Government Gazette 43758 dated October 2020.

- 2.1.1 The complaint relates to plagiarism pertaining to the paper she wrote after she finished her PHD under the supervision of Prof. Alan Rodgers. The paper was submitted to a journal where she was the first author. It came back with corrections and recommendations to be submitted to another journal;
- 2.1.2 The corrections were made and the paper was submitted to Prof. Rodgers to submit. It was not submitted as agreed and no explanation was provided;
- 2.1.3 She found out that the paper she had written was published without her name on it.
- 2.1.4 On 04 June 2018, she submitted a plagiarism complaint to the former acting Deputy Vice-Chancellor for Research, Prof Michael Kyobe (Prof Kyobe);
- 2.1.5 The plagiarism complaint was sent to Prof. Marc Blockman Chair of Human Research and Ethics for investigation. Prof. Manu Ramutsindela was appointed to be the oversee of the investigation. A preliminary investigation was conducted and both parties responded to the preliminary investigation report;
- 2.1.6 The reports were given to the DVC, Research for him to make a decision whether a formal investigation should take place. However, she received an email where he agreed to a memorandum written by Ranutsindela Prof. Ramutsindela;
- 2.1.7 Prof. Ranutsindela did not conduct an investigation and the circumstances under which he wrote the memorandum were not explained to her. Prof. Kyobe arranged a meeting with her to discuss her contribution to the published papers. The meeting did not take place because she was not provided with the information she had requested;

- 2.1.8 After some time she received an email from Prof Kyobe, informing her of another decision about the published papers. Around October 2018, she contacted the Ombud to request her intervention on her original complaint;
- 2.1.9 She met with the Ombud and gave her the documents related to her case. When she requested an update, she was told by the Personal Assistant to the Ombud that she was dealing with her matter and the Ombud would contact her. She never heard from the Ombud again and is not aware of her intervention;
- 2.1.10 A complaint was submitted to whistleblowing and she was told that the matter of the published papers was being “*addressed*” by the Faculty of Science. Her request for a report to the investigation was not answered;
- 2.1.11 Around April 2019, she wrote to the University management to request their intervention. There was no response to her request and the Registrar, Mr Royston Pillay told her that the Faculty of Science dealt with the matter, but he could not provide him with the report of the investigation; and
- 2.1.12 Apparently, Prof. Rodgers did not comply with the decision by the DVC Research to include her as a co-author of the published papers due to the fact that he is the editor where the other two papers were published.

3. INVESTIGATION BY THE WESTERN CAPE OFFICE OF THE PUBLIC PROTECTOR

- 3.1. The matter was assigned to and investigated by Ms Thumeka Mavuso (Investigator), under the supervision of Ms Shireen Lengeveldt (Senior Investigator). The matter was finalised by means of a Closing Report at the level of the Provincial Representative, Mr Mulao Lamula (Mr Lamula), on 08 April 2022.

- 3.2. The Investigation Team concluded that the allegation that the University of Cape Town failed to investigate Dr Gogwana's plagiarism complaint, is not substantiated on the following grounds:
- 3.2.1. When Dr Gogwana lodged the complaint with the Public Protector on 05 February 2020, alleging that she lodged a complaint of plagiarism with the University of Cape Town, and that the latter seemed unwilling to investigate the matter in a fair and transparent manner, she also alleged that she did not receive a report on the investigation that was conducted;
- 3.2.2. It was established that the University of Cape Town conducted a preliminary investigation into the complaint lodged by Dr Gogwana in June 2019, and the outcome of the investigation was that the allegation of plagiarism was weak, and that Dr Gogwana conflated authorship credit allocation with plagiarism. The University of Cape Town's preliminary investigation found that a formal investigation into the allegation of plagiarism was not required;
- 3.2.3. Dr Gogwana's contribution to the publications did not comply with the APPUNCT to be eligible for authorship or co-authorship. However, as recommended by Prof Ramutsindela in the memorandum and directed by Prof Kyobe, Dr Gogwana should be acknowledged in the three publications arising from her thesis;
- 3.2.4. The remedial action by Prof Kyobe was implemented as the correction was made to *Urolithiasis* (2018) 46:137-147 and Dr Gogwana was acknowledged by the author as follows: "*The work described in this paper is based on studies performed by Pumeza Gogwana as part of the PhD thesis (Gogwana PC, 2014)*";
- 3.2.5. On 02 August 2021, in an email to the Investigation Team, Dr Gogwana indicated that waiving her rights as an author or co-author was given under duress;

