

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



**PUBLIC PROTECTOR
SOUTH AFRICA**

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF
MALADMINISTRATION, ABUSE OF POWER AND IRREGULAR RECRUITMENT
BY THE PUBLIC SERVICE COMMISSION**

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LIST OF ACRONYMS AND ABBREVIATIONS

Complainant	Anonymous Complainant
Constitution	The Constitution of the Republic of South Africa, 1996
DG	Director-General of the PSC
EA	Executive Authority
E-mail	Electronic mail correspondence
KZN	KwaZulu-Natal Province
MoU	Memorandum of Understanding entered into between Public Service Commission and the Public Protector on 24 July 2017
Notice	Notice issued in terms of rule 41(1) of the Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018 as amended.
OCSLA	Office of the Chief State Law Advisor
PMDS	Performance Management Development System
PPSA	Public Protector South Africa
PSC	Public Service Commission
Public Protector	Public Protector of the Republic of South Africa
Public Protector Act	Public Protector Act 23 of 1994
Public Protector Rules	The Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018 (as amended)
Recruitment Policy	Public Service Commission Recruitment Policy approved by the erstwhile DG: Dr Mamphiswana on 31 March 2017

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, 1994 (the Public Protector Act).
- 1.2 The Closing Report is submitted in terms of sections 8(1), read with section 8(3) of the Public Protector Act and rule 40(b) of the Public Protector Rules, which empowers the Public Protector to make known the findings of an investigation, to affected parties, including the Complainant, for such persons to note the outcome of the investigation.
- 1.3 The report is provided to the following persons:
- 1.3.1 The Chairperson of the Public Service Commission, Prof Somadoda Fikeni;
 - 1.3.2 The Director-General of the PSC, Adv Dinkie Dube;
 - 1.3.3 The former Chairperson of the PSC, Adv Richard Sizani;
 - 1.3.4 The former Director-General of the PSC, Dr Dovichani Mamphiswana; and
 - 1.3.5 The Senior Manager: Legal Services at the PSC, Adv Shukrat Makinde.
- 1.4 The report relates to an investigation into allegations of maladministration, abuse of power and irregular recruitment and appointment of Adv Shukrat Makinde (Adv Makinde), to the position of Director: Legal and Litigation Services by the PSC.

2. THE COMPLAINT

- 2.1 The complaint was referred to the Public Protector by the PSC on 16 July 2021. According to the referral letter, the PSC received a complaint from an anonymous reporter (the Complainant), regarding the alleged irregularities in the appointment of Adv Makinde to the position of Director: Legal and Litigation Services.

- 2.2 Due to the allegations of maladministration and improper conduct levelled against officials of the PSC in the complaint, the PSC requested the Public Protector to conduct an independent investigation into the matter, in line with the Memorandum of Understanding (MoU), concluded by the two institutions on 24 July 2017.
- 2.3 The Complainant alleged the following:
- 2.3.1 *“Corruption- the appointment of Shukrat Makinde
This is to report corruption in the Office of the Public Service Commission about the appointment of Advocate Makinde and her not knowing law and her position want that to do the work.*
- 2.3.2 *When you talk to her, asking about public service rules, she doesn’t know them. She makes you confused. Then you go and talk to other people that study law, they tell you correct things. Or you go to someone who is working with Public Service they tell you correct things*
- 2.3.3 *There is loads of questions as to her appointment, Dr Dovahani Mamphiswana, tell people that she must get everything she wants, HR officials gave her. Those HR people they know it. They know what they did. They wanted to give her money for Chief Director in a post advertised for Director level. They put her on contract to get money then again to permanent. That is wrong, it’s crooking the system of Public Service. This thing must be investigated deep, a lot of non-legal things are happening in HR.*
- 2.3.4 *The Advocate is behaving like the DG if you look. She told people she knows the Chairperson of the PSC from before, they worked in KZN together. Questions is did she tell the interview panel this? Because the Advocate Makinde works only for the Chairperson. Nepotism is suspected.*

2.3.5 *She comes to work when she wants and leaves when she wants as if she is the DG, just check the access control. Even the COO has had stress trying to let her understand she cannot just come and go and many confrontations about her lack of work ethic, the COO must be asked. The advocate cannot do proper and good legal work and even commissioners are not happy, all advice she gave to them and in provinces that has PSC reports being challenged". (sic)*

2.4 The allegation that the appointment of Adv Makinde by the PSC was not in line with the salary level of the position of Director: Litigation and Legal Services, was not investigated further because preliminary investigations indicated that Adv Makinde negotiated a higher salary notch upon assumption of duty on the basis that her previous salary was higher than the minimum notch of the salary scale for a Director Director: Litigation and Legal Services, as advertised by the PSC. This request was declined by Adv Sizani on 30 June 2019. The Public Protector therefore did not consider the complaint meritorious to warrant further investigation.

