

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



**PUBLIC PROTECTOR  
SOUTH AFRICA**

*“Allegations of improper conduct and maladministration relating to wrongful burial  
of Ms Keitumetse Koloane in the grave of the late brother of Mr Izak Raymond  
Louw, by the Sol Plaatje Local Municipality in 2019”*

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT  
AND MALADMINISTRATION RELATING TO WRONGFUL BURIAL OF THE LATE MS  
KEITUMETSE KOLOANE IN THE GRAVE OF THE LATE BROTHER OF MR IZAK  
RAYMOND LOUW BY THE SOL PLAATJE MUNICIPALITY IN 2019**

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## **Executive Summary**

- (i) This is a Public Protector's report in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, (the Constitution) and section 8(1) of the Public Protector Act 23 of 1994 (the Public Protector Act).
- (ii) The report communicates the Public Protector's findings and appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, following an investigation into allegations of improper conduct and maladministration relating to wrongful burial of the late Ms Keitumetse Koloane in the grave of the late brother of Mr Izak Raymond Louw, by the Sol Plaatje Local Municipality (Municipality) in 2019.
- (iii) The complaint was lodged on 15 January 2020 by Mr Izak Raymond Louw (the Complainant), at the Northern Cape Provincial Office of the Public Protector South Africa in Kimberley.
- (iv) The Complainant alleged that on 30 November 2019, the Municipality removed the tombstone on the grave of his late brother, Mr Richard Paul Louw, and buried Ms Keitumetse Koloane on top of his late brother, at the West End Cemetery in Kimberley, without the permission of his family.
- (v) The Complainant further alleged that after he established during his visit to the Cemetery that the grave of his brother, Mr Richard Louw, had been tampered with, the matter was reported to Mr Doctor Letebejane, the Cemetery Manager of the Municipality. He promised that the problem would be rectified as soon as possible, but nothing happened despite several enquiries to the Municipality by the family.
- (vi) In essence, the Complainant alleged that the Sol Plaatje Municipality caused the wrongful burial of Ms Keitumetse Koloane in the grave of his late brother at the

West End Cemetery in November 2019 and that the conduct of the Municipality was improper, constitutes maladministration and prejudiced his family.

(vii) Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:

(a) Whether the Municipality wrongfully buried Ms Keitumetse Koloane in the grave of the late brother of Mr Izak Raymond Louw in 2019; and if so, whether the conduct of the Municipality was improper, constitutes maladministration and prejudiced his family.

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

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

**(a) Regarding whether the Municipality wrongfully buried Ms Keitumetse Koloane in the grave of the late brother of Mr Izak Raymond Louw in 2019; and if so, whether the conduct of the Municipality was improper, constitutes maladministration and prejudiced his family**

(aa) The allegation that the Municipality wrongfully buried Ms Keitumetse Koloane in the grave of the late brother of Mr Izak Raymond Louw in 2019, is substantiated.

- (bb) The Municipality failed to ensure that the graves were properly marked, a number was affixed to the grave and the register of graves properly managed, as required by the Sol Plaatje Municipality Cemeteries By-law, 2006.
- (cc) The Municipality's failure to rectify the wrongful burial of Ms Keitumetse Koloane in the grave of the late brother of Mr Izak Raymond Louw since 2019, was in violation of sections 4, 5(1) and (2) of the Sol Plaatje Municipality Cemeteries By-law, 2006, and Item 2 of the Code of Conduct for Municipal Staff Members as set out in Schedule 2 to the Municipal Systems Act. It also prejudiced the Complainant and his family as they had to bear the trauma caused by the wrongful burial and will also have to go through the ordeal of exhumation and reburial.
- (dd) The Municipality's conduct accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(ii) of the Public Protector Act.
- (x) The Municipal Manager conceded in his response to the section 7(9) Notice that the Municipality was at fault and indicated that the Municipality was in the process of improving the registry system of the cemeteries. He further indicated that the Municipality is committed to resolve the matter. Officials of the Municipality will be meeting with the families involved to endeavour to find an amicable solution, failing which the Municipality will obtain a court order for the exhumation and reburial of Ms Koloane and will make a financial contribution in regard thereto.
- (xi) The appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution is the following:

**(a) The Municipal Manager of the Municipality to:**

- (aa) After consultation with the families involved, approach the relevant sphere of government or approach the Magistrate's Court in terms of section 26(1)(a) and (b) of the National Health Act Regulations relating to the management of human remains, 2013 section 16(8) of the By-Law in order to obtain an exhumation order that will enable the Municipality to exhume the body of Ms Koloane that was wrongfully buried in the grave of the late brother of the Complainant, within sixty (60) working days from the date of this report.
- (bb) Ensure that once the Court order is granted, make a financial contribution to the family concerned for the costs of the exhumation and reburial, within sixty (60) working days from the date of this report.
- (cc) Ensure that tombstone that was removed from Mr Louw's grave is returned to its original position, within ninety (90) working days from the date of this report.
- (dd) Take the appropriate steps in respect of disciplinary action against the officials of the Municipality who contributed to undue delay in the rectification of the wrongful burial of Ms Koloane in the grave of the late brother of the Complainant in terms of the Consequence Management Policy of the Municipality, within sixty (60) working days from the date of this report.
- (ee) Embark on auditing all existing graves to ensure correct marking before loading the information on a newly developed digitized GPRS system in pre-empting wrongful burials in wrong graves, within sixty (60) working days from the date of this report.
- (ff) Take the appropriate steps to expedite the finalisation of the Sol Plaatje Municipal Cemeteries Policy to regulate the management of cemeteries and the threshold capped costs paid by the Municipality for the performance of

rituals during exhumation of remains of people, and to provide training to the relevant officials that will have to implement the Policy, within sixty (60) working days from the date of this report.

- (gg) Ensure that the Audit Committee of the Municipality report regularly to the Municipal Council on the audit outcomes relating to internal audit plan which includes the digitized GPRS system, within sixty (60) working days from the date of this report.
- (hh) Internal Audit must on an annual basis, review the adequacy and effectiveness of the municipality's system of internal control, risk management and supply chain management. It is further recommended that the Audit Committee must consider in all its meetings, the internal audit and AGSA reports to ensure that recommendations are implemented.
- (ii) Establish internal complaint mechanism which will address service delivery complaints raised by the community served by the Municipality, within sixty (60) working days from the date of this report.
- (jj) Report to the Council on the implementation of the remedial action taken in paragraphs (xi) (aa) to (ii) above within ninety (90) working days from the date of this report, and provide the Public Protector with a copy thereof.

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION RELATING TO WRONGFUL BURIAL OF THE LATE MS KEITUMETSE KOLOANE IN THE GRAVE OF THE LATE BROTHER OF MR IZAK RAYMOND LOUW BY THE SOL PLAATJE MUNICIPALITY IN 2019**

**1. INTRODUCTION**

1.1 This is a report of the Public Protector, issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act 23 of 1994 (the Public Protector Act).

1.2 The report is submitted in terms of sections 8(1) of the Public Protector Act to the following persons, to inform them of the outcome of the investigation and the remedial action taken

1.2.1 Dr Zamani Saul, the Premier of the Northern Cape Province.

1.2.2 Mr B Vaas, the Northern Cape Member of the Executive Council (MEC) for Co-operative Governance, Human Settlements and Traditional Affairs (COGHSTA).

1.2.3 Mr B Lenkoe, the Head of the Northern Cape Department of COGHSTA.

1.2.4 Ms Nomizizi Maputle, the Speaker of the Municipality.

1.2.5 Mr Kagisho Sonyoni, the Executive Mayor of the Municipality.



1.2.6 Mr Goolam Akharwaray, the Municipal Manager of the Municipality.

1.3 A copy of the report is also provided to Mr Izak Raymond Louw, who lodged the complaint (Complainant).

1.4 The report relates to an investigation into allegations of improper conduct and maladministration relating to the wrongful burial of Ms Keitumetse Koloane in the grave of the late brother of Mr Izak Raymond Louw, by the Sol Plaatje Local Municipality (Municipality) in 2019.