- 3.2.6. In another email to the Investigation Team of 12 November 2021, Dr Gogwana further indicated that regarding waiving her rights, she may have chosen the wrong set of words to express herself and convey her situation and that she withdraws the statement; and
- 3.2.7. Dr Gogwana also stated that Prof Le Roux offered her money or a job without doing anything and that constituted bribery. No conclusion could be drawn regarding the aforesaid, because there was no evidence provided to substantiate this allegation.

4. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

4.1. The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution of the Republic of South Africa, 1996 (the Constitution), to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

4.2. 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”.*

4.3. Section 182(2) directs that the Public Protector has the additional powers and functions prescribed by national legislation. The Public Protector’s powers are regulated and amplified by the Public Protector Act, 1994 which states, amongst others, that the Public Protector has the powers to

investigate and redress maladministration and related improprieties in the conduct of state affairs.

- 4.4. In *Faleti v the University of South Africa and Others*², the Court stated that Unisa is a higher education institution created in terms of the Higher Education Act, 1997 (HEA) and is also an administrator as contemplated in section 1(b)(ii) of the Promotion of Administrative Justice Act, 2000 (PAJA).
- 4.5. The Court stated further that Unisa exercises public power or performs a public function in accordance with the provisions of section 1(b) of PAJA. The Court held that “[T]he authorities are crystal clear that a university is a public institution of Higher Education and is governed by administrative law as contemplated by PAJA”.
- 4.6. Considering the above, the UCT is also a public higher education institution like Unisa and exercises a public power and performs a public function in terms of the Constitution, PAJA and the HEA. The UCT is an administrator as contemplated in section 1(b)(ii) of PAJA, and in the circumstances the Public Protector has the jurisdiction to investigate the conduct of the functionaries of the UCT.
- 4.7. The UCT is an organ of state in terms of section 239(b)(ii) of the Constitution read with section 65B(i) of the HEA, and as a result the Public Protector is satisfied that the complaint falls within her competency to conduct an investigation as envisaged in section 182(1) of the Constitution and section 6(4)(a)(v) of the Public Protector Act.
- 4.8. Rule 44 of the Public Protector Rules empowers the Public Protector to consider internal review applications and provides as follows:

² 2021 ZAGPPHC 482 (27 July 2021)

- (1) *Complainants who are dissatisfied with a decision of any official of the Office of the Public Protector or the Public Protector to close or refuse the investigation of a complaint, may, except where the Public Protector has released a final report in terms of 182(1)(b) of the Constitution, 1996 and Sections 8(1) of the Act, request an internal review of that decision if—*
 - (a) *the complainant is of the opinion that a decision is wrong because it was made based on incomplete or inaccurate evidence or information that contained inaccurate facts, and he or she can show this using readily available information; or*
 - (b) *there is new and relevant information that was not previously available and has a material effect on the decision made.*
- (2) *A request for an internal review of a decision must be made in writing on a form that is available from any of the offices of the Public Protector, within ninety (90) days of being informed of the decision.*
- (3) *The review will be considered by the Public Protector or his/her delegated official.*
- (4) *The person adjudicating the review application shall consider:*
 - a) *the process adopted by the investigating team and whether it was fair and adequate to address all the complaint issues raised with the Public Protector,*
 - b) *the merit of the investigating team's conclusions, and*
 - c) *whether the decision was properly explained to the complainant(s).*
- (4) *After reviewing the matter the Public Protector may:*
 - a) *uphold the original decision;*
 - b) *change the original decision; or*

c) send the matter back to the original or another investigating team for further investigation or a better explanation.

