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CLOSING REPORT

CLOSING REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION BY THE BELLVILLE MAGISTRATES' COURT RELATING TO AN APPLICATION FOR A PROTECTION ORDER

1. INTRODUCTION

- 1.1 This report is issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution), and section 8(1) of the Public Protector Act, 1994 (Public Protector Act).
- 1.2 The report relates to an investigation by the Public Protector in terms of section 6 of the Public Protector Act on allegations of improper conduct and maladministration by the Bellville Magistrates' Court (BMC).
- 1.3 The report is submitted to Mr John Jeffery MP, the Deputy Minister of Justice and Constitutional Development.
- 1.4 Copies of the report are also provided to the family of the late Ms A Kortje, who approached the BMC for a Protection Order and Ms L Goosen, the Court Manager of the BMC.

2. THE COMPLAINT

2.1 On 18 June 2020, Mr John Jeffery MP, the Deputy Minister of Justice and Constitutional Development, requested the Public Protector to investigate allegations reported in the news media that Ms A Kortje approached the BMC to apply for a Protection Order, but was turned away by the court officials.

2.2 According to the media reports, Ms Kortje was allegedly murdered by her former partner on 12 June 2020.

2.3 In essence, it was alleged that the failure by the officials at the BMC to assist Ms Kortje with her application for a Protection Order was improper, constitutes maladministration and prejudiced her and her family.

2.4 A statement issued by the Ministry of Justice and Correctional Services on 18 June 2020 stated *inter alia* that:

“We are of the view that an investigation by the Office of the Public Protector is necessary to establish whether Ms Kortje approached the Court for assistance and, if so, why she was not assisted and whether there has been any act or omission by a person in the employ of government or performing a public function, which had resulted in any unlawful or improper prejudice to Ms Kortje and her daughter.

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 of the Republic of South Africa, 1996 (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 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation, advising the complainant regarding appropriate remedies or any other means that may be expedient under the circumstances.

3.5 Section 7(1)(a) of the Public Protector Act provides that the Public Protector shall have the power, on his or her own initiative, or on receipt of a complaint or allegation or on the ground of information that has come to his or her knowledge and which points to improper conduct and maladministration, to conduct a preliminary investigation for the purpose of determining the merits of the complaint, allegation or information and the manner in which the matter concerned should be dealt with.

3.6 In 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 effect¹. The Constitutional Court further held that: *“When the remedial action is binding, compliance is not optional,*

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

*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*².

4. THE INVESTIGATION

4.1 The Investigation Process

4.1.1 The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act, 1994. The Public Protector Act confers on the Public Protector the sole discretion to determine the format and procedure to be followed in conducting any investigation.

4.1.2 The investigation process included an exchange of correspondence with the Court Manager of the BMC and the Acting Regional Head of the Department of Justice and Constitutional Development (Department) in the Western Cape, interviewing of witnesses and officials of the BMC and obtaining their statements and confirmatory affidavits; analysing the documents and information obtained during the investigation and considering and applying the relevant laws and prescripts.

4.2 The approach to the investigation

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to establish:

4.2.1.1 What happened?

4.2.1.2 What should have happened?

² *Supra* at para[73]

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

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 BMC failed to assist Ms Kortje when she allegedly wanted to apply for a Protection Order.

4.3 Based on the analysis of the information obtained regarding the allegations, the following issues were identified to inform and focus the investigation:

4.3.1 Whether the BMC failed to assist Ms A Kortje to apply for a Protection Order on 8 June 2020, and if so, whether the conduct of the BMC was improper, constitutes maladministration and resulted in prejudice.

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 BMC failed to assist Ms A Kortje to apply for a Protection Order on 8 June 2020, and if so, whether the conduct of the BMC was improper, constitutes maladministration and resulted in prejudice.

Common cause or undisputed facts

5.1.1 It is not in dispute that Ms Kortje approached the BMC on 8 June 2020 to apply for a Protection Order at the Protection Order Section.

