

**REPORT 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 23 OF 1994**



**PUBLIC PROTECTOR  
SOUTH AFRICA**

**REPORT No: 48 of 2022/23**

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**INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY OR FAILURE BY THE  
SOUTH AFRICAN BROADCASTING CORPORATION TO PAY AN OUTSTANDING  
AMOUNT FOR SERVICES RENDERED BY MICHAEL OWEN PRODUCTIONS CLOSE  
CORPORATION**

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## LIST OF ACRONYMS AND ABBREVIATIONS

<b>ADV</b>	Advocate
<b>ADR</b>	Alternative Dispute Resolution
<b>CAPASSO</b>	Composers, Authors and Publishers Association
<b>GCEO</b>	Group Chief Executive Officer
<b>COMPLAINANT</b>	Mr Owen Ndlovu
<b>EXCO</b>	Executive Management Committee
<b>INVESTIGATION TEAM</b>	Public Protector South Africa Investigating Team
<b>MICHAELOWEN PRODUCTIONS</b>	Michaelowen Productions Close Corporation
<b>PFMA</b>	Public Finance Management Act No. 1 of 1999, as amended
<b>PUBLIC PROTECTOR ACT</b>	Protector Act No. 23 of 1994, as amended
<b>PUBLIC PROTECTOR RULES</b>	Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018, as amended
<b>PSL</b>	Premier Soccer League
<b>RULE 41(1) NOTICE</b>	Rule 41(1) Notice issued under Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018, as amended
<b>SABC</b>	South African Broadcasting Corporation
<b>SCM</b>	Supply Chain Management

## 1. INTRODUCTION

1.1 This is a Closing Report of the Public Protector 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) and Rule 40(b) of the *Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018*<sup>1</sup> (Public Protector Rules) as promulgated under section 7(11) of the Public Protector Act.

1.2 The report relates to an investigation in connection with allegations of undue delay or failure by the South African Broadcasting Corporation (the SABC) to pay an outstanding amount for services rendered by Michaelowen Productions Close Corporation (Michaelowen Productions).

1.3 The report is submitted to the following persons in terms of sections 8(1) and 8(3) of the Public Protector Act:

1.3.1 The Complainant: the Director of Michaelowen Productions, Mr Owen Ndlovu; and

1.3.2 The SABC Group Chief Executive Officer, Mr Madoda Mxakwe

## 2. THE COMPLAINT

2.1 On 22 November 2021, the Public Protector received a complaint from Mr Owen Ndlovu (the Complainant) alleging undue delay or failure by the SABC to pay his business namely, Michaelowen Productions, for services rendered to the SABC under a contract signed during 2014, which expired through the effluxion of time during 2017.

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<sup>1</sup> Published under Government notice No 945, Government Gazette 41903 of 14 September 2018 and Amended in Government Notice No 1047, Government Gazette 43758 dated 2 October 2020.

- 2.2 The complainant stated *inter alia* that:
- 2.2.1 In July 2014, Michaelowen Productions entered into a contract with the SABC to produce a theme song for the Premier Soccer League (PSL) soccer radio show. This followed a trade exchange deal between the PSL and the SABC. The contract further stipulated that Michaelowen Productions must also be paid royalties by the relevant collecting societies. The latter contract was paid in full by the SABC;
- 2.2.2 Michaelowen Productions was further instructed or mandated by the SABC through an email during 2014 to compose jingles, adverts and promos. This is called *show identity* or *imaging*. Michaelowen Productions performed the work as instructed during 2014, which was approved by the SABC and subsequently aired;
- 2.2.3 Around September 2015, Michaelowen Productions submitted its invoices to the SABC as per the guidance of its standard payment procedures, designed by the SABC procurement department;
- 2.2.4 In terms of the invoices submitted to the SABC for outstanding money due to Michaelowen Productions, an amount of twelve million, six hundred and fifty thousand rand (R12 650 000,00) per annum was claimed for Sekunjalo PSL Imaging, which was broadcast on eleven SABC radio stations during 2014, 2015 and 2016;
- 2.2.5 The total amount of the invoices submitted to the SABC was thirty seven million, nine hundred and fifty thousand rand (R 37 950 000,00). Michaelowen Productions was sent from pillar to post by the SABC until 2017, when the contract expired through the effluxion of time;

- 2.2.6 Eventually, during 2019, the SABC requested indulgence to investigate whether work done by Michaelowen Productions was broadcast by the SABC as alleged. During February 2020, the SABC returned with the investigation report and confirmed that work was delivered by Michaelowen Productions in a form of jingles, theme songs and promos. This was after Advocate Ntuthuzelo Vanara, Head of the SABC Legal Services (Adv Vanara) instructed the Head of Intellectual Property, Ms Mathapelo Matsaneng (Ms Matsaneng), to investigate all the productions created by Michaelowen Productions;
- 2.2.7 Following the “undisputed” findings relating to how PSL Sekunjalo theme songs, produced by Michaelowen Productions, were played on SABC Radio stations, Michaelowen Productions then invoiced the Composers, Authors and Publishers Association (CAPASSO), as a collecting society, to pay royalties as agreed. CAPASSO forwarded two million rand (R2 million) to the SABC for such royalties. Same was paid to Michaelowen Productions by the SABC during December 2020. This payment formed part of the whole agreement with the SABC and the only outstanding payment was for jingles, adverts and promos that were scheduled during sports shows;
- 2.2.8 During May 2021, Adv Vanara then instructed Michaelowen Productions to claim the outstanding amount for jingles, adverts and promos from SABC Radio Business. The SABC Head of Radio Business, Ms Nada Wotshela (Ms Wotshela) engaged with the SABC Sports Department (Sport), as this production was done for Sport. Ms Wotshela then agreed that Michaelowen Productions must be paid the outstanding amount due to it;
- 2.2.9 Months went by without any payment or any form of contact from the SABC. Michaelowen Productions followed up with the SABC and during a zoom meeting Ms Wotshela was in disbelief that the non-payment issue was still on-going. In

this meeting, it was agreed that Sport would call Michaelowen Productions for more information, but this did not occur;