(5) Should the complainant still not be satisfied with the decision of the Public Protector, he or she may, within thirty (30) days of receipt of the decision, approach any competent court with jurisdiction to review the decision to close the investigation or refuse to investigate a complaint.

5. APPLICATION FOR INTERNAL REVIEW

5.1. Dr Gogwana lodged a request for an internal review on 13 April 2022, in terms of Rule 44(1) of the Public Protector Rules following the decision of the Public Protector's Western Cape Provincial Representative to close her complaint through a Closing Report, dated 08 April 2022.

5.2. Dr Gogwana submitted the following grounds for requesting an internal review:

5.2.1. Professor Mano Ramutsindela's (Prof Ramutsindela) memorandum dated 10 August 2018, which outlined the preliminary investigation outcome, is deemed unacceptable because his appointment violated the University of Cape Town's Conflict of Interest Policy as he did not investigate the plagiarism complaint;

5.2.2. Her understanding was that, according to the Authorship Practices Policy University of Cape Town (APPUCT), the decision regarding the plagiarism complaint rested with the Deputy Vice-Chancellor for Research (DVC Research);

5.2.3. The Investigation Team only considered Prof. Ramutsindela's recommendations and did not take into account the final decision of the DVC Research, contrary to the APPUCT which specifies that decisions and

recommendations in authorship disputes are the responsibility of the DVC Research;

5.2.4. She disputes the University of Cape Town's assertion that she did not approve the final published paper, insisting instead that she made necessary corrections and submitted it to Prof Allan Rodgers (Prof Rodgers) for journal submission. However, Prof Rodgers retained the paper, revised it, and submitted it as the main author without crediting her as a co-author;

5.2.5. She concedes to waiving her rights to the paper during a meeting with Prof Anton le Roex (Prof le Roex) in an email dated 26 October 2016, because she objected to Dr Jappie Muhammed (Dr Muhammed), and Stellenbosch University being included as authors. She argues that these papers, which credited Dr Muhammed and Stellenbosch University as authors, were not based on her thesis. Consequently, she contends that their inclusion violated APPUCT and she asserted, "*... they should publish without me and that I should not be acknowledged*"; and

5.2.6. The Investigation Team failed to address the fraud allegation regarding the inclusion of Dr Muhammed and Stellenbosch University, despite being informed early in the investigation that fraud would be examined. Thus, the issue of whether waiving her rights on the two papers was lawful or not was not investigated by the Investigation Team.

Applicable law

Constitution of the Republic of South Africa, 1996

5.3. Section 33 of the Constitution provides that:

- (1) *Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.*
- (2) *Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.*

5.4. Section 195(1) of the Constitution stipulates the democratic values and principles governing public administration by stating that:

- (1) *Public Administration must be governed by the democratic values and principles enshrined in the Constitution, including amongst others, 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.*
 - (c) *Public administration must be development oriented.*
 - (d) *Services must be provided impartially, fairly, equitably and without bias.*
 - (e) *People's needs must be responded to, and the public must be encouraged to participate in policy-making.*
 - (f) *Public administration must be accountable.*
 - (g) *Transparency must be fostered by providing the public with timely, accessible, and accurate information.*

Promotion of Administrative Justice Act, 2000 (PAJA)

5.5. Section 3(1) of PAJA prescribes that “*Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.*”

Higher Education Act, 1997

- 5.6. Section 20 of the Higher Education Act³ (the Act) establishes public higher education institutions and in terms of subsection (4) every public higher education institution that is established under this Act is a juristic person.