## **2. THE COMPLAINT**

2.1. The complaint was lodged on 15 January 2020 by Mr Izak Raymond Louw (the Complainant), at the Northern Cape Provincial Office of the Public Protector South Africa in Kimberley.

2.2. The Complainant alleged that on 30 November 2019, the Municipality removed the tombstone on the grave of his late brother, Mr Richard Paul Louw, and buried Ms Keitumetse Koloane on top of his late brother, at the West End Cemetery in Kimberley, without the permission of his family.

2.3. The Complainant further alleged that after he established during his visit to the Cemetery that the grave of his brother, Mr Richard Louw, had been tampered with, the matter was reported to Mr Doctor Letebejane, the Cemetery Manager of the Municipality. He promised that the problem would be rectified as soon as possible, but nothing happened despite several enquiries to the Municipality by the family.

2.4. In essence, the Complainant alleged that the Sol Plaatje Municipality caused the wrongful burial of Ms Keitumetse Koloane in the grave of his late brother at the

West End Cemetery in November 2019 and that the conduct of the Municipality was improper, constitutes maladministration and prejudiced his family.

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

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

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

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

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

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

3.4 In the matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect.<sup>1</sup> The Constitutional Court further held that:

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<sup>1</sup> [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].

*“When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.”<sup>2</sup>*

- 3.5 In the above-mentioned constitutional matter, Mogoeng CJ, 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 values 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

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<sup>2</sup> *Supra* at para [73].

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 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 the words suggests that she has to leave the exercise of the power to take remedial action to other institutions or that it is the power that is by its nature of no consequence (paragraph 71(a));

3.5.8 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 In the matter of the *President of the Republic of South Africa v Office of the Public Protector and Others, Case No 91139/2016 (13 December 2017)*, the Court held as follows when confirming the powers of the Public Protector:

3.6.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the Constitution (para 71);

3.6.2 The Public Protector has the power to take remedial action, which include instructing the President to exercise powers entrusted on him under the Constitution if that is required to remedy the harm in question. (para 82);

- 3.6.3 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.
- 3.6.4 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings. (para 104);
- 3.6.5 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. (Para 105);
- 3.6.6 The fact that there are no firm findings on the wrong doing, does not prohibit the Public Protector from taking remedial action. The Public Protector's observations constitute *prima facie* findings that point to serious misconduct (paragraphs 107 and 108); and
- 3.6.7 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (paragraph 112 of the judgment).
- 3.7 The Municipality is an organ of state and its conduct amounts to conduct in state affairs, and as a result, the matter falls within the jurisdiction of the Public Protector.
- 3.8 The Public Protector's power 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 investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

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

### **4.2 Approach to the investigation**

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

4.2.1.1 What happened?

4.2.1.2 What should have happened?

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

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

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether the Municipality wrongfully buried the late Ms Keitumetse Koloane in the grave of the late brother of Mr Izak Raymond Louw in 2019; and if so, whether the

conduct of the Municipality was improper, constitutes maladministration and prejudiced his family.

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

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

#### **4.3 On analysis of the complaint, the following issue was identified to inform and focus the investigation:**

4.3.1. Whether the Municipality wrongfully buried Ms Keitumetse Koloane in the grave of the late brother of Mr Izak Raymond Louw in 2019; and if so, whether the conduct of the Municipality was improper, constitutes maladministration and prejudiced his family.

#### **4.4 The Key Sources of information**

##### **4.4.1 Documents**

4.4.1.1. Copy of an Email from Ms T Maropong, the Manager: Sport, Art, Culture and Recreation of the Municipality, dated 17 March 2020.