2.5 The issue relating to Adv Makinde's alleged poor performance or incompetence and misconduct in that she was reporting for duty and leaving as she pleases, was referred back to the PSC, as the Public Protector deems this complaint to be an internal issue that should be dealt with by the PSC in line with its Performance Management Development System (PMDS) for public service employees and in line with the Disciplinary Policy applicable to PSC.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1. The Public Protector is an independent constitutional institution established in terms of 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.

- 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. Sections 6(4) of the Public Protector Act, 1994 (Public Protector Act) regulates the manner in which the powers conferred by section 182 of the Constitution may be exercised in respect of government at any level.
- 3.5. Section 6(9) of the Public Protector Act, 1994 provides that, *“Except where the Public Protector in special circumstances, within his or her discretion, so permits, a complaint or matter referred to the Public Protector shall not be entertained unless it is reported to the Public Protector within two (2) years from the occurrence of the incident or matter concerned”*.
- 3.6. The incident or matter concerned occurred more than two (2) years prior to its reporting to the Public Protector. The Public Protector exercised her discretion in terms of section 6(9) of the Public Protector Act to entertain the complaint based on the following special circumstances, as envisaged in Rule 10(1) of the Public Protector Rules in relation to this matter as follows:

3.6.1. **Nature of the complaint**

3.6.1.1. The complaint relates to allegations of alleged maladministration, abuse of power and irregular recruitment of a Director in a legal component of the PSC, which is expected to ensure compliance with the legal prescripts of the institution and a custodian of good corporate governance in the public service. Furthermore, the allegations are against the former Chairperson of the PSC, who was the Executive Authority of the institution, and holds the highest position of authority in the administration of the institution.

3.6.2. **Seriousness of the allegations**

3.6.2.1 The allegations relate to an institution supporting democracy in terms of section 196 of the Constitution, tasked with the responsibility of investigating, monitoring and evaluation of the organisation and administration of the personnel practices of the public service and its conduct should be above reproach, particularly, in public personnel practices.

3.6.3. **Availability of evidence**

3.6.3.1. The Complaint was referred to the Public Protector in terms of the MoU with the PSC which is the custodian of the recruitment documents in this matter and would cooperate with the investigation.

4 **ISSUE IDENTIFIED FOR INVESTIGATION**

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

4.1.1. Whether the appointment of Adv Makinde to the position of Director: Litigation and Legal Services by Adv Sizani was influenced by alleged

nepotism, and if so, whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act;

5. THE INVESTIGATION

5.1. Methodology

5.1.1. The investigation into the complaint is conducted in accordance with section 182(1) of the Constitution, read with sections 6 and 7 of the Public Protector Act.

5.2. Approach to the investigation

5.2.1. The approach to the investigation included analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.

5.2.2. The investigation was approached using an enquiry process that seeks to determine:

- (a) What happened?
- (b) What should have happened?
- (c) Is there a discrepancy between what happened and what should have happened? and
- (d) In the event of a violation, what action should be taken?

5.2.3. 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 the appointment of Adv Makinde to the

position of Director: Litigation and Legal Services by Adv Sizani was influenced by alleged nepotism.

5.2.4. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by Adv Sizani when Adv Makinde was appointed.

5.3. **The investigation process**

5.3.1. The approach to the investigation included the sourcing and analysis of information pertaining to the impugned conduct, and supporting documents, as well as the exchange of correspondence with the PSC.

5.3.2. The Public Protector conducted a preliminary investigation into the matter in terms of section 7(1) of the Public Protector Act, to determine the merits of the complaint and also to determine how the matter should be dealt with.

5.3.3. The preliminary investigation process included the assessment of the complaint, as well as legal research on the applicable prescripts, an exchange of correspondences with PSC and analysis of the relevant documents received by the Public Protector in the course of investigation.