Authorship Practices Policy of the University of Cape Town PC 1 /2011 (APPUCT)

- 5.7. Paragraph 2 of the APPUCT provides that *“a distinction should be made between disputes regarding authorship credit and allegations of plagiarism.”*
- 5.8. Page 1, paragraph 2 of the APPUCT, states that a *“Publication must give appropriate credit to all authors for the roles in the research”*.
- 5.9. Pages 2 to 3 of the APPUCT provide three principles for judging eligibility for authorship as:
- “(1) each author should have participated in formulating the research problem, or analysing and interpreting the data or have made other substantial scholarly effort or a combination of these; and/or*
- (2) Have participated in writing the paper; and*
- (3) Should have approved the final version for publication and be prepared to defend the publication against criticisms.”*
- 5.10. The APPUCT further stipulates that *“any person who does not meet the eligibility criteria [for authorship] but who has made other substantial contributions should be acknowledged in the publication”*.

³ Act 101 of 1997.

UCT Policy on Conflict of Interest at UCT and on Disclosures of interests to be made by members of the University, 2014 (UCT Policy on Conflict of Interest)

5.11. Paragraph 4 of the UCT Policy on Conflict of Interest provides that:

“4 In any situation where a potential conflict of interest may arise, the person involved must withdraw from processes and decisions.

4.1. A member of Council, a Committee or of staff with a conflict of interest is obliged to recuse himself or herself (immediately withdraw) from the situation which is linked to the conflict, or during the discussion of the matter and the voting thereon...”

UCT Policy and Procedures for Breach of Research Ethics Code and Allegations of Misconduct in Research, 2017 (the Ethics Code)

5.12. Paragraph 4 of the Ethics Code provides that:

“4.1.1 A person who suspects research wrongdoing should act in terms of these or other appropriate procedures; use of the UCT Whistleblower policy, for example, may be more appropriate for acute circumstances associated with matters of health and safety.

4.1.2 The Faculty-based Adviser on Research Integrity should be approached in confidence for advice on whether and how to proceed, so that the appropriate channels and procedures are accessed as soon as possible.

4.1.3 The allegation should be dealt with at a level that best matches the facts;

4.1.4 *A complaint not resolved in terms of 4.1.3 must be lodged in terms of the Faculty level Procedures or as an escalated matter in terms of the Escalated Procedures.*

4.1.5 *The formal process includes an inquiry, a formal investigation, the findings of the investigation and the outcome”.*

5.13. Paragraph 4.2.3 of the Ethics Code further provides that:

“Before a conclusion is reached that a formal investigation is warranted, the Adviser should conduct a preliminary informal enquiry to the circumstances. The purpose is to establish whether, on the face of it, if an answerable case can be made out. The nature of the complaint and whether it is contested may determine the level at which the enquiry is initiated, e.g. at departmental, school or faculty level. Allegations of serious misconduct must be particularly carefully managed to ensure that due process is followed. UCT Policy & Procedures for Breach of Research Ethics Codes and Allegations of Misconduct in Research. The informal enquiry should be prompt, discreet and effective, and should reach a decision about whether formal investigative procedures should be instituted, preferably within 10 working days of the initial allegation being brought. If the informal enquiry indicates the need for a formal investigation, then the matter should be escalated in accordance with the procedures under 5.2ff. If the informal enquiry shows that further action is not warranted because the complaint can be dealt with appropriately elsewhere or by other means, then no further action is taken. The Adviser writes a report for the record. If the matter is not to be dealt with at Faculty-level, the Escalated Matters procedures below must be followed”.

5.14. Paragraph 5.5 of the Ethics Code outlines the resolution and outcome process and stipulates that:

“The report and the record are forwarded to the DVC responsible for research, who decides what action to take considering the report. The DVC notifies the respondent, the Dean, and the Registrar of the decision”.

UCT Whistleblowing Policy, 2023

5.15. Paragraph 9 of the UCT Whistleblowing Policy stipulates that; *“where a report is received that constitutes a protected disclosure, and where the whistleblower makes their identity and contact details known, they will be communicated with as follows:*

“Once any investigation has been concluded, the whistleblower will be advised regarding its outcome and any arising action”.