4.4.1.2. Copy of a letter to the Complainant from Municipality, dated 17 August 2020.

4.4.1.3. Copy of an Affidavit of the Complainant, dated 09 January 2020.

4.4.1.4. Copy of a Newspaper Article published by the *Diamond Fields Advertiser* on 15 January 2020.

4.4.1.5. Copy of an undated report titled “*Koloane vs Louw Wrongful Burial*” obtained during the investigation from Ms Tumelo Maropong, the Chief: Parks and Recreation of the Municipality, on 17 March 2020

#### **4.4.2. Meetings held**

4.4.2.1 Meeting held with on 11 February 2020, with Mr Doctor Letebejane, the Cemetery Manager of the Municipality.

4.4.2.2 Meeting held with Mr Goolam Akharwaray, the Municipal Manager of the Municipality on 2 December 2021

#### **4.4.3. Legislation and other prescripts**

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

4.4.3.2 The Public Protector Act No 23 of 1994.

4.4.3.3 The Local Government: Municipal Systems Act 32 of 2000. (Municipal Systems Act).

4.4.3.4 The Sol Plaatje Municipality Cemeteries By-law of 2006.

4.4.3.5 The National Health Act Regulations relating to the management of human remains, 2013.

#### **4.4.4 Notice issued in terms of section 7(9) of the Public Protector Act**



4.4.4.1 A Notice was issued on 10 November 2021 in terms of section 7(9) of the Public Protector Act to Mr Goolam Akharwaray, the Municipal Manager of the Municipality, affording him an opportunity to respond to the evidence obtained during the investigation.

4.4.4.2 The Notice was also sent to:

- (a) Dr Z Saul, the Premier of the Northern Cape.
- (b) Mr B Vass, the MEC for Co-operative Governance, Human Settlements and Traditional Affairs
- (c) Mr B S Lenkoe, the HOD of COGHSTA.
- (d) The former Speaker of the Municipality.
- (e) The former Executive Mayor of the Municipality.
- (f) Ms T Moropong, the Chief: Parks & Recreation of the Municipality.
- (g) Mr D Letebejane, the Cemetery Manager of the Municipality.
- (h) Mr Pitso, the Manager: Legal Unit of the Municipality, respectively.

4.4.4.3 Only the Municipal Manager Mr Akharwaray responded to the Notice, on 23 November 2021.

4.4.4.4 Copy of the Letter from the Municipal Manager dated 23 November 2021.

4.4.4.5 Copy of the Letter from the Municipal Manager dated 6 December 2021.

## **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 the Municipality wrongfully buried Ms Keitumetse Koloane in the grave of the late brother of Mr Izak Raymond Louw in 2019;**

**and if so, whether the conduct of the Municipality was improper, constitutes maladministration and prejudiced his family:**

*Common cause or undisputed facts*

- 5.1.1. It is common cause that the late Mr Richard Paul Louw, the elder brother of the Complainant, was buried in Grave Cath T-A-1<sup>A</sup> at the West End Cemetery, Kimberley, on 9 June 2012.
- 5.1.2. In November 2019, the Municipality authorised the removal of a tombstone on the grave of the late Mr Richard Louw i.e. Cath T-A-1<sup>A</sup>.
- 5.1.3. On 30 November 2019, Ms Keitumetse Koloane was buried, without the permission of the Louw family in Grave Cath T-A-1<sup>A</sup> where the late Mr Richard Louw was already buried.
- 5.1.4. On 09 January 2020, Mr Doctor Letebejane, the Cemetery Manager of the Municipality, advised the Complainant at the Municipality's West End Cemetery Office to go to the nearest police station to make an affidavit to give the Municipality permission to open his late brother's grave and exhume the remains of the "unknown" person that was buried on top of his late brother.

*Issues in dispute*

- 5.1.5. The Complainant contended that the Municipality wrongfully buried Ms Keitumetse Koloane in the grave of his late brother in 2019.
- 5.1.6. The Complainant further stated that the family had initially planned that Grave Cath T-A-1<sup>A</sup> would be used to bury Mr Peter Louw, the twin brother of the late Mr Richard Louw, in terms of tradition.