5.4. **Key sources of information**

5.4.1. **Correspondence sent and received**

5.4.1.1. Document request letter of the Public Protector, dated 02 November 2021;

5.4.1.2. Response from Adv Dube, dated 02 December 2021;

5.4.1.3. Response from Adv Makinde, dated 06 May 2022; and

5.4.1.4. Response from Adv Sizani, dated 18 January 2023.

5.4.2. **Documents and e-mail correspondence**

5.4.2.1. Public Service Commission Policy on Recruitment and Selection Policy, signed on 31 March 2017;

5.4.2.2. Document titled “*Memorandum on the short-list for the post Director: Litigation and Legal Services*”, dated 18 August 2018;

5.4.2.3. Document titled “Confirmation of the Outcome of an interview”, dated 27 August 2018;

5.4.2.4. Declaration Form and Individual Scoring Sheet completed by Ms Lefiera C Viviers, dated 27 August 2018;

5.4.2.5. Declaration Form and Individual Scoring Sheet completed by Mr Chris Stoffel van Niekerk, dated 27 August 2018;

5.4.2.6. Declaration Form and Individual Scoring Sheet completed by Mr Dochani Mamphiswana, dated 27 August 2018;

5.4.2.7. Declaration Form and Individual Scoring Sheet completed by Ms Adelihe Tsienyame, dated 27 August 2018;

5.4.2.8. A document titled “*Request for Reference Check Letter of Adv SO Makinde*” from Director: Human Resource Management and Development, dated 29 August 2018;

5.4.2.9. Document titled “*Filling of the advertised post of Director: Litigation and Legal Services*”, dated 19 September 2018;

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- 5.4.2.10. Document titled “*Appointment to the Post of Director: Litigation and Legal Services*” from Director Human Resource Management and Development addressed to Adv SO Makinde, dated 25 September 2018;
 - 5.4.2.11. Appointment letter, dated 25 September 2018;
 - 5.4.2.12. Acceptance of offer from Adv SO Makinde, dated 01 November 2018;
 - 5.4.2.13. Contract of Employment, dated 13 December 2018;
 - 5.4.2.14. Document titled “*Request for a legal opinion on whether the Executive Authority can set a higher salary for a successful candidate for employment who was employed by an organ of state or public entity immediately before he or she is appointed in terms of section 9 of the Public Service Act 1994*” from the Office of the Chief State Law Adviser “TW Mesefo// JJ Nel// MA Olwage// A Johaar” addressed to the former Director General of the PSC, Dr D Mamphiswana, dated 05 February 2019;
 - 5.4.2.15. Copies of Adv Makinde’s CV and Copies of the qualifications (Annexures);
 - 5.4.2.16. Copies of the Performance Agreement for 2019/2020, signed on 31 May 2019;
 - 5.4.2.17. Mid Term Performance Assessment, dated 31 October 2019 for April – September 2019;
 - 5.4.2.18. Outcome of the assessment of 2019/2020 financial year;
 - 5.4.2.19. Mid Term Performance Assessment, dated 15 July 2020 for October 2019 – March 2020;
 - 5.4.2.20. Annual performance assessment dated 8 September 2021 for April 2020– March 2021;

5.4.2.21. Copies of the Performance Agreement for 2020/2021, signed on 26 April 2021;

5.4.2.22. Referral Letter from PSC, dated 15 July 2021; and

5.4.2.23. Complaint by Anonymous Complainant to PSC, dated 16 July 2021;

5.4.3. **Legislation and other prescripts**

5.4.3.1. The Constitution of the Republic of South Africa, 1996;

5.4.3.2. Public Protector Act 23 of 1996;

5.4.3.3. Public Service Act 103 of 1994, as amended;

5.4.3.4. Public Service Regulations, 2016; and

5.4.3.5. Public Service Commission's Recruitment Policy, 31 March 2017;

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

6.1. **Whether the appointment of Adv Makinde to the position of Director: Litigation and Legal Services by Adv Sizani was influenced by alleged nepotism, and if so, whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act**

Common Cause

- 6.1.1. The former Chairperson of the PSC, Adv Richard Sizani (Adv Sizani), was a Director-General (DG) in the office of the Premier in the KwaZulu-Natal Province (KZN), at the time Adv Makinde was employed in the same office during the course of 2005.
- 6.1.2. The post of Director: Legal Services was advertised by PSC in the media and on the Public Service Vacancy Circular, with a closing date of 20 April 2018.
- 6.1.3. Adv Makinde applied for the position of Director: Litigation and Legal Services during Adv Sizani's tenure as the Chairperson of the PSC.
- 6.1.4. On 19 September 2018, Adv Sizani approved the appointment of Adv Makinde.