Analysis

5.16. In her complaint to the Public Protector, Dr Gogwana substantively alleged that the University of Cape Town management, including the Ombud failed to investigate her complaint of plagiarism relating to her paper as she was not provided with a report of the investigation that was undertaken.

5.17. As indicated in paragraph 3 above, the Investigation Team concluded that the allegation against the University of Cape Town management was not substantiated on the grounds that the evidence provided by the University revealed that a preliminary investigation into the complaint lodged by Dr Gogwana in June 2019 was conducted and the outcome of the investigation which was communicated to her, found that the allegation of plagiarism was weak, and that Dr Gogwana conflated authorship credit allocation with plagiarism.

5.18. The University of Cape Town’s preliminary investigation further concluded that a formal investigation into the allegation of plagiarism was not required.

This conclusion was based on the finding that Dr Gogwana's contribution to the publications did not comply with the APPUNCT to be eligible for authorship or co-authorship. However, as recommended by Prof Ramutsindela in the memorandum and directed by Prof Kyobe, Dr Gogwana, should be acknowledged in the three publications arising from her thesis.

- 5.19. Evidence further revealed that the remedial action by Prof Kyobe was implemented as the correction was made to Urolithiasis (2018) 46:137-147 and Dr Gogwana was acknowledged by the author as follows: "*The work described in this paper is based on studies performed by Pumeza Gogwana as part of the PhD thesis (Gogwana PC, 2014)*".
- 5.20. The evidence before the Public Protector further indicates that on 02 August 2021, in an email to the Investigation Team, whilst Dr Gogwana conceded to having waived her rights as an author or co-author, however, she alleged that such a waiver was given under duress. She further stated in another email of 12 November 2021, to the Investigation Team that she may have chosen the wrong set of words to express herself and convey her situation and that she withdraws the statement regarding the waiver of her rights.
- 5.21. Notably, Dr Gogwana did not provide the Investigation Team with any evidence to support her allegation that she was coerced to waive her rights and/or indicate the person against whom such allegations were made.
- 5.22. It must be noted that the investigation approach adopted by the Investigation Team did not seek to establish the existence of a conflict of interest by the functionaries of the University who were involved in the preliminary investigation of the plagiarism complaint lodged by Dr Gogwana. Therefore, the submission by Dr Gogwana in her review application that Prof Ramutsindela's memorandum dated 10 August 2018, which outlined preliminary investigation outcome, is deemed unacceptable

because his appointment violated the University of Cape Town Conflict of Interest Policy and he did not investigate the plagiarism complaint, were not canvassed. Furthermore, this allegation did not form part of the original complaint from Dr Gogwana to the Public Protector.

- 5.23. Rule 44(1)(b) of the Public Protector Rules empowers the Public Protector to consider internal review applications where there is new and relevant information that was not previously available and has a material effect on the decision made. In this instance, evidence before the Public Protector indicates that, after Dr Gogwana lodged a complaint of plagiarism on 04 June 2018, Prof Kyobe, the DVC Research, requested Prof Blockman through an email dated 13 June 2018, to investigate the complaint and provide him with the outcome.
- 5.24. On 21 June 2018, Prof Ramutsindela notified Dr Gogwana of his appointment by the then Dean of Science, Prof Bourne as the overseer of the preliminary investigation of her plagiarism complaint. Dr Gogwana expressed her willingness to participate in this preliminary investigation and did not raise any objection regarding the appointment of Prof Ramutsindela.
- 5.25. Furthermore, Dr Gogwana has not provided the Public Protector with any substantive basis for alleging that Prof Ramutsindela was conflicted and should not been assigned to oversee the investigation of her complaint.
- 5.26. Nevertheless, the Public Protector established in the response from the University that Prof Bourne appointed Prof Ramutsindela as the overseer of the preliminary investigation as she previously mediated a dispute between Dr Gogwana and Prof Rodgers on the issues of authorship of the papers in 2016. Therefore, Prof Bourne's previous involvement in the matter could have resulted in a perceived and/or actual conflict of interest, and her pro-active delegation of the preliminary investigation to be overseen by Prof Ramutsindela is deemed prudent under the circumstances.

