



PUBLIC PROTECTOR  
SOUTH AFRICA

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**REPORT OF THE PUBLIC PROTECTOR ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION, CORRUPTION, COLLUSION, THEFT, FORGERY AND DEFEATING THE ENDS OF JUSTICE BY THE DEPUTY DIRECTOR-GENERAL OF THE DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES, MS SIPHOKAZI NDUDANE.**

## **1. INTRODUCTION**

- 1.1. This is a 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 issued in terms of section 8 of the Public Protector Act, 1994 (the Public Protector Act), on an investigation into allegations of maladministration, corruption, collusion, theft, forgery and defeating the ends of justice by the Deputy Director-General of the Department of Agriculture, Forestry and Fisheries (DAFF), Ms Siphokazi Ndudane.
- 1.2. It is noted that during 2019, Departments in the Republic were reconfigured. Where there was previously the Department of Agriculture, Forestry and Fisheries, there is currently the Department of Agriculture, Land Reform and Rural Development and the Department of Environment, Forestry and Fisheries.
- 1.3. The Complainant in this matter is Ms Beverley Schafer, the Deputy Speaker of the Western Cape Provincial Parliament (the Complainant).
- 1.4. The complaint was prompted by various media reports following the surfacing of a charge sheet against Ms Ndudane, detailing her alleged involvement in incidences of abalone theft of an estimated value of R20 million, which took place on 25 September 2017, 08 January 2018 and 15 May 2018, respectively.
- 1.5. The Complainant has requested the Office of the Public Protector to investigate the above allegation, as well as the following allegations which were also contained in the charge sheet against Ms Ndudane:-

- 1.5.1. Whether Ms Ndudane unlawfully signed falsified documents pertaining to the determination and approval of the 2017/2018 West Coast Rock Lobster (WCRL), Total Allowance Catch (TAC) / Total Applied Effort (TAE), which was completed by Ms Wendy West on 14 September 2017;
- 1.5.2. Whether Ms Ndudane irregularly appointed Sizwe Ntsaluba Gobodo (SNG) to perform Fishing Rights Allocation Processes (FRAP), without following appropriate procurement processes.
- 1.6. The Complainant requested the Public Protector to also investigate whether the former President of the Republic of South Africa, Mr Jacob Zuma (Mr Zuma) accepted a R1 million cash bribe to keep the former Minister of Agriculture, Forestry and Fisheries, Mr Senzeni Zokwana (Mr Zokwana) in his role as Minister in order to prioritise abalone processing and fishing permits for select companies in the Western Cape Province.
- 1.7. Further that Mr Zokwana himself be investigated for allegedly receiving a R300 000 bribe from Western Cape businessmen with interests in the fishing sector, for facilitating talks with Mr Zuma.
- 1.8. This report is submitted to the Complainant to inform her of the outcome of the investigation.

## **2. THE INVESTIGATION**

- 2.1. The complaint was accepted and investigated in terms of section 182 of the Constitution of the Republic of South Africa, 1996 (the Constitution), read with sections 6 and 7 of the Public Protector Act, 1994 (the Public Protector Act).
- 2.2. The investigation process included the following:-

- 2.2.1. The consideration of the complaint lodged by the Complainant;
- 2.2.2. Correspondence to the former Deputy Director-General: Fisheries Management of the Department of Agriculture, Forestry and Fisheries, Ms Siphokazi Ndudane (Ms Ndudane) on 10 October 2018 informing her of the allegations and requesting a response;
- 2.2.3. Correspondence to the Director-General of the former Department of Agriculture, Forestry and Fisheries, Mr MM Mlengana (Mr Mlengana) on 25 October 2018, informing him of the allegations and requesting a response;
- 2.2.4. Meeting with the former Minister of Agriculture, Forestry and Fisheries, Mr Senzeni Zokwana on 12 November 2018;
- 2.2.5. Meeting with the officials from the Directorate for Priority Crime Investigation during November and December 2018;
- 2.2.6. Interview with Ms Ndudane on 18 December 2018;
  - 2.2.6.1. Interview with Mr Mlengana on 27 February 2019;
  - 2.2.6.2. Consideration of the evidence received from Mr Mlengana relating to the issues under investigation;
  - 2.2.6.3. Consideration of evidence received from Ms Ndudane on 17 April 2020; and

2.2.6.4. Consideration of a report by the Public Protector under reference number 005335-19, on a complaint lodged by Mr Nyiko Floyd Shivambu, MP the Deputy President of the Economic Freedom Fighters on 29 March 2019.