- 5.1.7. In his response to the allegations during the investigation in a meeting held on 11 February 2020, Mr Doctor Letebejane, the Cemetery Manager of the Municipality conceded that the reuse of Cath T-A-1<sup>A</sup> by the Municipality occurred in November 2019.
- 5.1.8. Mr Letebejane further stated that Mr Rhodes May, the Supervisor/Controller of all Cemeteries of the Municipality authorised the reuse of the Grave Cath T-A-1<sup>A</sup> without consulting the Louw family.
- 5.1.9. Mr Letebejane also indicated that the late Ms Keitumetse Koloane was supposed to be buried in “Grave A3” i.e. her father’s grave. He stated that:

*“A service provider was appointed by the Municipality to remove the tombstone from Grave A2 and erect it on Grave A1. The normal process involves the consultation of the family by the Municipality for the reuse of the grave”.*

- 5.1.10. According to a newspaper article titled “No answers after grave mix-up” published in the *Diamond Fields Advertiser Newspaper* (DFA) on 15 January 2020, Mr Sello Matsie, the Sol Plaatje Municipal Spokesperson, apologised to the Koloane and Louw families for the inconvenience that the mix up had caused and stated that an investigation would be conducted.
- 5.1.11. In an undated report titled “*Koloane vs Louw Wrongful Burial*” obtained during the investigation from Ms Tumelo Maropong, the Chief: Parks and Recreation of the Municipality, on 17 March 2020 she conceded that the mistake was on the part of the Municipality in that:
- 5.1.11.1. Due to shortage of burial space, various pathways were used for burials at the cemeteries that are operational, namely West End, ABC and Roodepan Cemeteries;

- 5.1.11.2. At the West End Cemetery, Catholic Block T-Row A, the first grave was dug in the pathway to bury Mr Richard Louw in Grave Cath T-A-1<sup>A</sup> on 9 June 2012. The second grave was subsequently dug on the left side of Cath T-A-1<sup>A</sup> to bury the late Mr Donald Semau in Grave Cath T-A-1<sup>A</sup> a week later on 16 June 2012. Due to lack of adequate space, the third grave could not be dug towards the left side of Mr Semau's grave but was instead dug on the right side of Mr Louw's grave (Cath T-A-1<sup>A</sup>) to bury J Mokalake later on 23 June 2012. The grave was then registered as Cath T-A-3<sup>A</sup> on the records;
- 5.1.11.3. The numbering of the graves was never corrected on the records for the grave numbers to be in the correct sequence;
- 5.1.11.4. The Koloane family completed the Burial Application Form dated 27 November 2019 for the late Ms Keitumetse Koloane to be buried with her father, Mr D Semau in grave Cath T-A- 2<sup>A</sup>. The same form was completed by the late Mr R Semau's brother, Mr Molwana Semau giving authorization for Ms Koloane (niece) to be buried on top of her father;
- 5.1.11.5. From the investigation, there is no confirmation that neither the Koloane nor the Semau family members personally identified Mr D Semau's grave that had to be re-opened to satisfy themselves that it is the correct grave;
- 5.1.11.6. One of the West End Cemetery's employees, Mr G Kruger perused the correct Burial Record Book to identify Grave Cath T-A- 2<sup>A</sup> that the grave diggers had to reopen for the burial of Ms Koloane;
- 5.1.11.7. In terms of the graves layout, Mr Kruger, '*innocently*' counted the graves following the correct order which implied that the first grave was Mr Richard Louw's grave marked as T-A-3<sup>A</sup>, the second grave 2A was identified as Grave

Cath T-A- 2<sup>A</sup> which should belong to Mr Semau and the last grave 3A belonging to J Mokalake which in actual fact belongs to Mr D Semau;

5.1.11.8. Mr Kruger noticed that the grave ostensibly belonging to Mr D Semau that needed to be reopened had a tombstone belonging to Mr R Louw, which, according to him, was erected on a wrong grave. The employee reportedly took it up with the Cemeteries Controller, Mr R May, who was convinced that the late Mr Louw's tombstone was erected on a grave belonging to the late Mr Semau;