- 5.27. Paragraph 4 of the UCT Policy on Conflict of Interest provides that where a potential conflict of interest may arise, the person involved must withdraw from processes and decisions *and a member of Council, a Committee or of staff with a conflict of interest is obliged to recuse himself or herself (immediately withdraw) from the situation which is linked to the conflict, or during the discussion of the matter and the voting thereon...*"
- 5.27.1. Accordingly, the Public Protector deems the appointment of Prof Ramutsindela to have been a corrective measure to address potential conflicts stemming from Prof Bourne's previous involvement. The University of Cape Town's Conflict of Interest Policy does not appear to have been violated in this instance, as the appointment of Prof Ramutsindela was made to ensure impartiality and adherence to policy guidelines.
- 5.28. Therefore, the issue of conflict of interest cannot be brought as a ground for review of the conclusions of the Investigation Team as this issue was neither raised during 2018 with the functionaries of the University of Cape Town nor was it part of Dr Gogwana's initial complaint to the Public Protector.
- 5.29. In addition, as indicated above, Prof Ramutsindela was only appointed to oversee the investigation. Evidence before the Public Protector revealed that Prof Judith Sealy (Prof Sealy) was appointed to conduct the investigation. Prof Ramutsindela thereafter drafted a memorandum dated 10 August 2018, with recommendations to Prof Kyobe following the completion of the preliminary investigation by Prof Sealy.
- 5.30. Dr Gogwana further raised in her grounds for review that according to the APPUCT, the decision regarding the plagiarism complaint rested with the DVC Research. The Public Protector established that in this instance, the decision on the outcome of the plagiarism complaint lodged by Dr Gogwana was taken by Prof Kyobe, who was the DVC Research. Dr Gogwana did

not provide the Public Protector with any evidence indicating that the decision was made by someone other than Prof Kyobe.

- 5.31. The Investigation Team considered the evidence and responses from the University of Cape Town which included, *inter alia*, copies of emails dated 22 September 2018 from Prof Kyobe addressed to Prof Rodgers communicating his decision on the plagiarism complaint following a preliminary investigation by Prof Sealy and recommendations by Prof Ramutsindela. In his decision, Prof Kyobe concluded as follows: “*acknowledge Dr Gogwana in the 3 publications arising from her thesis or retract the papers*”. This decision was implemented by Prof Rodgers.
- 5.32. In addition, the investigation established that the preliminary investigation outcome was communicated to Dr Gogwana. This is evident from the document compiled by Dr Gogwana dated 01 August 2018 in response to Prof Sealy’s preliminary investigation report. Furthermore, Dr Gogwana was carbon copied and/or one of the recipients of the email from Prof Kyobe dated 22 September 2018, communicating his decision on the matter.
- 5.33. It is further worth noting that in Dr Gogwana’s original email complaint dated 05 February 2020 to the Public Protector, she clearly stated, *inter alia*, that “*Prof. Manu Ramutsindela was appointed to be the overseer of the investigation. A preliminary investigation was conducted and both parties responded to the preliminary investigation report*”. [Own emphasis]
- 5.34. Consequently, it cannot be envisioned that Dr Gogwana excluded herself in the statement “*both parties responded to the preliminary investigation report*” as it appears in her complaint to the Public Protector. The converse can be inferred in that this statement serves as testimony that at the time of lodging the complaint with the Public Protector, Dr Gogwana was aware of the outcome of the preliminary investigation.