Issue in dispute

- 6.1.5 The issue for determination by the Public Protector is whether the appointment of Adv Makinde to the position of Director: Litigation and Legal Services by Adv Sizani was due to nepotism and whether his conduct constitutes maladministration and improper conduct.

Complainant's version

- 6.1.6. The Complainant alleged that the appointment of Adv Makinde by the PSC was irregular, in that Adv Makinde was known to Adv Sizani who approved her appointment and he failed to make a declaration to that effect.
- 6.1.7. The Complainant further alleged that Adv Makinde *only works* for Adv Sizani and therefore suspects nepotism.

Response from the PSC Director General: Adv Dube

- 6.1.8. On 02 November 2021, the Public Protector raised the allegations with the Commissioner of PSC, Dr TB Luthuli (Dr Luthuli).
- 6.1.9. A response dated 02 December 2021, was received from Adv Dube who stated, *inter alia*, that:
- 6.1.9.1. Adv Sizani was the DG of KwaZulu-Natal Province in 2005, when Adv Makinde was employed in the Office of the Premier: KwaZulu-Natal Province.
- 6.1.9.2. Adv Makinde interacted with Adv Sizani in her capacity as an employee of the Province and therefore, there was no need for Adv Makinde to declare her previous employment relationships to the Selection Committee, as there was a professional working relationship which are common occurrences in the Public Service;
- 6.1.9.3. She further stated that, the Complainant did not tender any evidence of a close relationship between her and Adv Sizani to substantiate the allegation that she works only for Adv Sizani, and that nepotism is suspected. Therefore, having a professional working relationship with an applicant for employment does not amount to nepotism; and
- 6.1.9.4. Lastly, that the submission for the filling of the post of Director: Litigation and Legal Services reflects that the Selection Committee regarded Adv Makinde as the most suitable candidate for the post, based on her skills, knowledge and experience, and the recruitment process was managed at the level of the DG and that Adv Sizani's involvement was limited to the confirmation or approval of the appointment, as recommended by the interview panel.

Documentary evidence received from the PSC

- 6.1.10. Adv Dube provided the Public Protector with copies of the Interview Panel Members' declaration forms signed on 27 August 2018 and in terms of which, each panel member was required to declare any *vested interest* in any of the candidates.
- 6.1.11. Adv Dube also provided a declaration form completed by Adv Makinde on 27 August 2018. The form required Adv Makinde to declare, amongst other things, her personal information, including citizenship, previous disciplinary record, criminal record and consent to security vetting.
- 6.1.12. Adv Dube further provided copies of the selection panel interview score sheets dated 27 August 2018, indicating that Adv Makinde scored the highest of all interviewed candidates.
- 6.1.13. Furthermore, she provided a copy of a memorandum recommending that Adv Makinde be appointed as Director: Litigation and Legal services. The recommendation for the appointment was approved by Adv Sizani on 19 September 2018.
- 6.1.14. The memorandum further stated that in terms of the approved Delegations, the approval for appointment to posts on salary level 13-14 has been delegated to the DG. It was recorded in the memorandum that the DG served as the Chairperson of the Selection Committee and the recommendations of the Selection Committee should therefore be forwarded to the next level supervisor for approval, and in this case it was Adv Sizani.
- 6.1.15. In the same memorandum, the PSC confirmed having conducted reference checks, qualification verification and pre-employment screening on Adv Makinde.

- 6.1.16. Adv Dube also provided the Public Protector with a copy of a letter of acceptance of employment, dated 26 September 2018 from Adv Makinde and a copy of her contract of employment signed on 01 November 2018.

Response from Adv Makinde

- 6.1.17. On 28 April 2022, the Public Protector raised the matter with Adv Makinde with a view of providing her with an opportunity to respond to the allegations against her.
- 6.1.18. A response was received from Adv Makinde on 06 May 2022 and she stated, *inter alia*, that:
- 6.1.18.1. The allegation is malicious and vexatious, as no evidence is submitted to substantiate the suspicion by the Complainant;
- 6.1.18.2. She knew Adv Sizani in the KZN provincial government as the Director-General many years ago (around 2005). Further that, when she arrived at the PSC in 2018, she found that he was the Chairperson;
- 6.1.18.3. Adv Sizani was not her immediate supervisor in the KZN Office of the Premier, as she reported to Adv Jacques Wolmarans and Adv Ndokweni at the Chief State Law Advisory Services. She only knew Adv Sizani as a public servant, since she has worked in many public service departments and became acquainted to a lot of people during the course of her professional career;
- 6.1.18.4. Adv Sizani was not part of the interview panel and she was neither asked a question whether she knew him nor was it a question in the disclosure form. She contended that all employees in an organisation that apply for promotional posts, often know the seniors that participate in the interview

panel as colleagues and that does not amount to a conflict of interest. A disclosure is required where there is a conflict of interest only;