Issues in dispute

- 5.1.2 The late Ms Kortje's mother made an affidavit during the investigation on 2 July 2020, stating that her husband accompanied Ms Kortje to the Delft Police Station on 6 June 2020 to seek assistance in connection with her two children that was taken from their home by Mr Ryan Smith, on 5 June 2020. She was advised by officials of the South African Police Service to "*approach the court for an interdict*". Her mother further stated that a family friend accompanied the late Ms Kortje to the BMC on 8 June 2020. On her return from the BMC at about 15:00, the late Ms Kortje told her that she did not complete the forms that were given to her at the BMC, but she did not indicate why. The late Ms Kortje had to go to work on 9 June 2020. She did not return home on 10 June 2020 and was found dead on 11 June 2020.
- 5.1.3 Mr Marin Kortje, the late Ms Kortje's father, confirmed the evidence submitted by his wife.
- 5.1.4 Ms N G Dolf made an affidavit on 2 July 2020, stating that she was requested to accompany the late Ms Kortje to the BMC on 8 June 2020, at about 11:10. The late Ms Kortje indicated to her that she wanted to apply for a Protection Order. They arrived at the BMC at about 11:30. She was not allowed to enter the court building with the late Ms Kortje (due to Covid-19 restrictions) and waited outside. The late Ms Kortje came out of the court building at about 12:50 with the Protection Order forms in her hand. She informed Ms Dolf that the court officials requested her to complete the forms and explained to her that social workers will have to be involved in the matter. She further indicated that she did not complete the forms "*because it was too much writing and that the officials at court explained to her a lot of things ...*"
- 5.1.5 In her written response to the allegations during the investigation, dated 3 July 2020, the Court Manager of the BMC, Ms L Goosen indicated, *inter alia* that:
- 5.1.5.1 The Closed-Circuit Television (CCTV) footage taken by the BMC on 8 June 2020 shows a lady, believed to be Ms Kortje, being assisted by a Security

Officer at the main gate of the BMC premises at 11:56 and granted entry to the access control area where she completed the Covid-19 assessment form. A copy of the Covid-19 Access Control Form completed by Altecia Kortje and signed by the Security Officer was submitted by the Court Manager, during the investigation.

- 5.1.5.2 The footage further shows Ms Kortje entering the BMC building at 12:02, walking down the passage to the Protection Order Section and leaving the building at 12:50 with a document in her hand.
- 5.1.5.3 Ms Kortje entered her name on the waiting list at the Protection Order Section between 11:35 and 12:22. A copy of the relevant page of the waiting list was also submitted during the investigation.
- 5.1.5.4 There were two clerks on duty at the Protection Order Section on 8 June 2020. A copy of the duty roster was submitted.
- 5.1.5.5 According to the register kept by MOSAIC (a Non-Governmental Organisation assisting complainants of domestic violence at the BMC), Ms Kortje did not approach them for assistance on 8 June 2020. A copy of the relevant day's register was submitted during the investigation.
- 5.1.5.6 There is no indication that Ms Kortje returned to the BMC on that day. No case file was allocated under her name at the Protection Order Section, which indicates that she did not submit a completed application form for a Protection Order.
- 5.1.6 It was established during the investigation that MOSAIC provides services to complainants of domestic violence at the BMC, in terms of a Memorandum of Understanding with the Department, by explaining the process to apply for a Protection Order and assisting with the completion of the relevant forms.
- 5.1.7 The Court Manager further stated in her response that Ms Kortje was offered assistance by the Protection Order Section "*...up to the point of being handed an application form, being explained how to complete it and waiting for her turn to be assisted for the completion thereof up to 12h50 on 08 June 2020.*", and

that "...[B]ased on the fact that the CCTV footage confirms that Ms Kortje was in the court building for almost an hour, confirms (sic) that she was waiting to be assisted for the completion of the form."

5.1.8 The two Senior Administrative Clerks that were on duty at the Protection Order Section of the BMC on 8 June 2020 were interviewed during the investigation, on 19 August 2020. They explained the procedure at the BMC to apply for a Protection Order, as follows:

5.1.8.1 The complainant first enters his/her name on the "*Domestic Violence and Harassment-list*", which is available on a clipboard in the waiting area in the passage outside the office of the Protection Order Section.

5.1.8.2 Thereafter, in accordance with the order of the names on the list, the complainant is called into the office where a clerk interviews him/her to determine the nature of the relationship between the parties to the alleged domestic violence or harassment incident. This is done to ensure that the complainant is provided with the correct prescribed application form, in order to determine whether the Magistrates' Court has jurisdiction in respect of the matter and to classify it.

5.1.8.3 In cases where the application relates to domestic violence, the complainant is advised which part of the relevant application form to complete and is directed to MOSAIC, should he/she require further assistance with completing the application form.

5.1.8.4 Once the application form is completed with the relevant information, the clerk explains to the complainant in more detail the remedies that are available.