- 2.2.10 Michaelowen Productions then went back to Ms Wotshela, now seeking only a payment date and she suggested that another meeting should be held. The meeting request was declined by all invited SABC personnel and Ms Wotshela was the only one who was in attendance. She then invited Adv Vanara to the meeting once again. The Head of Sport, Mr Gary Rathbone (Mr Rathbone), then replied to another email, saying that in his meeting with Ms Wotshela, they resolved that they will settle with Michaelowen Productions and he wondered why the matter was still on-going;
- 2.2.11 Michaelowen Productions then had no choice but to approach Adv Vanara to request a meeting, which occurred on 10 November 2021, but Adv Vanara's attitude was that of protecting the SABC as opposed to proper governance and work ethics. Adv Vanara started interrogating Michaelowen Productions during the zoom meeting, taking the latter back to all already answered questions;
- 2.2.12 Adv Vanara was coaching his people on what to say and not to say, warning them not to implicate themselves. Ms Wotshela confessed that she was happy with the findings that her business department had achieved and confirmed that the work was done but claimed that she had not seen an email from Mr Rathbone, wherein the latter said that the matter had been resolved and that they would settle with Michaelowen Productions;
- 2.2.13 On 07 November 2021, Mr Rathbone sent an email to Ms Wotshela stating that he thought this issue would be settled, but that the fee would be set at industry norm for the music that was used by Sport. Mr Rathbone further indicated in the same email that in fact, he is surprised that this is still ongoing and expressly stated that he believes that they have to settle as there was no doubt that the

SABC used Michaelowen Productions music. According to Mr Rathbone's email, the issue was not about settling or not, it was about determining what fee or amount should be paid to Michaelowen Productions, in line with average industry norms;

- 2.2.14 Mr Rathbone further stated in his email that he believes that the amount Michaelowen Productions is asking for, is way out of line. Further that, if Michaelowen Productions does not accept an amount in line with average industry norms, then Michaelowen Productions must take the SABC to court to prove that they agreed to pay the amount he billed, unless Michaelowen Productions has documentary evidence, it would not be successful in court;
- 2.2.15 Following the above email from Mr Rathbone, the Complainant received a call from Adv. Vanara claiming that he spoke to Mr Rathbone and that the latter would reply to Michaelowen Productions;
- 2.2.16 On Monday 16 November 2021, Michaelowen Productions received a very shocking email from Mr Rathbone, contradicting his previous email of 07 November 2021 to Ms Wotshela. Mr Rathbone now denied all Michaelowen Productions' claims without mentioning a single reason. This time, Mr Rathbone stated in an email to the Complainant that the SABC denied any liability as alleged by Michaelowen Productions against it, therefore, the SABC would not make any payment to Michaelowen Productions. Mr Rathbone further stated that their rights are fully reserved in this matter;
- 2.2.17 One can assume that Adv Vanara had influenced Mr Rathbone. If Mr Rathbone sent him two contradicting emails as explained above, did he face any disciplinary action? What steps had Adv Vanara taken in this regard? This proves that Adv. Vanara failed to practise responsible, honest oversight, proper governance and ethics in this matter;



- 2.2.18 All this unnecessary drama had caused anxiety and depression to both the Complainant and his wife. They had lost their dignity and pride in the past three years at the hands of Adv Vanara’s leadership. The Complainant’s wife, Ms Portia Ndlovu, who also works for Michaelowen Productions, was suicidal; and
- 2.2.19 The Complainant is now expected to perform doctor’s duties, while he is a patient himself. It is a fact that six people have died at SABC Sport, due to stress following illegal contract terminations and/or ill treatment similar to this case. If this matter is not attended to urgently, someone will die, hence an appeal to the Public Protector to treat this case with the urgency it deserves.

### **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 (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 the additional powers and functions prescribed by national legislation.

- 3.4. Section 6(5) 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(5)(a) of the Public Protector Act states that the Public Protector shall be competent to investigate maladministration within the affairs of any institution in which the State is a majority shareholder or of any public entity as defined in section 1 of the Public Finance Management Act, 1999 (PFMA). The SABC is a schedule 2 major public entity in terms of the PFMA and is therefore one of the institutions contemplated in section 6(5) of the Public Protector Act.
- 3.6. In two separate letters dated 07 January 2022 and 11 March 2022, the SABC disputed the jurisdiction of the Public Protector to investigate this complaint based on two considerations:
- 3.6.1 Firstly, that the matter involves a contractual dispute between the SABC and Michaelowen Productions and that the Constitution reserves the resolution of such matters to the courts; and
- 3.6.2 The second dispute related to SABC's challenge on the rationality of an investigation by the Public Protector on the basis that the Complainant waited more than 4 (four) years to approach the Public Protector with a prescribed claim for relief.
- 3.7 As a result of the two said letters from SABC, the issue of the Public Protector's jurisdiction became contentious right at the outset.
- 3.8 With regard to the first dispute relating to the contract, it is submitted that the complaint may have arisen from an agreement between the parties, namely the SABC and Michaelowen Productions, however cognisance was taken that the agreement is also inextricably linked to the conduct of the SABC officials who discharge a public function. It is in the manner in which the SABC conducted itself

concerning this agreement that is alleged to be improper and to have prejudiced the Complainant and this matter can therefore not be viewed through the narrow lens that it is simply a dispute between two contracting parties.<sup>2</sup>

3.9 It is further submitted that the Public Protector is modelled on the ombudsman institution that is intended to be a less formal and a cost effective alternative available to persons that are alleged to be prejudiced by the conduct associated with public administration. It was with this in mind that the Public Protector asserted its jurisdiction and exercised its discretion in favour of accepting the complaint, underpinned by the view that this matter may be resolved amicably, without further delay and inconvenience to the parties involved. In this respect, the Public Protector has engaged the SABC on possible remedies and mediated<sup>3</sup> between the parties, with a view to assist them to find common ground.

3.10 Section 6(9) of the Public Protector Act 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 years from the occurrence of the incident or matter concerned.”*

3.11 In this case, the alleged agreement between Michaelowen Productions and the SABC was valid from 2014 to 2017 and the complaint was lodged with the Public Protector on 22 November 2021. Since the incident or matter concerned occurred more than two years prior to the reporting of the matter to the Public Protector, a

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<sup>2</sup> Section 182 of the Constitution empowers the public Protector to investigate conduct in state affairs which is alleged to be improper or results in any prejudice.

