

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



**PUBLIC PROTECTOR
SOUTH AFRICA**

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND
MALADMINISTRATION BY THE FUNCTIONARIES OF THE LIMPOPO DEPARTMENT OF
HEALTH, AND IMPROPER CONDUCT BY MR MOTHIBE RHODES MSIZA, RELATING TO
THE PERFORMANCE OF REMUNERATIVE WORK OUTSIDE HIS OFFICIAL DUTIES
WITHOUT PERMISSION FROM HIS EMPLOYER**

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LIST OF ACRONYMS / ABBREVIATIONS

ACRONYM / ABBREVIATION	DESCRIPTION
Adv	Advocate
CEO	Chief Executive Officer
Code	Code of Conduct for the Public Service
Constitution	Constitution of the Republic of South Africa, 1996
Department	Limpopo Provincial Department of Health
Directive	Directive on Remunerative work outside the employee's employment in the relevant Department as contemplated in section 30 of the Public Service Act, 1994
DPSA	Department of Public Service and Administration
HoD	Head of Department
Hospital	Groblersdal Hospital
Investigation Team	Public Protector Investigation Team
LRU	Labour Relations Unit of the Limpopo Department of Health
MEA	Municipal Electoral Act, 2000
MEC	Member of Executive Council
MMC	Member of Mayoral Committee
MSA	Municipal Systems Act, 2000
Municipality	Elias Motsoaledi Local Municipality
NEHAWU	National Education, Health, and Allied Workers' Union

PAMA	Public Administration Management Act, 2014
PERSAL	Personnel and Salary System
Public Protector	Public Protector of the Republic of South Africa
Public Protector Act	Public Protector Act, 1994
PSA	Public Service Act, 1994
PSC	Public Service Commission
PSR	Public Service Regulations, 2016
RWOPS	Remunerative Work Outside Public Service

EXECUTIVE SUMMARY

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution, which empowers the Public Protector to report on any conduct in state affairs that is suspected to be improper or to result in any impropriety or prejudice and section 8(1) of the Public Protector Act, which provides that the Public Protector may make known the findings, point of view or recommendation of any matter investigated.
- (ii) The report relates to an investigation into allegations of improper conduct and maladministration by the functionaries of the Limpopo Department of Health, and improper conduct by Mr Mothibe Rhodes Msiza, relating to the performance of remunerative work outside his official duties without permission from his employer.
- (iii) The investigation originates from a complaint lodged with the Limpopo Provincial office of the Public Protector on 16 November 2021, by the Motetema Thusanang Crisis Committee (the Complainant).
- (iv) In essence, the Complainant alleged that:
 - (a) Maladministration occurred at the Department in that Mr Msiza, a full-time employee of the Department working at the Groblersdal Hospital, was simultaneously serving as a full-time ward councillor at the Municipality;
 - (b) The community of Motetema, for which Mr Msiza was the ward councillor, was not receiving the full attention it deserved from him, as he was held up at the Hospital where he was employed; and
 - (c) They would like to establish if it is possible for Mr Msiza to occupy two public service positions and simultaneously receive two public service salaries, while other people are unemployed.

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- (d) The Complainant requested the Public Protector to investigate whether the law allows a person to hold two positions in government simultaneously and if Mr Msiza had made the required disclosures of his employment to both the Department and the Municipality.
- (v) Based on the analysis of the complaint, the following issues were considered and investigated:
- (a) Whether Mr Msiza, an Administration Clerk employed by the Limpopo Department of Health, simultaneously served and was remunerated as a Ward Councillor at the Elias Motsoaledi Local Municipality, without obtaining permission from the Department as required by law, if so, whether such conduct is improper as envisaged in section 182(1) of the Constitution and constitutes maladministration in terms of section 6(4)(a)(i) of the Public Protector Act; and
- (b) Whether the functionaries of the Limpopo Department of Health failed to effectively manage remunerative work in accordance with the Remunerative Work Outside the Employees' Employment Directive, which resulted in Mr Msiza's continued employment as a councillor of the Elias Motsoaledi Local Municipality, if so, whether such conduct is improper as envisaged in section 182(1) of the Constitution and amounts to maladministration in terms section 6(4)(a)(i) of the Public Protector Act.
- (vi) The investigation was conducted in terms of section 182(1) of the Constitution and section 6(4) of the Public Protector Act. It included an analysis of all the relevant documents, application of relevant laws, case law and related prescripts.
- (vii) On 20 November 2024, a notice in terms of section 7(9)(a) of the Public Protector Act was issued to the following persons to provide them with an opportunity to respond on the likely adverse findings and proposed remedial action. Section 7(9)(a) of the Public Protector Act provides that persons implicated in an

investigation by the Public Protector, are to be allowed the opportunity to make representations regarding same:

- (a) The acting Head of Department of Health, Dr M Dombo;
 - (b) Mr J Maseleme, Director: Labour Relations, Limpopo Department of Health;
 - (c) Mr M Molepo, Deputy Director: Labour Relations, Limpopo Department of Health;
 - (d) Mr NZ Molefe, Sekhukhune District Labour Relations Officer, Limpopo Department of Health;
 - (e) Dr LJ Rashokeng, former Chief Executive Officer of Groblersdal Hospital;
 - (f) Mr M Kgwale, acting Municipal Manager, Elias Motsoaledi Local Municipality; and
 - (g) Mr MR Msiza, Ward Councillor, Elias Motsoaledi Local Municipality.
- (viii) Responses to the notice were received from the following persons:
- (a) Dr M Dombo;
 - (b) Mr J Maseleme;
 - (c) Mphoke PK Magane Attorneys on behalf of Mr Msiza; and
 - (d) Mr NZ Molefe.
- (ix) The responses from the respective recipients were duly considered by the Public Protector in relation to the substance of the allegations, the findings and the proposed remedial action in so far as such consideration was warranted.
- (x) No responses were received from other parties who were also issued with the section 7(9)(a) notice.
- (xi) Having regard to the evidence and regulatory framework determining the standard that the Department should have complied with, the following findings are made:

- (a) Whether Mr Msiza, an Administration Clerk employed by the Limpopo Department of Health, simultaneously served and was remunerated as a Ward Councillor at the Elias Motsoaledi Local Municipality, without obtaining permission from the Department as required by law, if so, whether such conduct is improper as envisaged in section 182(1) of the Constitution and constitutes maladministration in terms of section 6(4)(a)(i) of the Public Protector Act**
- (aa) The allegation that Mr Msiza, an Administration Clerk employed by the Limpopo Department of Health, performed other remunerative work as a Ward Councillor at the Elias Motsoaledi Local Municipality outside of his official duties, without obtaining the required permission from the executive authority, **is substantiated.**
- (bb) Evidence obtained during the investigation revealed that Mr Msiza was elected as a ward councillor of ward 31, Elias Motsoaledi Municipality from August 2016 and performed other remunerative work while employed by the Department without obtaining permission from the executive authority as required by section 30(1) of the PSA.
- (cc) Mr Msiza failed to comply with the provisions of section 30(1) of the Public Service Act in that his application to perform other remunerative work was only made nineteen (19) months after he occupied a position as a ward councillor and such application was incomplete and defective and was thus never approved. He however, declared his financial interests to the Municipality as required in terms of section 7(1)(g) of Schedule 1 of the Municipal Systems Act, 2000.
- (dd) Mr Msiza also failed to comply with the guidelines of Circular Minute 7 of October 2005, requiring him to inform the employer of his position as ward councillor.
- (ee) Mr Msiza continued to serve as ward councillor with the full knowledge that he does not have required permission from his employer until he resigned four (4) years later.

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- (ff) The conduct of Mr Msiza accordingly constitutes improper conduct as envisaged by section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
- (b) **Whether the functionaries of the Limpopo Department of Health failed to effectively manage remunerative work in accordance with the Remunerative Work Outside the Employees' Employment Directive, which resulted in Mr Msiza's continued employment as a councillor of the Elias Motsoaledi Local Municipality, if so, whether such conduct is improper as envisaged in section 182(1) of the Constitution and amounts to maladministration in terms section 6(4)(a)(i) of the Public Protector Act**
- (aa) The allegation that the functionaries of the Limpopo Department of Health failed to follow the Department of Public Service and Administration Guidelines and other applicable prescripts to regulate the participation of its employee, Mr Msiza, in municipal elections and his subsequent election to the municipal council of the Elias Motsoaledi Local Municipality, **is substantiated.**
- (bb) Mr Msiza was elected as ward councillor at the Municipality from August 2016 and the Department only became aware of his service as a ward councillor in 2018. Dr Rashokeng and Ms Maepa failed to take the appropriate steps to ensure that Mr Msiza's performance of remuneration work is managed in accordance with Circular Minute 1/3/8/P, 07 October 2005.
- (cc) The functionaries of the Labour Relations Unit, Mr Molepe and Mr Molefe, failed to take corrective action against Mr Msiza after Dr Rashokeng referred the transgression to them for advice and action in August 2018. The Department only took action on 12 January 2022 by instituting disciplinary proceedings against Mr Msiza, who in turn resigned on 25 January 2022, after the Public Protector raised the allegations with the Department. This was more than five (05) years after the Department became aware. The conduct of the functionaries was in contrast with

section 7(3)(b) of the PSA, which provides for maintenance discipline and promotion of sound labour relations.