5.1.8.5 Thereafter, the application is commissioned (as an affidavit), a file is opened and a case number issued. The file is processed and sent to the Magistrate who decides whether or not to grant an interim Protection Order.

5.1.9 According to the Senior Administrative Clerks, all applications relating to domestic violence must be attended to on the day of submission of the relevant form.

5.1.10 They could not recall specifically assisting Ms Kortje, but confirmed that on 8 June 2020 they followed the same procedure, as on any other day. The list on that day was manageable and there were fewer complainants than they would normally have attended to prior to the declaring of a national state of disaster, due to the Covid-19 pandemic, in March 2020. The only difference was that there were only two clerks on duty, instead of four and that everyone wore a mask, due to the national lockdown restrictions and regulations.

5.1.11 The Senior Administrative Clerk that commissioned the forms on 8 June 2020 was adamant that had Ms Kortje indicated that her former partner had taken her children and that she needed assistance in getting them back, it would have been brought to the attention of the Magistrate.

5.1.12 The Domestic Violence and Harassment list and the Domestic Violence and the Harassment Registers of the BMC accessed during the investigation, indicate that 20 domestic violence complaints were processed by the Protection Order Section on 8 June 2020. Nine (9) interim Protection Orders were granted.

Application of the relevant law

5.1.13 Section 12 of the Constitution provides, *inter alia* that everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources.”

5.1.14 In terms of section 195 of the Constitution the public administration must be governed by the democratic values and principles enshrined in the Constitution, including that a high standard of professional ethics must be promoted and maintained, services must be provided impartially, fairly, equitably and without bias and the public administration must be accountable.

5.1.15 The Preamble of the Domestic Violence Act, 1998 (Domestic Violence Act) *inter alia*, states that:

“IT IS THE PURPOSE of this Act to afford the victims of domestic violence the maximum protection from domestic abuse that the law can provide; and to introduce measures which seek to ensure that the relevant organs of state give full effect to the provisions of this Act, and thereby to convey that the State is committed to the elimination of domestic violence...”

5.1.16 According to the Definitions in section 1 of the Domestic Violence Act:

*‘**complainant**’ means any person who is or has been in a domestic relationship with a respondent and who is or has been subjected or allegedly subjected to an act of domestic violence, including any child in the care of the complainant;*

*‘**court**’ means any court contemplated in the Magistrates’ Court Act, 1944 or any family court established in terms of an Act of Parliament.*

*‘**domestic relationship**’ means a relationship between a complainant and a respondent in any of the following ways—*

...

“(c) they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);

...

(e) they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration;

...

'domestic violence' includes "physical, emotional, psychological or verbal abuse" or *any other controlling or abusive behaviour towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health or well being of the victim.*"

'protection order' means an order issued in terms of section 5 or 6.

'respondent' means any person who is or has been in a domestic relationship with a complainant and who has committed or allegedly committed an act of domestic violence against the complainant".

- 5.1.17 Section 4 of the Domestic Violence Act stipulates that any complainant may in the prescribed manner apply to the court for a Protection Order. If the complainant is not represented by a legal representative, the clerk of the court must inform the complainant, in the prescribed manner of the relief available in terms of the Act. The application and affidavits (where applicable) must be lodged with the clerk of the court, who shall forthwith submit the application and affidavits to the court.
- 5.1.18 The court must, in terms of section 5 of the Domestic Violence Act, as soon as is reasonably possible, consider the application and if it is satisfied that the respondent is committing, or has committed an act of domestic violence and undue hardship may be suffered by the complainant as a result of such domestic violence if a Protection Order is not issued immediately, issue an interim Protection Order against the respondent, which must be served on him/her.
- 5.1.19 The interim and final Protection Order may, in terms of section 7(1) of the Domestic Violence Act prohibit the respondent from, *inter alia* committing any act of domestic violence or any other act as specified. Section 7(6) provides that if the court is satisfied that it is in the best interests of any child, it may refuse the respondent contact with such child or order contact with such child on such conditions as it may consider appropriate.