### **3. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED DURING THE INVESTIGATION**

#### **3.1. Regarding allegations of maladministration and improper conduct by the senior management of the former Department of Agriculture, Forestry and Fisheries (DAFF).**

3.1.1. The Complainant has requested the Public Protector to investigate Ms Ndudane (former Deputy Director-General: Fisheries Management), Ms Parker (former Acting Chief Director: Financial Management) and Mr Vico (former Acting Chief Director: Monitoring Control and Surveillance) in connection with allegations of fraud, theft, extortion, forgery, defeating the ends of justice, insubordination and the contravention of section 217(1) of the Constitution of the Republic of South Africa, 1996 *“as contained in a charge sheet compiled during a disciplinary hearing held on 3 September 2018 at the Department’s offices in Pretoria”*.

3.1.2. It was established from the available evidence that Ms Ndudane, Ms Parker and Mr Vico were all subjected to an internal disciplinary process following charges of misconduct brought against the three officials, including the charge of the theft of abalone.

3.1.3. It was determined that Ms Ndudane was placed on precautionary suspension as the Deputy Director-General: Fisheries Management of the Department of Agriculture, Forestry and Fisheries (DAFF) in August 2019 by Mr Mlengana, pending the outcome of an internal DAFF disciplinary process.

- 3.1.4. She was charged with 69 counts of misconduct including the theft of abalone during 2017 and 2018, respectively.
- 3.1.5. The disciplinary hearing took place on 25-29 November 2019.
- 3.1.6. Ms Ndudane was found guilty of the theft of 3 tons of Abalone to the value of approximately R7 000 000.00 from DAFF's stores in Paarden Island in December 2017 or January 2018.
- 3.1.7. Proceedings relating to the appropriate sanction followed and the Chairperson of the Disciplinary Enquiry recommended that Ms Ndudane should be dismissed.
- 3.1.8. Ms Ndudane was accordingly dismissed as the Deputy Director-General: Fisheries Management of DAFF by Mr Mlengana on 29 November 2019.
- 3.1.9. Ms Ndudane disputed the fairness of her dismissal by referring the matter to the General Public Service Sector Bargaining Council (GPSSBC) for conciliation on 6 December 2019.
- 3.1.10. Ms Parker was also charged for misconduct, including the theft of abalone at DAFF's Paarden Island stores during the period of December 2017 to February 2018.
- 3.1.11. Ms Parker was placed on precautionary suspension as the Acting Chief Director: Financial Management of DAFF in June 2018 by Mr Mlengana, pending the outcome of an internal investigation by DAFF.
- 3.1.12. Her disciplinary hearing commenced on 6 September 2018.

- 3.1.13. She was found guilty of misconduct, including the theft of abalone from DAFF's facilities in Gansbaai, Western Cape Province on 8 January 2018.
- 3.1.14. Ms Parker was dismissed by DAFF on 26 February 2019.
- 3.1.15. Ms Parker has advised the investigation team that she has disputed the fairness of her dismissal and referred the matter to the General Public Service Sector Bargaining Council (GPSSBC) for conciliation. It is not clear when this occurred.
- 3.1.16. It was also determined that Mr Vico was placed on precautionary suspension as the Acting Chief Director: Monitoring Control and Surveillance of DAFF on 20 July 2018 by Mr Mlengana, pending the outcome of an internal investigation by DAFF.
- 3.1.17. Mr Vico was charged with 14 counts of misconduct, including the unprocedural removal of abalone from DAFF's store room in Paarden Island in the Western Cape during the period of December 2017 to February 2018.
- 3.1.18. Following an internal disciplinary hearing, Mr Vico was found not guilty on all charges levelled against him on 10 January 2020.
- 3.1.19. Having considered these developments in the investigation, I am closing this complaint by means of a closing report based on the following reasons:
- 3.1.19.1. The complaint lodged by Ms Schafer relates to allegations of misconduct by Ms Ndudane, Ms Parker and Mr Vico while in the employ of DAFF.
- 3.1.19.2. An internal disciplinary process followed the various charges that were brought against each of the three officials. The outcome of the disciplinary

processes were sanctions of dismissal for Ms Ndudane and Ms Parker, while Mr Vico was cleared of all charges by DAFF.