- 6.1.18.5. She has no relationship with Adv Sizani and there was no conflict of interest to disclose. Further that, when she was introduced at the staff meeting after she joined the OPSC in 2018, it was said to everyone that Adv Sizani knew her as an effective public servant because in the Chief State Law Advisory Services where she used to work, she supported all the Departments in the Province and all Heads of Department. She was also often required to attend Cabinet meetings, where she met principals including the Premier, Members of the Executive Council, Director-General and Heads of the Department.

Response from Adv Sizani

- 6.1.19. On 18 January 2023, the Public Protector raised the allegation with Adv Sizani. A response was received from him on the same aforesaid date and he confirmed to have made acquaintance with Adv Makinde in the public service. He stated *inter alia* that:
- 6.1.19.1. He had no vested interest in Adv Makinde's appointment and was not involved in the recruitment and selection process;
- 6.1.19.2. The post of Director: Litigation and Legal Service reports directly to the DG in the OPSC and not to the Chairperson;
- 6.1.19.3. He did not disclose that he was aware of Adv Makinde's previous employment in the public service when approving the appointment; and
- 6.1.19.4. In his previous positions in the public service, he had professional relations with countless employees and there is no requirement to declare these professional relationships as these are not material to these appointments.

Applicable law and prescripts

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

- 6.1.20. The principle of legality in South African law is enshrined in section 2 of the Constitution, which provides that:

“This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it, must be fulfilled.”

- 6.1.21. The constitutional principle of legality requires that a decision maker exercises the power conferred upon her/him lawfully, rationally and in good faith. To this end, it is submitted that the PSC as an organ of state is bound by the above constitutional obligations and by the principle of legality.

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

“(h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated”.

- 6.1.23. The above provisions place an obligation on the functionaries of the PSC to adhere to Human Resources policies and practises during the process of recruitment and selection that led to the appointment of Adv Makinde.

Public Service Act 103 of 1994 as amended (Public Service Act)

- 6.1.24. Section 1(c) of the Public Service Act defines the Executive Authority in the PSC as the Chairperson.

- 6.1.25. According to section 9 of the Public Service Act, an executive authority (EA) may appoint any person in his or her department in accordance with the Act and in such manner and on such conditions as may be prescribed.
- 6.1.26. Section 11(1) of the Public Service Act provides that in the making of appointments and the filling of posts in the public service due regard shall be had to equality and the other democratic values and principles enshrined in the Constitution.
- 6.1.27. Section 11(2) provides that in the making of any appointment or the filling of any post in the public service all persons who qualify for the appointment, transfer or promotion concerned shall be considered. Furthermore the evaluation of persons shall be based on training, skills, competence, knowledge and the need to redress the imbalances of the past to achieve a public service broadly representative of the South African people, including representation according to race, gender and disability.
- 6.1.28. Section 11(3) provides that notwithstanding the provisions of subsection (2), the relevant EA may, subject to the prescribed conditions, approve the appointment, transfer or promotion of persons to promote the basic values and principles referred to in section 195(1) of the Constitution.

Public Service Commission Policy on Recruitment and Selection, dated 31 March 2017 (the Recruitment and Selection Policy)

- 6.1.29. Paragraph 2 of the Recruitment and Selection Policy indicates that the purpose of the Recruitment Policy is to provide the OPSC with procedures and guidelines governing recruitment and selection in order to ensure consistency, fairness and equity through a climate that is affirming to all.
- 6.1.30. Paragraph 5.2.2 of the Recruitment and Selection Policy provides for the attributes of the Selection Committee which are:

Confidentiality, which provides that Selection Committee members shall be required to sign a confidentiality form and treat all information discussed during the selection process as confidential;

- (a) Consistency, which requires that the same set of criteria should be applied to each candidate;
- (b) Objectivity, which deals with facts and be free of bias/ prejudice; and
- (c) Impartiality, which provides that Selection Committee members must treat all candidates during the selection process equal and fair. It is desirable that a panel member declares him/herself if he/ she has an interest in terms of a candidate before the process begins.