- 5.35. Dr. Gogwana further argued that the Investigation Team focused solely on the recommendations of Prof Ramutsindela and did not adequately consider the final decision made by Prof Kyobe, as stipulated by the APPUCT. However, this contention is incorrect and is not supported by any empirical evidence as the initial report issued by the Investigation Team clearly entails the decision by Prof Kyobe which was ultimately implemented.
- 5.36. Furthermore, paragraph 6.1.3 of the Closing Report issued by the Investigation Team indicates *that “Dr Gogwana’s contribution to the publications did not comply with the APPUCT to be eligible for authorship or co-authorship. However, as recommended by Professor Ramutsindela and directed by Prof Kyobe, the Complainant (Dr Gogwana) should be acknowledged in the three publications arising from her thesis”*.
- 5.37. The following averments by Dr Gogwana will be dealt with collectively as the information and evidence related thereto, is the same to avoid being tautologous:
- 5.38.1 Dr Gogwana disputes the University of Cape Town's assertion that she did not approve the final published paper, insisting instead that she made necessary corrections and submitted it to Prof Rodgers for journal submission. However, Prof Rodgers retained the paper, revised it, and submitted it as the main author without crediting her as a co-author; and
- 5.38.2 She concedes waiving her rights to the paper during a meeting with Prof le Roex and in an email dated 26 October 2016, because she objected to Dr Muhammed and Stellenbosch University being included as authors. She argues that these papers, which credited Dr Muhammed and Stellenbosch University as authors, were not based on her thesis. Consequently, she contends that their inclusion violated APPUCT and asserted, *“... they should publish without me and that I should not be acknowledged”*.

- 5.39 The primary objective of the investigation by the Investigation Team sought to determine if the investigation by the University of Cape Town was conducted in accordance with the APPUCT, a guideline that seeks to offer broad guidance on authorship matters across the University of Cape Town and Dispute Resolution Mechanisms.
- 5.40 The investigation revealed that there was a dispute between Dr Gogwana and her former Supervisor Prof Rodgers regarding the writing of the papers, correcting the papers and submission of the papers to the publishers. This dispute dates back to 2016 and was previously mediated by Prof Bourne and Prof le Roex.
- 5.41 Based on the evidence analysed during the investigation, it was established that Dr Gogwana, during her dispute with Prof Rodgers, waived her authorship rights and stated that she wanted nothing to do with the papers emanating from the thesis and that Prof Rodgers could go ahead with the publishing of the papers without including her as a co-author or to mention her in the acknowledgements.
- 5.42 Dr Gogwana informed the Investigation Team that when she waived her authorship rights, she might have used a wrong set of words, and she was at that time under duress. The Public Protector's Closing Report outlined that no conclusion could be drawn in that regard as there was no evidence to substantiate that assertion.
- 5.43 According to the APPUCT, the principles for judging eligibility for authorship involve the following:
- “Each person who makes a meaningful contribution to the research project should be credited appropriately. An author is someone who makes a significant or substantial contribution to the production of the publication. The precise meaning of ‘significant or substantial contribution’ may be discipline-specific but is commonly understood as requiring that each author*

should have participated in formulating the research problem, or analysing and interpreting the data or have made other substantial scholarly effort or a combination of these; and/or have participated in writing the paper; and should have approved the final version for publication and be prepared to defend the publication against criticisms.”

- 5.44 Taking into consideration the above section of the APPUCT, it is paramount to indicate that it was not for the Public Protector to determine whether or not an act of plagiarism occurred, however, the Public Protector’s investigation focused on determining whether the functionaries of the University of Cape Town failed to investigate the complaint of plagiarism lodged by Dr Gogwana in compliance with the University of Cape Town Institutional Statute, Rules, and relevant policies regulating the handling of complaints in the University of Cape Town.
- 5.45 It was also not the function of the Public Protector to review either the outcome of the investigation conducted or the decisions made by functionaries of the University of Cape Town relating to the plagiarism complaint, as such decisions are clothed with academic autonomy. The exercise of determining whether there was plagiarism or not, is an academic judgment based on academics assessment of the subject matter that is alleged to have been plagiarised.
- 5.46 In this matter, the investigation of the Public Protector focused on whether there was compliance or non-compliance with investigative procedures and processes by the functionaries of the University of Cape Town upon receipt of the complaint lodged by Dr Gogwana. This includes action taken and/or lack of action taken by functionaries of the University of Cape Town in line with the relevant legislation, the University Statute and policy guidelines and prescripts regulating the handling of a plagiarism complaint in the institution.