<sup>3</sup> Section 6(4)(b) of the Public Protector Act provides that:

*“The Public Protector, shall be competent to endeavour, in his/her discretion, to resolve any dispute or rectify any act or omission by (i) mediation, conciliation or negotiation, (ii) advising, where necessary, any complainant regarding appropriate remedies, or (iii) any other means that may be expedient in the circumstances”*

discretion in terms of section 6(9) of the Public Protector Act was exercised to entertain the complaint based on the following special circumstances<sup>4</sup> as envisaged in Rule 10(1) of the Public Protector Rules:

- 3.11.1 The Complainant provided a **reasonable explanation for the delay** in reporting the matter to the Public Protector since he had been continuously engaging the SABC from around 2015, albeit, unsuccessfully, to resolve the matter internally;
- 3.11.2 **The Complainant provided comprehensive and compelling evidence** relating to his previous engagements with the SABC. In this regard, audio recordings, which are alleged to have been aired on radio stations belonging to the Complainant without receiving compensation for their production, invoices which remain unpaid by the SABC, as well as emails that were allegedly exchanged with the SABC were all furnished by the Complainant in support of his complaint;
- 3.11.3 The Public Protector also formulated the reasonable view that **the information/evidence that may be required by the Public Protector would still be readily available** due to the fact that during the analysis of the complaint, it became obvious that some of the SABC officials referred to in the complaint were still in the employ of the SABC and could therefore provide evidence that would enable finalisation of this matter;
- 3.11.4 It is also submitted that the investigation of the matter would be in **the interest of justice** as it could provide an **opportunity to identify potential maladministration, systemic deficiencies, prejudice or injustice and if any,**

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<sup>4</sup> In *Gordhan v Public Protector and Others* [2019] JOL 45246 (GP) and *Gordhan and Others v Public Protector and Others* (36099/2098) [2020] ZAGPPHC 777 (17 December 2020), the Supreme Court of Appeal (the SCA) and the High Court in Pretoria respectively, held that, it is only where special circumstances exist, that complaints that are older than two years can be entertained, and that, the particulars of the special circumstances must be succinctly set out.

**to remedy the same** in the administration of the SABC as a public broadcaster;  
and

3.12 As already alluded, the Public Protector decided to mediate in the matter in line with section 6(4)(b) of the Public Protector Act to assist the parties to find an amicable solution to their dispute. The mediation was as a result of a mutual agreement between SABC, the Complainant and the Public Protector, without prejudice to the parties.

#### **4 ISSUE IDENTIFIED FOR INVESTIGATION**

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

4.1.1 Whether the SABC failed or unduly delayed to pay an outstanding amount for services rendered by Michaelowen Productions under a lawful contract, and if so, whether such conduct is improper as envisaged in section 182(1) of the Constitution and constitutes maladministration in terms of section 6(5) of the Public Protector Act.

#### **5 THE INVESTIGATION**

##### **5.1 Methodology**

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

5.1.2 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.

5.1.3 The process of investigation involved an assortment of an exchange of correspondences, meetings with the SABC and the Complainant, analysis of the relevant documentation, discussions during an Alternative Dispute Resolution (ADR) process and the consideration and application of relevant laws, regulatory framework and prescripts.

## **5.2 Approach to the investigation**

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

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

5.2.2 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.

5.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by both parties in terms of the contract, agreement or business relationship.

5.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of the improper conduct.

## **5.3 The investigation Process**

5.3.1 The approach to the investigation included an exchange of documentation between the Public Protector, the Complainant and the SABC.

5.3.2 The Public Protector has concluded the investigation and based on the information and evidence obtained during the course thereof, is now in a position to make findings.

## **5.4 Key sources of information**

### **5.4.1 Documents and correspondences exchanged**

5.4.1.1 The original complaint received by the Public Protector from the Complainant on 22 November 2021;

5.4.1.2 The Allegations letter from the Public Protector to the SABC GCEO, Mr Mxakwe, dated 06 December 2021;

5.4.1.3 A response letter from the SABC's GCEO, Mr Mxakwe, to the Public Protector, dated 07 January 2022;

5.4.1.4 Additional evidence in the form of emails previously exchanged by the SABC and the Complainant from 2013 to 2021, submitted to the Investigation Team by the Complainant in January 2022;

5.4.1.5 Email correspondence received by the Public Protector from the SABC Group Executive: Legal, Governance & Regulatory, Adv Vanara, dated 02 February 2022;

5.4.1.6 A letter from the Public Protector to the SABC Group Executive: Legal, Governance & Regulatory, Adv Vanara, dated 14 February 2022;

5.4.1.7 A response from the SABC Group Executive: Legal, Governance & Regulatory, Adv Vanara, dated 11 March 2022;

- 5.4.1.8 A letter from the Public Protector to the SABC Group Executive: Legal, Governance & Regulatory, Adv Vanara, dated 04 April 2022;
- 5.4.1.9 Email correspondence from SABC Sports, Mr Orapeleng Lebetho, to the Public Protector, dated 29 June 2022;
- 5.4.1.10 Email correspondence from the Group Executive: Legal, Governance & Regulatory, Adv Vanara, to the Public Protector, dated 13 September 2022;
- 5.4.1.11 A letter from the Public Protector to the SABC GCEO, Mr Mxakwe, dated 16 October 2022; and
- 5.4.1.12 A response from the SABC GCEO, Mr Mxakwe, dated 17 October 2022.

## **5.5 ADR Meetings**

- 5.5.1 ADR meeting held between the SABC and the Public Protector on 29 April 2022; and
- 5.5.2 ADR meeting held between the SABC and the Complainant with the Public Protector mediating during the discussion process on 18 May 2022.

## **5.6 Legislation and other prescripts**

- 5.6.1 The Constitution of the Republic of South Africa, 108 of 1996;
- 5.6.2 The Public Protector Act 23 of 1994;
- 5.6.3 The Public Finance Management Act, 1999; and
- 5.6.4 The Prescription Act 68 of 1969.