5.1.11.9. Due to time constraints in preparing for that particular week's burials, a decision was then taken to remove Mr R Louw's tombstone with the intention of contacting the Louw Family to inform them of their findings that the tombstone was laid on Mr Semau's grave. The tombstone was then placed on Mr Mokalake's grave as it was believed that Mr Mokalake's grave was Mr Louw's; and

5.1.11.10. The grave was reopened with no intention of tampering with Mr Louw's but to innocently have Ms Koloane buried in a grave that it was believed belonged to her father.

5.1.12. In a letter dated 17 August 2020 addressed to the Complainant, Mr K A Bogacwi, the Executive Director: Community and Social Development Services of the Municipality, apologised for the wrongful burial and the inconvenience caused to the family.

5.1.13. In the said letter Mr Bogacwi further assured the family that the matter was taken seriously and that a Multi-Disciplinary Task Team had been established in ensuring that this matter was resolved amicably. He further stated that the process had since been disrupted by the COVID-19 lockdown that commenced on 27 March 2020. He stated that:

*“The Municipality is pleased to report that in spite of the challenges faced in resolving this wrongful burial complaint, the process is at an advanced stage for this matter to be laid to rest”.*

5.1.14. Despite several undertakings by the Municipality that the process of resolving the wrongful burial was at an advanced stage, the matter had not been resolved by the Municipality.

5.1.15. In his response to a section 7(9) Notice, in a letter dated 23 November 2021, Mr Goolam Akharwaray, the Municipal Manager of the Municipality stated the following:

5.1.15.1 The burial in a wrong grave was mainly occasioned by an incorrectly marked grave;

5.1.15.2 These matters are aggravated by the theft of the steel markers in addition to name plates being vandalized;

5.1.15.3 To mitigate such matters the Municipality has developed a digitized record platform which will detail the GPRS coordinates of each grave with details of the deceased. The matter of recording the information is underway as a pilot project with the aim of resolving this matter permanently.

5.1.15.4 In support of the above, a procedure manual (Policy) was developed and tabled before the Committees of Council. It awaits Council approval.

5.1.15.5 Staff advised that the delay in finalizing this matter had been occasioned by the following:

- (a) The family of the affected parties making the following demands for compensation:

- (aa) Pain and suffering damages of R400 000.00
- (bb) Cost of reburial and related rituals.
- (cc) A job for the brother of the deceased.
- (dd) Legal costs by the niece of the deceased.
- (ee) Refusal to consent exhumation unless above matters are met.
- (ff) The policy aforementioned which has not yet been approved by Council creating a vacuum for staff to function within.

5.5.16. In the said response, Mr Akharwaray also indicated that he had directed:

5.5.16.1 The relevant staff to meet the families once again to finalise a solution;

5.5.16.2 Failing such, to advise them that Sol Plaatje Municipality will obtain a court order for exhumation and reburial; and

5.5.16.3 Sol Plaatje Municipality will contribute the sum of R10 000.00 to cover the cost of reburial and related rituals.

5.5.17. Mr Akharwaray further stated that whilst the incorrect burial is regretted and was unfortunate, the matter seems not to be a case of dereliction of duty, whilst the delays are occasioned by the above-mentioned factors.

5.5.18. In another response to a section 7(9) Notice in a meeting held 2 December 2021, Mr Akharwaray, the Municipal Manager of the Municipality conceded that the Municipality was at fault. However, he reiterated the Municipality's commitment to resolve this matter.

5.5.19. According to a letter from the Municipal Manager addressed to the Public Protector dated 6 December 2021, Mr Mayisela from the Legal Section of the Municipality was tasked to meet and resolve the matter with family. Further that the matter could not be resolved and the Legal section was again tasked to proceed to obtain a court order in the matter.