6.1.31. Sub-paragraph 5.2.3 provides for the functions and duties of the Selection Committee and states, *inter alia*, that the proceedings of the Selection Committee must be properly documented and treated as strictly confidential. Furthermore, that the total score per candidate should be arrived at by adding the individual score of each Selection Committee member and divided by the number of members.

Analysis of the evidence

6.1.32. The evidence before the Public Protector indicates that Adv Makinde was appointed following a fair recruitment and selection process, in which she scored the highest of the interviewed candidates, in accordance with the requirements for proper public administration as envisaged in section 195 of the Constitution and section 11 of the Public Service Act.

6.1.33. The appointment was also in line with the provisions of paragraph 5.2.2 of the Recruitment and Selection Policy.

- 6.1.34. The evidence presented to the Public Protector indicates that Adv Makinde was required to sign a declaration form, however, the said form neither requires a candidate to declare any relationship with the interview panel members nor the Chairperson of the PSC.
- 6.1.35. The interview panel relating to the recruitment for the position of Director: Litigation and Legal Services, was chaired by Dr Mamphiswana. The investigation found that Adv Sizani was not part of the panel.
- 6.1.36. The investigation further revealed that the recommendation by the interview panel to appoint Adv Makinde was escalated to Adv Sizani for approval because the position reports to the DG and he had served as the Chairperson of the Selection Committee. As a result, the recommendations of the Selection Committee were forwarded to the next level supervisor for approval, in this case, Adv Sizani. Therefore, the PSC provided a legitimate explanation of the approval of the appointment of Adv Makinde, in line with the segregation of duties, when required, contrary to the allegation by the Complainant that there was nepotism.

Conclusion

- 6.1.37. The evidence presented to the Public Protector reflects that the PSC followed due processes and complied with the Constitution, the Public Service Act and the Recruitment and Selection Policy of the PSC during the appointment of Adv Makinde. The investigation did not find any evidence to substantiate the allegation of nepotism in the appointment of Adv Makinde.

7. FINDINGS

- 7.1. Having regard to the evidence as well as the regulatory framework determining the standard that should have been complied with by PSC

and/or any other persons that were involved in the matters under investigation, the Public Protector makes the following findings:

7.1.1. Whether the appointment of Adv Makinde to the position of Director: Litigation and Legal Services by Adv Sizani was influenced by alleged nepotism, and if so, whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act

7.1.1.1. The allegation that the appointment of Adv Makinde to the position of Director: Litigation and Legal Services by Adv Sizani was influenced by nepotism, is not substantiated.

7.1.1.2. The evidence obtained and analysed by the Public Protector during the investigation indicates that the PSC followed due processes in the appointment of Adv Makinde to the position of Director: Litigation and Legal Services, in compliance with section 195(h) of the Constitution, section 11 of the Public Service Act and paragraph 5.2.2 of the PSC Recruitment and Selection Policy.

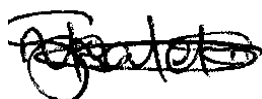
7.1.1.3. The investigation found that Adv Sizani was not involved in the shortlisting or interviews of any candidates who had applied for the position of Director: Litigation and Legal Services, including Adv Makinde. However, the recommendation of Selection Committee to appoint Adv Makinde was submitted to Adv Sizani to avoid contravening the principles of segregation of duties as the DG responsible for the position had served as the Chairperson of the Selection Committee. It was in this light that Adv Sizani, as the next level supervisor, approved the appointment of Adv Makinde.

7.1.1.4. Accordingly, the conduct of the PSC does not amount to improper conduct and maladministration as contemplated in terms of section 182(1) of the Constitution and section 6(4)(a)(i) of the Public Protector Act.

8. CONCLUSION

8.1. Rule 41(1) of the *Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018 (as amended)*, provides that when the Public Protector intends concluding the complaint by means of a closing report, the Complainant shall be informed in writing accordingly and be given an opportunity to make representations in connection with the intended closure of the complaint within 14 days of delivery of the notification. In this instance, a notice in terms of rule 41(1) was not issued as the complaint was lodged anonymously and the particulars of the complainant could not be ascertained.

8.2. The Public Protector considers this matter finalised and cannot take it any further. Should any party wish to challenge this decision, they are at liberty to explore legal remedies at their disposal.



ADV KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR OF
THE REPUBLIC OF SOUTH AFRICA
DATE: 31 MARCH 2023

Assisted by: Ms Ponatshego Mogaladi
Executive Manager: Investigations Branch