## **5.7 Case law**

- 5.7.1 *Gordhan v Public Protector and Others [2019] JOL 45246 (GP) and Gordhan and Others v Public Protector and Others (36099/2098) [2020] ZAGPPHC 777 (17 December 2020);*
- 5.7.2 *Government Employees Medical Scheme and Others v The Public Protector of the Republic of South Africa and Others (1000/2019 and 31514/2018 and 33401/2018) [2020] ZASCA 111 (29 September 2020);* and
- 5.7.3 *Sealed Africa (Pty) Ltd v Kelly and Another (3957/04) [2005] ZAGPHC 69 (6 July 2005).*

## **5.8 Textbooks**

- 5.8.1 *Christie RH the Law of Contracts in South Africa, 5th Edition.*

## **5.9 Rule 41(1) Notice issued**

- 5.9.1 On 28 November 2022, the Public Protector served the Complainant with a Notice issued in terms of Rule 41(1) of the Public Protector Rules to afford him an opportunity to reply to the provisional findings.
- 5.9.2 On 13 December 2022, the Complainant responded to the Rule 41(1) Notice via an email.

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

**6.1 Whether the SABC failed or unduly delayed to pay an outstanding amount for services rendered by Michaelowen Productions under a lawful contract, and if so, whether such conduct is improper as envisaged section 182(1) of the Constitution and constitutes maladministration in terms of section 6(5) of the Public Protector Act.**

*Common cause issues*

6.1.1 Save where the contrary may be argued, the facts outlined herein below are common cause between the parties:

6.1.1.1 On 23 December 2014 Michaelowen Productions entered into a written agreement with the SABC as per reference number 00006145 to produce theme songs referred to as 'sekunjalo' for the PSL soccer radio show. In the said contract of which a copy was furnished to the Public Protector, the SABC was represented by the General Manager for Production Radio Sport, Ms Diane Riemer and Michaelowen Productions was represented by Mr Owen Ndlovu (the Complainant); and

6.1.1.2 The signing of the contract followed a trade exchange deal between the PSL and the SABC. The contract further stipulated that Michaelowen Productions must also be paid royalties by the relevant collecting societies for the theme songs it produced, which aired on the PSL soccer radio show. This contract was met by the SABC and Michaelowen Productions was duly paid in full in December 2020. Accordingly, no dispute arose between Michaelowen Productions and the SABC after the payment of royalties.

- 6.1.1.3 The SABC and Michaelowen Productions subsequently concluded another written production agreement under contract number 1041622, giving the Complainant's company an additional mandate to compose imaging work for the PSL. However, this second agreement has become a subject of a dispute between the parties.

*Issue in dispute*

- 6.1.2 The central issue for the Public Protector's determination was whether the SABC failed or unduly delayed to pay an outstanding amount for services rendered by Michaelowen Productions under a lawful contract.

*Complainant's version*

- 6.1.3 The Complainant alleged that Michaelowen Productions was also instructed or mandated by the SABC through emails during 2014 (cited herein below) to compose jingles, adverts and promos for the PSL. This is also called *show identity* or *imaging work*.
- 6.1.4 The Complainant also stated that Michaelowen Productions performed the work as instructed during 2014, which was approved and aired by the SABC on its soccer radio show from 2014 to 2017.
- 6.1.5 According to the Complainant, the above-mentioned additional mandate or instruction by the SABC to Michaelowen Productions to compose imaging work for the PSL was as a result of another written production agreement concluded by the parties under contract number 1041622, a copy of which was furnished to the Public Protector. In the said contract, the SABC was represented by Mr Zakhele Sibiyi, who was the then Finance Manager at SABC Sports and Michaelowen Productions was represented by the Complainant. The contract was signed during August 2014.

- 6.1.6 According to the Complainant in terms of paragraph 12 of the latter contract (number 1041622), the parties agreed to the jurisdiction of the Magistrate's Court of South Africa in respect of all claims which may arise out of/or from the agreement.
- 6.1.7 He stated that Michaelowen Productions submitted its invoices to the SABC around September 2015 as per the guidance of the standard payment procedures designed by the SABC's procurement department, to claim for the work done for the PSL radio show, which was broadcast on eleven SABC radio stations during 2014, 2015 and 2016.
- 6.1.8 He stated further that the total amount of Michaelowen Productions' invoices that were submitted to the SABC was thirty seven million, nine hundred and fifty thousand rand (R 37 950 000,00). He also stated that this is when Michaelowen Productions was sent from pillar to post by the SABC, until 2017 when the contract expired through the effluxion of time.
- 6.1.9 The complainant stated that to this day, Michaelowen Productions has not been paid despite the fact that in 2019, the SABC requested an indulgence from it to investigate if the invoices submitted were indeed for work it had done and subsequently broadcasted by the SABC. He also stated that on February 2020, the SABC returned with an investigation report which confirmed that work had been delivered by Michaelowen Productions in the form of jingles, theme songs and promos. He further stated that this was after Adv Vanara had instructed Ms Matsaneng to investigate all the production work done by Michaelowen Productions.

#### *SABC's First Response*

- 6.1.10 In a letter dated 06 December 2021 the Public Protector raised the allegations with the SABC for a response. The SABC responded through a letter dated 07 January

2022, signed by the SABC Group Chief Executive Officer (the GCEO), Mr Madoda Mxakwe.

6.1.11 The GCEO stated, *inter alia*, that:

6.1.11.1 The SABC considered the complaint lodged by the Complainant, on behalf of Michaelowen Productions, which essentially is an alleged contractual claim, in terms of which the services were allegedly rendered by Michaelowen Productions, which should have endured until 2017.

6.1.11.2 It is alleged that the SABC has failed and/or refused to pay Michaelowen Productions an amount of R37 million.

6.1.11.3 For purposes of the Public Protector's investigation, the SABC once again places it on record that the SABC disputes liability as alleged in Michaelowen Production's complaint and reserves its right to pursue legal remedies available to it in law in this regard. To this extent, the SABC requested to be furnished with the letter of complaint received by the Public Protector from the Complainant.