Application of the relevant law

- 5.5.19. Section 55(1) of the Municipal Systems Act provides, that as the head of the administration of a municipality, the municipal manager is, subject to the policy considerations of the municipal council, responsible and accountable for, *inter alia*, the management of the provision of services to the local community in a sustainable and equitable manner.
- 5.5.20. According to Section 4 of the Sol Plaatje Municipality Cemeteries By-law of 2006 (By-law), a register of graves and burials shall be kept by the caretaker of a municipal cemetery and such register shall be completed as far as possible immediately after a burial has taken place, with reference to the prescribed particulars contained in the burial order concerned.
- 5.5.21. In terms of sections 5(1) and (2) of the By-law, all graves in a municipal Cemetery that are occupied or for which a burial has been authorized in terms of the provisions of Section 9, shall be numbered by the Municipality and the number shall be affixed to the grave and indicated on a plan to be kept available in the caretaker's office.
- 5.5.22. Section 9(6) of the By-law provides that the allocation of a specific grave is the responsibility and the sole discretion of the caretaker and a burial shall be executed only in a grave allocated by him or her.
- 5.5.23. Section 16(8) of the By-law provides that if at any time and for whatever reason the exhumation and transfer of a corpse to another grave in a municipal cemetery shall become necessary, the Municipality may, after the relatives of the deceased person have been notified accordingly, exhume such body and transfer it to another grave.



5.5.24. A Code of Conduct for Municipal Staff Members is provided for in Schedule 2 to the Municipal Systems Act.

5.5.25. Item 2 of the Code provides that a staff member of a municipality must at all times-

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

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

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

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

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

5.5.26. Breaches of the Code must, by virtue of item 14, be dealt with in terms of the disciplinary procedures of the Municipality.

5.5.27. Section 15(3) of the National Health Act Regulations relating to the management of human remains, 2013 (the Regulations) provides that all burials must be registered with the relevant local government, and the local government concerned shall enter all burials in the register of burials of such local government.

5.5.28. Section 26 (1)(a) and (b) of the Regulations provide that no exhumations and reburials of human remains shall be done unless authorized by the relevant sphere of government and permitted by the relevant local government in whose jurisdiction the exhumation and reburial will take place or a court order is issued by a magistrate and shall be permitted by the relevant local government in whose jurisdiction the exhumation and reburial will take place.

### Conclusion

5.5.29 The evidence and information obtained during the investigation show that the Municipality wrongfully buried Ms Keitumetse Koloane in the grave of the late brother of the Complainant and that the Municipality had failed to rectify the wrongful burial since 2019. The facts of this matter were also not disputed by the Municipality.

5.5.30 It is further clear from the evidence that the register and numbering of graves were not properly managed by the Municipality, which would have avoided the wrongful burial.

## **6. FINDINGS**

**6.1 Regarding whether the Municipality wrongfully buried of Ms Keitumetse Koloane in the grave of the late brother of Mr Izak Raymond Louw in 2019; and if so, whether the conduct of the Municipality was improper, constitutes maladministration and prejudiced his family**

6.1.1. The allegation that the Municipality wrongfully buried Ms Keitumetse Koloane in the grave of the late brother of Mr Izak Raymond Louw in 2019, is substantiated.

- 6.1.2. The Municipality failed to ensure that the graves were properly marked, a number was affixed to the grave and the register of graves properly managed, as required by the By-law.
- 6.1.3 The Municipality's failure to rectify the wrongful burial of Ms Keitumetse Koloane in the grave of the late brother of Mr Izak Raymond Louw since 2019, was in violation of sections 4, 5(1) and (2) of the Sol Plaatje Municipality Cemeteries By-law, 2006, and Item 2 of the Code of Conduct for Municipal Staff Members as set out in Schedule 2 to the Municipal Systems Act. It also prejudiced the Complainant and his family as they had to bear the trauma caused by the wrongful burial and will also have to go through the ordeal of exhumation and reburial.
- 6.1.4. The Municipality's conduct accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(ii) of the Public Protector Act.