- 5.1.20 The Minister of Justice made the Regulations under the Domestic Violence Act, 1998, promulgated on 5 November 1999, in terms of section 19 of the Act (Regulations).
- 5.1.21 Regulation 4(2) of the Regulations provide that the application to the court for a Protection Order must be by way of an affidavit, in which must be stated, *inter alia* the facts on which it is based and the nature of the order applied for.
- 5.1.22 If the complainant is not represented by a legal representative, the clerk of the court must, in terms of Regulation 5, provide the complainant with the prescribed Information Notice in respect of the application and the prescribed forms to complete. The clerk of the court must further enquire from the complainant whether he or she understands the Notice and requires further information concerning the relief available in terms of the Domestic Violence Act.
- 5.1.23 The *Justice Codified Instructions: Code: Domestic Violence* issued by Departmental Circular on 5 August 2014, provides for the procedure to be followed when a complainant of domestic violence applies for a Protection Order.
- 5.1.24 Paragraph 7 stipulates that the Clerk of the Court has to provide the complainant with the relevant form, and where necessary, read and explain the contents thereof to the complainant. The complainant has to be informed of the relief available and the complainant and the Clerk has to sign the form as proof that it was explained. The signed form is to be placed on the case file. It further provides that the Clerk has to assist the complainant and the respondent to complete the prescribed forms, including affidavits and ensure that all the required facts and details are entered accurately, as required.
- 5.1.25 The Senior Administrative Clerks of the BMC interviewed during the investigation was not aware of the Code, even though they explained the process to be followed in dealing with an application for a Protection Order accordingly.

Conclusion

- 5.1.26 From the evidence obtained during the investigation it is concluded that the late Ms Kortje visited the BMC around midday on 8 June 2020 to apply for a Protection Order in terms of the Domestic Violence Act. Her name was placed on the list of complainants at the Protection Order Section of the BMC. She was attended to by a clerk at the section that provided the application form to her to complete and provided her with an explanation in connection with her application, the involvement of social workers and that the respondent would have to appear in court.
- 5.1.27 According to the evidence of the two Senior Administrative Clerks that were on duty on the Protection Order Section on 8 June 2020, they could not specifically remember the late Ms Kortje, but they followed the same procedure in respect of applications for Protection Orders on 8 June 2020 than on any other day. It is also evident from the records of the BMC that several applications were processed on 8 June 2020 and interim Protection Orders issued.
- 5.1.28 Ms Kortje left the BMC about an hour after her arrival without having completed and submitted the application form for further assistance. Her explanation to Ms Dolf was that she did not expect that it would be a long process to obtain the Protection Order and there was too much to write. It is not clear whether Ms Kortje intended to complete the form and to return it to the BMC with her application. According to her mother, the late Ms Kortje had to go to work the next day and did not return home on 10 June 2020. She was later found dead.
- 5.1.29 There is no evidence indicating that Ms Kortje was turned away by the BMC when she wanted to apply for a Protection Order. The evidence shows that she was assisted at the Protection Order Section and requested to complete the prescribed application form. She also did not indicate to Ms Dolf or her parents that she was not assisted by the officials at the BMC to complete the application process.

5.1.30 It could not be established with certainty why Ms Kortje decided not to wait to be assisted with submitting her application after having completed the form, but to return home.

6. REASONS FOR CLOSURE

6.1 The evidence obtained from the investigation does not support the allegation that Ms Kortje was turned away or not assisted by the BMC, when she wanted to apply for a Protection Order on 8 June 2020. There was thus no improper conduct or maladministration on the part of the BMC.

6.2 Mr John Jeffery MP, the Deputy Minister of Justice and Constitutional Development was afforded an opportunity to respond to the evidence obtained during the investigation and the intention of the Public Protector to issue a Closing Report in this matter, by means of a Discretionary Letter issued in terms of Rule 42(1) of the *Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018* (the Public Protector Rules), made in terms of the Public Protector Act.

6.3 Mr Jeffery met with the Acting Public Protector, Adv Kholeka Gcaleka in connection with this matter on 11 February 2021 and indicated that he was satisfied with the investigation that was conducted and the findings made.

6.4 The Acting Public Protector agreed with the Deputy Minister of Justice and Constitutional Development that this investigation raises serious concerns regarding how women are treated by officials when seeking assistance within the court system, in particular on matters that relates to Gender Based Violence and the difficulties faced by many women with obtaining assistance on maintenance related complaints/enquiries.

6.5 It is on the basis of the above that the Public Protector South Africa (PPSA) intends to conduct a systemic investigation on the issues raised above in the

Financial Year 2021/22. The PPSA shall be working closely with the Department of Justice and Constitutional Development in this regard.



ADV Kholeka Gcaleka
ACTING PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 2021/03/31



Assisted by Adv C H Fourie:
Executive Manager, PII Coastal