- (dd) The functionaries of the department failed to recover the remuneration paid to Mr Msiza by the Municipality while he remained in the employ of the Department and further missed the opportunity to recover same when he resigned. The conduct of the functionaries was in contrast with section 31(1)(a)(ii) of the PSA which empowers the accounting officer to recover the remuneration irregularly paid to Mr Msiza by way of legal proceedings.
- (ee) The failure of the functionaries of Department to act promptly in dealing with the misconduct of Mr Msiza amounts to maladministration and improper conduct in terms of section 182(1) of the Constitution and section 6(4)(a)(i) and (v) of the Public Protector Act.
- (xii) The appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, is the following:

The Head of Department

- (a) Within **thirty (30) calendar days** from the date of receipt of this report, institute legal proceedings against Mr Msiza for the recovery of the remuneration he received from the Municipality as a Municipal Councillor without the permission of the executive authority in terms of section 31(1)(a)(ii) of the Public Service Act;
- (b) Alternatively, make a determination in terms of section 31(1)(a)(iv) of the Public Service Act to approve the retention by Mr Msiza of the whole or a portion of the remuneration he received in contravention of section 30(1) of the Public Service Act. In the exercise of the discretion as provided for in the above legal provision, the Head of Department should consider the seriousness of Mr Msiza's conduct in this regard, who continued to serve as a councillor knowing that he did not

have approval of the executive authority to do so.

- (c) Within **ninety (90) calendar days** from the date of receipt of this report, and in terms of section 195(1)(a) of the Constitution, conduct a full audit in respect of all employees within the Department who may be serving as municipal councillors to ascertain whether they have obtained the required permission as required by section 30(1) of the Public Service Act;
- (d) If it is found that there are current employees of the Department who are in contravention of section 30(1) of the Public Service Act, **within thirty calendar (30) days** of such discovery, implement the guidelines as per the Circular Minute 1/3/8/P, 07 October 2005 and the recommendations of the Public Service Commission Report as outlined in paragraph 6.2.42;
- (e) Within **sixty calendar days (60)**, take corrective action against the following functionaries of the Department for the inordinate delay in initiating disciplinary proceedings against Mr Msiza, in line with section 15(6)(a) of PAMA, section 7(3)(b) of the Public Service Act and section 16A(2)(a) of the Public Service Act:
 - (aa) Mr N Z Molefe, the Sekhukhune District Labour Relations Officer; and
 - (bb) Mr M Molepo, the Deputy Director, Labour Relations, Provincial Office.

1. INTRODUCTION

- 1.1 This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2 The report is submitted in terms of section 8(1) read with section 8(3) of the Public Protector Act, which empower the Public Protector to make known the findings of an investigation, to the following affected parties (including the Complainant) for such persons to note the outcome of the investigation and to implement the remedial action, where applicable:
- 1.2.1 Dr Phophi Ramathuba, the Premier of Limpopo Province;
 - 1.2.2 Ms Makoma Makhurupetje, the Speaker, Limpopo Legislature;
 - 1.2.3 Ms Dieketseng Mashego, Member of the Executive Council for the Department of Health, Limpopo Province;
 - 1.2.4 Dr Mutheiwana Dombo, acting Head of Department, Limpopo Department of Health, Limpopo Province;
 - 1.2.5 Mr Jameson Maseleme, Director: Labour Relations, Limpopo Department of Health;
 - 1.2.6 Mr Ntsodi Zachariah Molefe, the Sekhukhune District Labour Relations Officer, Limpopo Department of Health;
 - 1.2.7 Mr M Molepo, Deputy Director: Labour Relations, Provincial Office;
 - 1.2.8 Mr Mothibe Rhodes Msiza, Councillor, Elias Motsoaledi Local Municipality;
 - 1.2.9 Dr LJ Rashokeng, former Chief Executive Officer of Groblersdal Hospital;
 - 1.2.10 Mr MW Mohlala, acting Municipal Manager, Elias Motsoaledi Local Municipality; and
 - 1.2.11 Motetema Thusanang Crisis Committee, the Complainant.
- 1.3 The report relates to an investigation into allegations of maladministration by the functionaries of the Limpopo Department of Health (the Department), and improper conduct by Mr Mothibe Rhodes Msiza (Mr Msiza), an administration clerk employed

by the Department at the Groblersdal Hospital (the Hospital), in that he served as a ward councillor at the Elias Motsoaledi Local Municipality (the Municipality), from August 2016 to January 2022, without obtaining permission from the Executive Authority of the Department as prescribed by section 30(1) of the Public Service Act, 1994 (Public Service Act), and that the Department failed to manage such conduct as required by law.