- 3.1.19.3. Under the circumstances, the continued investigation of this matter would therefore serve no purpose due to the fact that the alleged impugned conduct by Ms Ndudane, Ms Parker and Mr Vico were addressed internally by DAFF and appropriate action was subsequently taken against these officials.
- 3.1.19.4. Any findings and remedial action which would result from the continued investigation of this matter would therefore be purely academic as they cannot be implementable, particularly against Ms Ndudane and Ms Parker by virtue of their dismissal by DAFF.
- 3.1.20. The Complainant was informed on 18 September 2020, of the findings and the intended closure of the investigation of the complaint that she had raised with the office of the Public Protector. She was provided an opportunity to respond to the findings and to submit additional information where appropriate.
- 3.1.21. The Complainant responded by email on 06 October 2020 stating the following: *“My apologies at the delay for replying to you. I am raising concerns that the case I have made is linked with the EFF’s. The charges I laid against Ms Ndudane, case number CAS 857/9/2018, at the Cape Town Police Station back in 2018. Why has SAPS not investigated the allegations but did not submit any further or additional information or evidence that contradicted the findings on this issue.”*
- 3.1.22. It is noted from the response by Ms Schafer that she had also laid a charge against Ms Ndudane under case CAS 857/9/2018 at the Cape Town Police Station, information which I was not made aware of at the inception of the



complaint. It is also noted from the response that Ms Schafer did not submit any further or additional information or evidence that contradicts my findings on this issue.

**3.2. Regarding whether Mr Jacob Zuma, in his capacity as former President of the Republic of South Africa, accepted a R1 million cash bribe to keep the former Minister of Agriculture, Forestry and Fisheries, Mr Senzeni Zokwana in his role in order to prioritise abalone processing and fishing permits for select companies in the Western Cape Province and also whether Mr Zokwana received a R300 000 bribe from Western Cape businessmen with interests in the fishing sector, for facilitating talks with Mr Jacob Zuma.**

3.2.1. This complaint was lodged by the Complainant (Ms Schafer) on 26 September 2018.

3.2.2. It was determined that on 29 March 2018 (almost 6 months prior), Mr Nyiko Floyd Shivambu, MP, the Deputy President of the Economic Freedom Fighters (Mr Shivambu) lodged a similar complaint with the Public Protector.

3.2.3. The complaint lodged by Ms Shivambu was allocated reference number 7/2:004983-18.

3.2.4. The complaint was lodged in terms of section 4(1) of the Executive Members' Ethics Act, 1998 (the Ethics Act) relating to allegations of a violation of the Executive Ethics Code by Mr Zokwana during his tenure as the Minister of Agriculture, Forestry and Fisheries.

3.2.5. In his letter of complaint, Mr Shivambu alleged that:-

*“The Economic Freedom Fighters (EFF) notes with grave concern serious allegations of bribery made in an affidavit deposed at the Lyttelton Police Station in December 2017. The affidavit contains allegations that the Minister of Agriculture, Forestry and Fisheries, Mr Senzeni Zokwana, was paid R300 000 by a Western Cape abalone dealer.”*

*“The Hawks have confirmed the authenticity of the affidavit, indicated that based on the allegations made a docket will be open and will be handed over to the National Prosecuting Authority.” (sic)*

3.2.6. The letter of complaint requested the Public Protector to investigate whether:-

*(a) “Minister Zokwana was paid a bribe of R300 000 by Mr. Deon Larry, delivered through Mr. James Booie and Mr. Fryman Baaities?”*

*(b) Through the intervention of Minister Zokwana, there have been any irregularities in the granting of abalone fishing licenses in particular, and fishing licenses in general, to fishing companies related to Deon Larry.*

*(c) In the interest of Minister Zokwana, whether Mr. Jacob Zuma was given R1 million bribe to retain him in Cabinet.” (sic)*

3.2.7. The complaint lodged by Mr Shivambu was closed during November 2019 due to the removal of Mr Zokwana as Minister of Agriculture, Forestry and Fisheries during May 2019.