6.1.11.4 It is the view of the SABC (GCEO) that the matter is a legal dispute involving the SABC and Michaelowen Productions and that the Constitution reserves the resolution of legal disputes to courts of law. A well-established procedure is in place in this regard, where a Plaintiff with similar claims may vindicate his rights in Court and a Defendant may, similarly protect his rights. It is settled law in civil proceedings that he who alleges must prove his claim on a balance of probabilities, and not the other way around.

6.1.11.5 There are no monies due and payable to Michaelowen Productions by the SABC as alleged in the complaint or under the 2014 contract, which endured until 2017. Further that all payments for services rendered in terms of a written contract signed between the SABC and Michaelowen Productions during 2014

were paid in full. That any claim(s), which Michaelowen Productions may have had against the SABC, which is disputed, would have prescribed.

- 6.1.11.6 Considering the unresolved legal dispute by a competent court of law and the absence of a court order instructing the SABC to pay any monies to Michaelowen Productions, the Public Protector lacks the legal competence to investigate the complaint it had received from the Complainant on behalf of Michaelowen Productions. Further, that the Public Protector lacks the legal competence to determine whether the SABC is indebted to Michaelowen Productions, in circumstances where the SABC disputes legal liability, a function the Constitution reserves to the courts for adjudication.
- 6.1.11.7 During September 2017, Michaelowen Productions brought an urgent application against the SABC in the Gauteng Local Division of the High Court under Case No. 035216/17 claiming an amount of fourteen million eight hundred and seventy eight thousand five hundred and forty eight rand only (R14 878 548), in respect of imaging and jingles, which application was dismissed with costs. No action proceedings were instituted by Michaelowen Productions thereafter to recover monies allegedly due to it.
- 6.1.11.8 During December 2014, the SABC and Michaelowen Productions entered into a written contract under SABC reference number 00006145, which contract was furnished to the Public Protector. The effective date of this contract was 05 September 2014 and terminated on 04 September 2017. The terms of this contract are self-explanatory, undisputed and were complied with by both parties and the SABC discharged all of its contractual obligations in terms of this Agreement.
- 6.1.11.9 The SABC had concluded a Productions Agreement with Michaelowen Productions as per contract number 1041622, which Agreement was terminated

during 31 March 2015 by the SABC.<sup>5</sup> A copy of the Productions Agreement was furnished to the Public Protector. Beyond these two contracts, there is no other contract which the SABC had with Michaelowen Productions and that the latter has failed since 2014 to produce evidence to substantiate the existence of the claims made.

- 6.1.11.10 Michaelowen Productions submitted to the SABC, an invoice dated 01 April 2014 in the amount of R14 878 548.00, for imaging in respect of different radio stations. The SABC refused to pay, as these services were not contracted for, neither were they rendered.
- 6.1.11.11 The SABC's officials are bound by the provisions of section 57 of the Public Finance Management Act, 1999 (PFMA) in the discharge of their responsibilities which provides amongst other things that *“An official in a public entity – (a) must ensure that the system of financial management and internal control established for that public entity is carried out within the area of responsibility of that official; (b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official area of responsibility; (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any irregular expenditure and fruitless and wasteful expenditure....”*
- 6.1.11.12 There is no legal or moral obligation on the SABC to pay a non-existent claim. Any payment of a non-existent claim and/or a prescribed claim would have amounted to fruitless and wasteful expenditure, exposing the relevant officials to consequence management. In the circumstances, the relevant SABC officials acted consistently with the provisions of section 57 of the PFMA, by refusing to pay a non-existent claim against the SABC. Thus, a finding of improper conduct against the SABC has no factual or legal basis.

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<sup>5</sup> It must be noted that GCEO did not furnish proof of termination or cancellation of this contract as alleged and the Complainant denied that this contract was ever terminated by the SABC.

- 6.1.11.13 The first invoice was submitted to the SABC on 01 April 2014. The invoices were not paid, as the SABC disputed liability for the reasons outlined above. What was open to the Complainant was to approach a competent court to sue for breach of contract, alternatively to sue for non-payment. The Complainant has not done so. The only inference to be drawn is that there has never been a legitimate claim to start with and that any potential claims the Complainant might have had, something the SABC denies, has prescribed.
- 6.1.11.14 That the Constitution, the PFMA, National Treasury Regulations and SABC Supply Chain Management (SCM) policy would have required the procurement of services to the value of R37 million to have a Business Case approved at Operational Committee and at Group EXCO. Thereafter, the advertisement of a tender, the adjudication and award of the tender by the relevant supply chain management Committees and approval structures. None of the above were obtained in this case.
- 6.1.11.15 All of these point to the non-existence of any agreement permitting Michaelowen Productions to render the relevant services. It is SABC's contention that no imaging was done by Michaelowen Productions as alleged by the Complainant.
- 6.1.11.16 The SABC further argues that, the Complainant himself has not asserted or proven that he participated in a competitive SCM process for these services as required by the above stated legal framework governing procurement.

*Further evidence adduced by the Complainant*

- 6.1.12 The Complainant disputed some of the responses by the SABC's GCEO and gave further evidence to the Public Protector. As a result, on 14 February 2022, the Public Protector addressed a second letter to the SABC, seeking clarity on the specific contentions raised by the Complainant, such as that there is no court case pending between the SABC and Michaelowen Productions as this matter



was struck off the court roll for lack of urgency in terms of a court order dated 28 February 2018.

6.1.13 The Complainant explained to the Public Protector in January 2022 that the merits of this court case cited by SABC were not heard or entertained by a court and that the Complainant never returned to court for the same issue.

6.1.14 The above was confirmed by Adv Vanara in an email to the Public Protector dated 02 February 2022. He indicated in the email that he had ascertained with the SABC's attorneys and that no other court application was brought in connection with this matter. The merits of the matter were therefore not adjudicated upon by any court.

6.1.15 Michaelowen Productions has advised that following the matter being struck off the court roll, the SABC offered to resolve the matter internally, out of court and that both parties had been engaged in that process, albeit without any success.