2. THE COMPLAINT

2.1 The investigation originates from a complaint lodged with the Limpopo Provincial office of the Public Protector on 16 November 2021, by the Motetema Thusanang Crisis Committee (the Complainant).

2.2 The Complainant alleged, *inter alia*, that:

2.2.1 Maladministration occurred at the Department in that Mr Msiza, a full-time employee of the Department working at the Groblersdal Hospital, was simultaneously serving as a full-time ward councillor at the Municipality;

2.2.2 The community of Motetema, for which Mr Msiza was the ward councillor, was not receiving the full attention it deserved from him, as he was held up at the Hospital where he was employed; and

2.2.3 They would like to establish if it is possible for Mr Msiza to occupy two (02) public service positions and simultaneously receive two (02) public service salaries, while other people are unemployed.

2.3 The Complainant requested the Public Protector to investigate whether the law allows a person to hold two (02) positions in government simultaneously and if Mr Msiza had made the required disclosures of his employment to both the Department and the Municipality.

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;

(c) and take appropriate remedial action”.

3.3 Section 182(2) of the Constitution directs that the Public Protector has the additional powers and functions prescribed by national legislation. The Public Protector’s powers are regulated and amplified by the Public Protector Act which states, amongst others, that the Public Protector has the power to investigate and redress maladministration and related improprieties in the conduct of state affairs.

3.4 The Limpopo Department of Health and the Elias Motsoaledi Local Municipality are organs of state in terms of section 239 of the Constitution and the conduct of their functionaries amounts to conduct in state affairs, as a result, the Public Protector is satisfied that the complaint falls within its competency to investigate as envisaged in section 182(1)(a) of the Constitution and section 6(4) of the Public Protector Act.

Special circumstances in terms of section 6(9) of the Public Protector Act

3.5 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.”

3.6 Where an incident or matter reported to the Public Protector occurred more than two years prior to the reporting of the matter to the Public Protector, he/she shall exercise his/her discretion in terms of section 6(9) of the Public Protector Act to entertain the complaint based on special circumstances as envisaged in Rule 10(1) of the Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018 as amended.¹ (Public Protector Rules).

3.7 The Public Protector exercised a discretion referred to in terms of section 6(9) of the Public Protector Act to entertain this complaint, based on the following *special circumstances*² as envisaged in Rule 10(1) of the Public Protector Rules:

¹ 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 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.

Nature of the complaint and seriousness of the allegations

- 3.7.1 In the complaint to the Public Protector, the Complainant indicated that the rural community of Motetema, for which Mr Msiza was the ward councillor, was not receiving the full attention it deserved from him, as he was held up at the Hospital where he was also employed. Mr Msiza's attention was divided between his duties as a ward councillor and those as administrative clerk at the hospital, with the result that both the community and the patients at the hospital may be suffering because of a lack of proper service delivery.

Likelihood of being able to investigate the matter due to the delay having regard to the allegations and the availability of information, evidence, witnesses and records

- 3.7.2 The Public Protector considered that the information/evidence that may be required during the investigation would still be readily available as Mr Msiza is in the employ of the Municipality and the department, which are both bound by the provisions of the National Archives Act, 1996, which prescribes the period for the retention of official documents.

Whether the outcome of an investigation could rectify a systemic problem in the public administration

- 3.7.3 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 if any, to remedy same within the affected organs of state. In a study undertaken in 2007³, the Public Service Commission identified Limpopo Province as one of the provinces with a high number of public servants who were

³ Report on the investigation into the Management of Public Servants in Terms of Prevailing Provisions who are elected as Municipal Councillors in the Limpopo and Western Cape Provinces, August 2007

elected as municipal councillors and went on to serve as such while still retaining their positions as public servants.

3.7.4 The remedial action proposed by the Public Protector, also envisages bringing an end to possible systemic deficiencies.