## **7. REMEDIAL ACTION**

- 7.1 The Municipal Manager conceded in his response to the section 7(9) Notice that the Municipality was at fault and indicated that the Municipality was in the process of improving the registry system of the cemeteries. He further indicated that the Municipality is committed to resolve the matter. Officials of the Municipality will be meeting with the families involved to endeavour to find an amicable solution, failing which the Municipality will obtain a court order for the exhumation and reburial of Ms Koloane and will make a financial contribution in regard thereto.
- 7.2 The appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution is the following:

## **7.2.1 The Municipal Manager of the Municipality to:**

- 7.2.1.1 After consultation with the families involved, approach the relevant sphere of government or approach the Magistrate's Court in terms of section 26(1)(a) and (b) of the National Health Act Regulations relating to the management of human remains, 2013 and section 16(8) of the By-Law in order to obtain an exhumation order that will enable the Municipality to exhume the body of Ms Koloane that was wrongfully buried in the grave of the late brother of the Complainant, within sixty (60) working days from the date of this report.
- 7.2.1.2 Ensure that once the Court order is granted, make a financial contribution to the family concerned for the costs of the exhumation and reburial, within sixty (60) working days from the date of this report.
- 7.2.1.3 Ensure that tombstone that was removed from Mr Louw's grave is returned to its original position within ninety (90) working days from the date of this report.
- 7.2.1.4 Take the appropriate steps in respect of disciplinary action against the officials of the Municipality who contributed to undue delay in the rectification of the wrongful burial of Ms Koloane in the grave of the late brother of the Complainant in terms of the Consequence Management Policy, within sixty (60) working days from the date of this report.
- 7.2.1.5 Embark on auditing all existing graves to ensure correct marking before loading the information on a newly developed digitized GPRS system in pre-empting wrongful burials in wrong graves, within sixty (60) working days from the date of this report.

- 7.2.1.6 Take the appropriate steps to expedite the finalisation of the Sol Plaatje Municipal Cemeteries Policy to regulate the management of cemeteries and the threshold capped costs paid by the Municipality for the performance of rituals during exhumation of remains of people, and to provide training to the relevant officials that will have to implement the Policy, within sixty (60) working days from the date of this report.
- 7.2.1.7 Ensure that the Audit Committee of the Municipality report regularly to the Municipal Council on the audit outcomes relating to internal audit plan which includes the digitized GPRS system, within sixty (60) working days from the date of this report.
- 7.2.1.8 Internal Audit must on an annual basis, review the adequacy and effectiveness of the municipality's system of internal control, risk management and supply chain management. It is further recommended that the Audit Committee must consider in all its meetings, the internal audit and AGSA reports to ensure that recommendations are implemented.
- 7.2.1.9 Establish internal complaint mechanism which will address service delivery complaints raised by the community served by the Municipality, within sixty (60) working days from the date of this report.
- 7.2.1.10 Report to the Council on the implementation of the remedial action taken in paragraphs 7.2.1.1 to 7.2.1.9 above within ninety (90) working days from the date of this report, and provide the Public Protector with a copy thereof.

## **8 MONITORING**

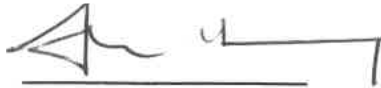
- 8.1. The Municipal Manager of the Sol Plaatje Municipality to submit an action plan to the Public Protector within thirty (30) days from the date of receiving this report, indicating how the remedial action referred to in paragraph 7.2.1 above will be implemented.

8.2 The submission of the implementation plan and the implementation of the remedial action shall in the absence of a court order, be complied with within the period prescribed in this report to avoid being in contempt of the Public Protector.



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**ADV BUSISIWE MKHWEBANE**  
**THE PUBLIC PROTECTOR OF THE REPUBLIC OF SOUTH AFRICA**  
**DATE: 13 / 12 /2021**



Assisted by: Mr M Khanya, Provincial Representative:  
Northern Cape  
Public Protector South Africa