6.1.16 The Complainant further furnished the Public Protector with an email dated 24 June 2014, from Mr Aubrey Motloug: then SABC Executive Producer Radio Sport, with the following instruction:

*"We need to deliver on very powerful, convincing and sellable signature tunes X 2 and 2 stings for the PSL Magazine Show. Delivered by C.O.B: Thursday 3 July 2014."*

6.1.17 The Complainant submitted another email dated 16 August 2013, to the Public Protector. The email was sent by Ms Kedibone Hlongwane, the then Personal Assistant of Mr Sizwe Nzimande, former General Executive Manager for SABC Sport, to Mr Joseph Phetla and Mr Pat Mahuma and others under the subject *"Work Without Contract"* and the following was stated:

*“Please note that Sizwe has agreed that Lindani, Duane and Owen can proceed and work without contract, he will sort it out on Monday. Please go ahead and schedule them.” (sic)*

- 6.1.18 The Complainant furnished the Public Protector with another email dated 17 December 2019, from Ms Mathapelo Matsaneng of SABC to Ms Thando Philison of CAPASSO. The subject of the email was *“RE: Owen Ndlovu Productions”*. The email reads as follows:

*“The update on the matter is that the SABC is making progress in drawing records on how the PSL Sekunjalo songs were played on the SABC Radio Stations. The process involved searching into the SABC broadcast system and finding records dating back as far as 2014. Nearly all the stations have submitted their broadcast records. What the SABC has gathered contains information such as jingles, adverts, and promos that were scheduled during sports shows. The next step is for the SABC to analyse the records and compile a report that will be understood by all parties, including collecting societies by end of June 2020.”*

- 6.1.19 The Complainant argued that following these findings of records on how PSL Sekunjalo theme songs by Michaelowen Productions were played on SABC radio stations, Michaelowen Productions then invoiced CAPASSO as a collecting society, to pay royalties and indeed CAPASSO claimed R2 million from the SABC, which was paid to Michaelowen Productions by CAPASSO in December 2020. However, according to the Complainant, this R2 million excluded the payment for imaging work jingles, adverts, stings and promos that were scheduled during sports shows, which is what Michaelowen Productions demands from the SABC.

*SABC's second response*

- 6.1.20 The above emails that were provided by the Complainant in support of his complaint were furnished to the SABC to solicit an additional response.
- 6.1.21 In a second letter from the SABC dated 11 March 2022, signed by Adv. Vanara, the SABC reasserted its position and stated *inter alia* that:

*"We have provided a detailed response to the complaint by Michael Owen Productions in our letter dated 6 January 2022. It is not our intention to address every averment made in the letter under reply. Our failure to address an averment inconsistent with our submissions in our letters dated 6 January 2022 and 11 March 2022, must not be considered as an admission, but as expressly denied.*

*We have noted from your letter under reply that our legal submissions in our letter dated 6 January 2022 were misunderstood. To the extent necessary, we deem it appropriate to clarify ourselves.*

*We place it on record that the statutory and constitutional powers of the Public Protector to investigate, report on the conduct and take appropriate remedial action has not been disputed in our letter dated 6 January 2022. Neither are the powers disputed in this letter. It is the SABC's position that the legal dispute between the SABC and Michael Owen Production, is one capable of being resolved by a competent Court of law".*

*It is our submission that absent a Court finding that the SABC is legally liable to Michael Owen Production and a consequent Order instructing the SABC to pay the latter, it is not competent for the Public Protector to conclude that the SABC is failing and/or is unduly delaying payment for services allegedly rendered to Michael Owen Productions. This is especially so, in circumstances where the*

*SABC is denying its indebtedness to Michael Owen Productions on the basis of legal defences at its disposal.*

*Reference to prescription in our letter dated 6 January 2022 is not directed to the power of the Public Protector to exercise the statutory and constitutional powers, but to any possible legal claim Michael Owen Productions may have had against the SABC, something expressly disputed, in terms of the relevant provisions of the Prescription Act, 1969 (Act No. 68 of 1969).*

*We respectfully submit that any claim(s) Michael Owen Production may have had against the SABC, something which is denied, has prescribed under the current circumstances, as no legal action has been brought to date to interrupt prescription, more than 4 (four) years the cause of action had arisen.*

*We, however, do challenge the rationality of an investigation by the Public Protector, more than 4 (four) years after the cause for complaint had arisen, a matter that has not been adjudicated upon by the Courts.*

*It is our submission that in the event Michael Owen Productions holds a view that the SABC owes it money, which the SABC is on record as disputing, then it was always open to Michael Owen Productions to approach a Court of law for appropriate relief. Not to wait more than 4 (four) years to approach the Office of the Public Protector with a prescribed claim for relief.*

*In our view, whilst section 182 of the Constitution grants the Public Protector wide investigative powers, the relevant section does not confer on the Public Protector powers to investigate prescribed claims and order Organs of State to pay legally non-existent claims, such as the one at hand. Especially, considering that such payments constitute fruitless and wasteful expenditure as defined in the Public Finance Management Act, 1999 Act No. 1 of 1999)..."*

- 6.1.22 The above response from SABC was communicated and discussed with the Complainant in March 2022. The Complainant rejected the arguments advanced by Adv. Vanara. The Public Protect Investigation Team (Investigation Team) then advised the Complainant that a meeting shall be requested with the SABC to explore alternative dispute resolution mechanisms for this matter.
- Alternative Dispute Resolution (ADR) meeting / session in terms of section 6(4)(b) of the Public Protector Act.*
- 6.1.23 Section 6(4)(b) of the Public Protector Act empowers the Public Protector to resolve any dispute or rectify any act or omission by mediation, conciliation or negotiation, advising, where necessary, any Complainant regarding appropriate remedies, or any other means that may be expedient in the circumstances.
- 6.1.24 In an effort to resolving this matter, the Public Protector requested a meeting with the SABC in a letter dated 04 April 2022. The SABC agreed to the meeting which took place on 29 April 2022, wherein the SABC agreed to a mediation session with the Complainant. The SABC also agreed to allow the Complainant to demonstrate during the mediation, the production work he alleges to have provided to the SABC.
- 6.1.25 The mediation took place on 18 May 2022 with the Complainant, the Investigation Team and the SABC Sports Team being present. During the mediation, the Complainant was given an opportunity to demonstrate and provide evidence of the production work he claimed Michaelowen Productions delivered to the SABC. During the mediation, the Complainant demonstrated by playing material such as jingles, promos, voice overs, ambience and stings, which were used by the SABC on its radio platforms in the presence of the SABC Sports Team, using a Bluetooth device which was connected to a speaker in the boardroom at SABC.
- 6.1.26 Following the above mediation, Mr Orapeleng Lebethe of SABC Sports (Mr Lebethe) indicated that he will give a report regarding his analysis of what was

presented during the mediation. Subsequently, Mr Lebethe sent the following feedback email to Adv. Vanara on 29 June 2022, which the latter forwarded to the Public Protector:

*“I thought we should bring you up to speed that when we had the meeting with the PP and Michael Owen, the objective was to establish if he had indeed produced the work he is claiming for.*

*You had asked us not to deal with any other legal issues besides establishing the understanding of the work he created.*

*From that meeting, both myself and Zakhele understood that he did produce the material and it did flight on our radio platforms as per what he presented.*

*That is where we left it.*

*With regards to the invoices, we did not discuss anything around that with the PP and with Michael Owen”.*

- 6.1.27 From the above email, it is evident that the SABC concedes that Michael Owen Productions did indeed produce the work he is claiming for, which included jingles, promos, voice overs, ambience and stings, which were used by the SABC on its radio platforms. After the above email from Mr Lebethe, the Public Protector requested Adv. Vanara to consider allowing the Complainant to resubmit his invoices for reconsideration in line with industry norms. Furthermore, for the parties to find an amicable solution to their dispute, within a permissible regulatory framework, in the light of the revelations emanating from the mediation.

#### *SABC’s third response*

- 6.1.28 On 13 September 2022, Adv. Vanara replied to the Public Protector after several enquiries and stated, amongst others, the following:

*“...I am advised by the colleagues at our Sport Department that the reasons for the non-payment of the invoices are as follows:*

- 1. No Contract existed between the SABC and Michael Owen Productions CC for the alleged services;*
- 2. The services allegedly rendered were not requested by an authorised official at the SABC;*
- 3. No amount was agreed for the services; and*
- 4. Any services rendered would have been irregular and expose the organization to irregular expenditure.*

*I hope this clarifies the SABC’s position on the matter, as fully articulated in our response letters submitted to your Office...”*

6.1.29 On 25 September 2022, the above response from Adv. Vanara was communicated to the Complainant and the Investigation Team explained that the mediation had not yielded positive results since the SABC continued to raise contractual dispute and to deny any indebtedness to Michaelowen Productions.

6.1.30 The Complainant rejected the SABC’s position and strongly asserted that Adv. Vanara is the one who is responsible for non-payment of Michaelowen Productions’ invoices because Adv. Vanara’s attitude has always been that of protecting the SABC and not fostering proper governance and work ethics.

6.1.31 On 16 October 2022, the Public Protector wrote to the GCEO and requested him to reflect on the above mentioned developments and to accordingly advise the Public Protector regarding the SABC’s final position on this matter. The GCEO’s attention was drawn in particular to the admission made by Mr Lebethe through an email dated 29 June 2022 to Adv. Vanara that the SABC used Michaelowen

Productions' production work on its radio platforms, as revealed during the mediation held on 18 May 2022.

*SABC's fourth response*

6.1.32 On 17 October 2022, the GCEO replied to the Public Protector in a letter and stated the following:

*"Receipt of your letter dated 16 October 2022 is acknowledged, the contents of which noted.*

*I confirm the position of the SABC as articulated in our letters dated 7 January 2022 and 11 March 2022, respectively, as our response to the complainant's complaint. Engagements between officials of the SABC and the Public Protector were in support of the Public Protector's investigation, in discharge of our constitutional obligation.*

*Having considered your letter under reply, please be advised that, for the reasons already furnished by the SABC officials, including the prescription of any potential claim the complainant may have had, I am unable to come to a different conclusion.*

*Consequently, the SABC denies that it is indebted to the complainant and no payment will be effected to the complainant.*

*Lastly, allegation of unethical conduct on the part of Advocate Vanara by the complainant is without merit and thus denied". (sic)*

6.1.33 It must also be recorded that Adv. Vanara had already submitted an affidavit dated 07 January 2022, to the Public Protector, in which he denied the allegations that he is responsible for any undue delay or non-payment of Michaelowen Production's invoices. Adv. Vanara indicated amongst others in his affidavit that



he only joined the SABC as the Head of Legal Services on 01 October 2018 and that he has never been responsible for activities within the SABC Sports Department or payment of SABC Sports service providers. Adv. Vanara submitted in his affidavit that his responsibilities to the SABC Sports Department are to provide effective and efficient legal support to the business unit.

*Response to the Rule 41(1) Notice by the Complainant*

- 6.1.34 In what follows, the Public Protector shall proceed to consider the submissions made in response to *Rule 41(1) Notice*. However, the Public Protector shall not deal with each and every aspect raised in the response, but that should not be misconstrued as an admission of any kind of the averments contained therein.
- 6.1.35 The Complainant submitted his response to the Public Protector's *Rule 41(1) Notice* on 13 December 2022 and argued that there are facts omitted by the Public Protector in the interim report. In the main, the Complainant contended that the Public Protector's issue for determination was to investigate whether SABC unduly delayed and/or failed to pay Michaelowen Productions for services rendered. According to the Complainant, the Public Protector failed to make a finding on this issue. Thus, the Complainant requested the Public Protector to pronounce on whether there was undue delay and non-payment by SABC to Michaelowen Productions on this matter.
- 6.1.36 The Complainant further registered his concerns about Adv. Vanara's credibility and the manner in which he handled his claim against SABC. The Complainant further attached emails exchanged between SABC and Michaelowen Productions indicating the subject "*Work Without Contract*". It was also contended by the Complainant that Mr Mbuso Sokhela who works for SABC Finance, had advised SABC Sport on how to go about processing *payment without contract* on

this matter. According to the Complainant, the Public Protector must interview Mr Sokhela on issues related to finance and payments.