- 5.47 The contention by Dr Gogwana that the Investigation Team did not provide feedback on the fraud allegation relating to the inclusion of Dr Muhammed and the Stellenbosch University despite having been communicated at the early stages of the investigation that the fraud was going to be investigated and thus, the issue of whether waiving her rights on the two papers was lawful or not was not investigated by the Investigation Team is further without basis.
- 5.48 The allegations of fraud were never investigated and there was no undertaking by the Investigation Team that the alleged fraud would be investigated. The Public Protector's mandate is informed by section 182(1) of the Constitution which entails investigation of 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.
- 5.49 The Public Protector Act confers additional powers to the Public Protector in terms of sections 6(4) and (5).
- 5.50 Neither the Constitution nor the Public Protector Act confers upon the Public Protector the power to investigate fraud or criminal matters, however, in terms of section 6(4)(c)(i), *"the Public Protector shall be competent to at a time prior to, during or after an investigation— if she is of the opinion that the facts disclose the commission of an offence by any person, to bring the matter to the notice of the relevant authority; and charged with prosecutions"*. The general principle is that criminal offences are investigated by the South African Police Service.
- 5.51 Dr Gogwana was advised during the consultation process by the Investigation Team, that in relation to the alleged fraud, she should approach the South African Police Service (SAPS) nearest to her and lodge a complaint of fraud as it is not within the purview of the Public Protector to investigate the alleged criminal conduct.

5.52 Furthermore, the allegation of fraud by Dr Muhamed and the University of Stellenbosch was made within the ambit of the plagiarism complaint. Therefore, these allegations also fall within the academic autonomy and must be dealt with in accordance with the applicable prescripts of the institutions involved, in addition to reporting the matter to the police.

6. OUTCOME OF THE APPLICATION FOR INTERNAL REVIEW

6.1 Based on the analysis of the information available in its entirety, against the Complainant's reasons for requesting an internal review, it is the Public Protector's considered view that the request for internal review of the closure of the matter by the Western Cape office of the Public Protector to investigate cannot succeed for the following reasons:

6.1.2. Dr Gogwana did not submit any new or relevant evidence substantiating her request for an internal review. The issues she has raised in the application for review were addressed in the original investigation;

6.1.3. Dr Gogwana neither advanced factual reasons nor legislative authority that gives the Public Protector jurisdiction to investigate the alleged plagiarism or review of the decision taken by Prof Kyobe in relation to the outcome of the investigation conducted by Prof Sealy.

6.1.4. The complaint and request for an internal review, submitted to the Public Protector, were investigated in conformity with the Constitution, the Public Protector Act and the Public Protector Rules. Dr Gogwana did not substantiate why she is alleging that the University of Cape Town did not investigate her complaint, by providing additional or new information gainsaying the evidence in possession of the Public Protector.

6.1.5. Based on the evidence before the Public Protector, the conduct of the functionaries of the University of Cape Town does not constitute improper

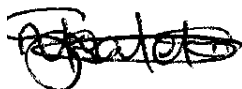
conduct as envisaged in section 182(1) of the Constitution and does not amount to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

6.2. Dr Gogwana was not satisfied with the outcome of the internal review by the Public Protector's delegated official and in an email, dated 11 January 2023, requested that the decision be considered by the Public Protector on the basis that she wanted to take the Closing Report on judicial review.

6.3. The grounds for review advanced by Dr Gogwana are not substantiated and the decision to close the matter is confirmed.

7. CONCLUSION

7.1 The Public Protector considers this matter as finalised and cannot take it further.



ADV KHOLEKA GCALEKA
PUBLIC PROTECTOR
REPUBLIC OF SOUTH AFRICA
DATE: 30 SEPTEMBER 2024

Assisted by Adv. Deon Barnard
Executive Manager: PII Coastal Branch