3.2.8. The closure of the complaint was motivated by the fact that the complaint was lodged in terms of section 4(1) of the Ethics Act.

3.2.9. The Ethics Act provides for a code of ethics which is applicable to, and also governs the conduct of members of the Cabinet, Deputy Ministers and

members of the provincial Executive Councils, and to provide for matters concerned therewith.

- 3.2.10. According to section 1 of the Ethics Act, “*Cabinet*” means the Cabinet referred to in section 91(1) of the Constitution.
- 3.2.11. Section 91(1) of the Constitution states that the Cabinet consists of the President, as head of the Cabinet, Deputy President and Ministers.
- 3.2.12. When Mr Zokwana was removed as a Minister, he ceased to be a member of Cabinet and neither the Ethics Act nor the Code of Conduct for members of the Executive were applicable to him.
- 3.2.13. The continued investigation of the complaint had therefore become moot as the President would not be able to take any action contemplated by the Ethics Act against Mr Zokwana should adverse findings be made and any remedial action imposed by the Public Protector.
- 3.2.14. Other factors which motivated the closure of the complaint lodged by Mr Shivambu was that the Directorate for Priority Crime Investigation (the Hawks) had already begun their investigation into the allegations of corruption involving Mr Zokwana and Mr Zuma.
- 3.2.15. It would not have served any sensible purpose to duplicate the efforts of the Hawks.
- 3.2.16. Having considered the closure of the complaint lodged by Mr Shivambu, I also hereby close this complaint by means of a closing report based on the following reasons:-
  - 3.2.16.1. The complaint lodged by the Complainant (Ms Schafer) on 26 September 2018, is similar to that lodged by Mr Shivambu on 29 March 2018 (almost 6 months prior).

- 3.2.16.2. The complaint lodged by Mr Shivambu was closed on account that it had been overtaken by circumstances such as the removal of Mr Zokwana as a Member of Parliament. The Ethics Act would therefore no longer be applicable to Mr Zokwana and therefore, the continued investigation of the matter had become moot.
- 3.2.16.3. The Hawks were also investigating allegations of corruption against Mr Zokwana and Mr Jacob Zuma.
- 3.2.17. Under the circumstances, the Public Protector has already pronounced on this matter and is now *functus officio*.
- 3.2.18. The Complainant was informed on 18 September 2020 of the findings and the intended closure of the investigation of the complaint that she had raised with the office of the Public Protector. She was provided an opportunity to respond to the findings and to submit additional information where appropriate.
- 3.2.19. The Complainant responded by email on 06 October 2020 stating the following: *“My apologies at the delay for replying to you. I am raising concerns that the case I have made is linked with the EFF’s. The charges I laid against Ms Ndudane, case number CAS 857/9/2018, at the Cape Town Police Station back in 2018. Why has SAPS not investigated the allegations but did not submit any further or additional information or evidence that contradicted the findings on this issue.”*
- 3.2.20. Ms Schafer did not submit any further or additional information or evidence in her response that contradicts my findings on this issue.

#### **4. REASONS FOR CLOSURE OF THE INVESTIGATION**

4.1. Having considered the submissions presented by the Complainant as well as the information and evidence obtained during the investigation, the conclusion is drawn that:-

4.1.1. The alleged improper conduct forming the subject matter of the complaint was addressed internally by DAFF.

4.1.2. DAFF investigated the allegations internally and took appropriate action against those it determined to be implicated in wrong doing against the Department. This has rendered the continued investigation of the matter moot.

4.1.3. On the second issue relating to allegations of bribery involving former President Jacob Zuma and former Minister Zokwana, that complaint was substantially similar to that lodged by Mr Shivambu of the EFF almost 6 months earlier. That matter was closed due to the criminal investigation conducted by the Hawks. It would have served little purpose to duplicate an investigation already conducted by another competent authority.



**ADV. KHOLEKA GCALEKA**  
**ACTING PUBLIC PROTECTOR OF THE**  
**REPUBLIC OF SOUTH AFRICA**

**DATE:** 03 / March / 2021

*Assisted by Mr Njabulo Mathabela in Investigations Branch*