- 6.1.37 Having considered the Complainant's submissions, the Public Protector is of the view that his response to a *Rule 41(1) Notice* has already been canvassed and extrapolated. The Public Protector cannot progress to a stage of pronouncing on the issue of whether there was undue delay and/or failure by SABC to pay Michaelowen Production despite a contractual dispute as consistently raised by SABC.
- 6.1.38 The GCEO is the accounting officer of SABC and the head of administration. As indicated in evidence, the GCEO of SABC, Mr Mxakwe has already given his position on the matter. On this score, Mr Sokhela's viewpoints cannot override those of the GCEO. Accordingly, the Public Protector is of the opinion that the Complainant's submission does not necessitate any amendment on the preliminary conclusions and findings as set out in the *Rule 41(1) Notice*.

#### *Applicable Legal Framework*

#### **Public Finance Management Act, 1 of 1999 (PFMA)**

- 6.1.39 Section 57 of the PFMA outlines the responsibilities of official(s) in a public entity and stipulates as follows—
- (a) *“must ensure that the system of financial management and internal control established for that public entity is carried out within the area of responsibility of that official;*
- (b) *is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;*

- (c) *must take effective and appropriate steps to prevent, within that official's area of responsibility, any irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;*
- (d) *must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 56; and*
- (e) *is responsible for the management, including the safe-guarding, of the assets and the management of the liabilities within that official's area of responsibility".*

6.1.40 The officials of the SABC are subject to the above legal provisions in the ordinary course of their duties, including the holistic administration of SABC. Their conduct is therefore expected to always measure up to the dictates of the PFMA as a public entity.

#### **Prescription Act 68 of 1969 (Prescription Act)**

6.1.41 Prescription is governed by the Prescription Act which provides that a person has three years from the date on which a debt became due to institute legal proceedings to collect on that debt.<sup>6</sup> The SABC steadfastly objected to this complaint on the basis that Michaelowen Production's claim has prescribed in law. In terms of section 14 of the Prescription Act, the running of a prescription period can be interrupted by an acknowledgement of liability by the debtor or by service of a process to claim payment by the claimant.

6.1.42 In this instance Michaelowen Productions has submitted its invoices to SABC on various occasions from September 2015 as adumbrated in evidence. On the

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<sup>6</sup> Section 11(d) of the Prescription Act 68 of 1969.

other side SABC denied any liability to this claim and disputed the existence or validity of a contract from which the debt of Michaelowen Productions arises.

### Case law

- 6.1.43 The contractual principle was confirmed in the matter of *Government Employees Medical Scheme and Others v The Public Protector of the Republic of South Africa and Others*<sup>7</sup>, where the Public Protector was investigating allegations of failure or refusal by GEMS to recognise the Complainant as a beneficiary under the medical aid scheme. In this matter, the Court found amongst other things that *the relationship between members and the scheme is essentially one of a contractual nature*. In rejecting the mandate of the Public Protector, the SCA opined that the nature of the complaint, has the consequence that the jurisdictional preconditions for an investigation in terms of sections 6(4) and (5) have not been met. At the end, the SCA found the Public Protector does not have the statutory power to investigate the complaint.
- 6.1.44 In *Sealed Africa (Pty) Ltd v Kelly and Another*<sup>8</sup> it was held that the basic rule regarding interpretation of contract(s) is that no evidence may be given of its terms except the document itself which is a memorial of the agreement, nor may the contents of such document be contradicted, altered, added to or varied by oral evidence. In this regard, it is submitted that interpretation of contracts is a question of law and not fact, a function reserved for the courts of law.<sup>9</sup>

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<sup>7</sup> *Government Employees Medical Scheme and Others v The Public Protector of the Republic of South Africa and Others* (1000/2019 and 31514/2018 and 33401/2018) [2020] ZASCA 111 (29 September 2020) at paragraph 22 and 38.

<sup>8</sup> *Sealed Africa (Pty) Ltd v Kelly and Another* (3957/04) [2005] ZAGPHC 69 (6 July 2005) at para 18.

<sup>9</sup> Christie RH *the Law of Contracts in South Africa*, 5<sup>th</sup> Edition at page 192.

### *Conclusion*

- 6.1.45 The Public Protector considered the evidence obtained during the investigation and determined that Michaelowen Productions produced work for the SABC which was subsequently aired on its radio shows. This was not disputed by the SABC as it was revealed by its own internal investigation during 2019 and further confirmed by Mr Lebethe on 29 June 2022, in an email addressed to Adv. Vanara. The Public Protector provided feedback to the Complainant on the SABC's internal investigation.
- 6.1.46 The SABC contends that any services rendered by Michaelowen Productions were irregular and any payment in recognition thereof would be tantamount to irregular expenditure in violation of the PFMA, as no contract existed between the SABC and Michaelowen Productions for the alleged services; the services allegedly rendered were not requested by an authorised official at the SABC and no amount was agreed to for the services.
- 6.1.47 In addition, the SABC contends that any claim that Michaelowen Productions would have had against it, has prescribed in law.
- 6.1.48 The Public Protector endeavoured to mediate the matter in accordance with the Public Protector Act with the aim of assisting both parties to reach an amicable solution through mutual consultation but this was not successful. While the system of the Public Protector as an ombudsman is complementary to and may have a lot in common with the courts and tribunals, but is not designed to operate as a carbon copy of a court of law.
- 6.1.49 While the resolution of complaints and disputes by the Public Protector “*by application of the law*” is a legal process, it is not intended to simulate or to be equated to the process in a court of law. The Public Protector cannot compel the SABC to pay Michaelowen Productions what the latter contends is due to it.

6.1.50 In the result, it has become evident that this matter involves a contractual dispute between SABC and Michaelowen Productions.

## **7 FINDINGS**

7.1 In view of the foregoing, the Public Protector closes this investigation based on the following finding:

7.1.1 The Public Protector finds that the nature of the dispute between the SABC and Michaelowen Productions is one that may be appropriately ventilated in a court of law.

## **8 CONCLUSION**

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



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**ADV Kholeka Gcaleka**  
**THE ACTING PUBLIC PROTECTOR**  
**OF THE REPUBLIC OF SOUTH AFRICA**  
**DATE: 30 DECEMBER 2022**

*Assisted by: Mr Vusumuzi Xolani Dlamini*  
*Acting Executive Manager: Investigations Branch*