4. ISSUES IDENTIFIED FOR INVESTIGATION

4.1 Based on the analysis of the complaint, the following issues were identified to inform and focus the investigation:

4.1.1 Whether Mr Msiza, an Administration Clerk employed by the Limpopo Department of Health, simultaneously served and was remunerated as a Ward Councillor at the Elias Motsoaledi Local Municipality, without obtaining permission from the Department as required by law, if so, whether such conduct is improper as envisaged in section 182(1) of the Constitution and constitutes maladministration in terms of section 6(4)(a)(i) of the Public Protector Act; and

4.1.2 Whether the functionaries of the Limpopo Department of Health failed to effectively manage remunerative work in accordance with the Remunerative Work Outside the Employees' Employment Directive, which resulted in Mr Msiza's continued employment as a councillor of the Elias Motsoaledi Local Municipality, if so, whether such conduct is improper as envisaged in section 182(1) of the Constitution and amounts to maladministration in terms section 6(4)(a)(i) 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 and sections 6 and 7 of the Public Protector Act.

5.1.2 Section 7(1)(b) of 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.

5.2 Approach to the investigation

5.2.1 The approach to the investigation included the exchange of documents, analysis of the relevant documentation and information received from all parties as well as independently sourced information, consideration and application of the relevant laws, the regulatory framework and prescripts.

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

- (a) What happened?
- (b) What should have happened?
- (c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration, abuse of power, improper conduct or resulted in prejudice?
- (d) In the event of a violation, what action should be taken?

5.2.3 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the

investigation. Evidence is evaluated and a determination is made on a balance of probabilities. In this case, the factual enquiry principally focused on whether or not the alleged conduct was inconsistent with the applicable prescripts.

- 5.2.4 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standards that should have been met by the functionaries of the Department and the Municipality in the regulation of the employee's performance of remunerative work outside of his official duties or work.

5.3 The Investigation Process

- 5.3.1 The investigation process commenced with correspondence to the Municipal Manager of the Municipality on 02 December 2021 as well as the Head of Department of Health on 06 December 2021, whereby both the Municipality and the Department were informed of the investigation, the legislation in terms of which the investigation was conducted, as well as the information required.

- 5.3.2 The format and the procedure followed in conducting the investigation included:

- 5.3.2.1 Communication by telephone, letter exchanges and email correspondence with the Municipality and the Department;

- 5.3.2.2 Interviews with affected parties or persons reasonably believed to have information relevant to the investigation, such as the Municipal Manager, functionaries of the Department in the Labour Relations Unit, the Chief Executive Officer of Groblersdal Hospital, as well as Mr Msiza; and

- 5.3.2.3 Consideration of records or documents obtained relevant to the investigation, which were in possession or under the control of the Municipality and the Department.

5.4 Key sources of information

5.4.1 Letters, e-mail correspondence and documents exchanged

- 5.4.1.1 The complaint, dated 03 November 2021;
- 5.4.1.2 Email from the Public Protector to Dr Rashokeng requesting confirmation of employment of Mr Msiza, dated 01 December 2021;
- 5.4.1.3 Letter from the Public Protector to Mr Kgwale, the Municipal Manager of Elias Motsoaledi Local Municipality, raising the allegations and requesting reasons why Mr Msiza was sworn in as a councillor while in full time employment at the hospital, dated 02 December 2021;
- 5.4.1.4 Mr Kgwale's letter to the Public Protector responding to the Public Protector, dated 07 December 2021;
- 5.4.1.5 Letter from the Public Protector to Dr Mhlongo, the erstwhile Head of Department of Health raising the allegations with the Department, dated 06 December 2021;
- 5.4.1.6 Letter from Dr Dombo, the erstwhile Acting Head of Department of Health to the Public Protector responding to the Public Protector's letter of 06 December 2021, dated 19 January 2022 and containing the following attachments:
 - a) Dr Rashokeng's letter to Mr Msiza, dated 02 May 2018 regarding allegations of performance of remunerative work without permission;
 - b) Mr Msiza's response to Dr Rashokeng letter, dated 04 May 2018;
 - c) Dr Rashokeng's letter to Mr Msiza dated 18 May 2018, together with Mr Msiza's Application to Perform Other Remunerative Work in terms of Section 30 of the Public Service Act dated 14 March 2018;
 - d) Dr Rashokeng's letter to Mr Msiza, dated 22 May 2018;
 - e) Dr Rashokeng's letter to Labour Relations Unit, dated 10 August 2018;

- f) Dr Rashokeng's letter to Dr Mhlongo, dated 08 December 2021; and
- g) Notice to Attend a Disciplinary Hearing by Mr M Z Mawasha, Deputy Director General, Limpopo Department of Health addressed to Mr Msiza, dated 05 January 2022.

- 5.4.1.7 Letter from Mr Kgwale to the Public Protector, dated 29 August 2022 with Mr Msiza's Disclosure by Councillors of Pecuniary Interest forms for the 2016/17, 2017/18, 2018/19, 2019/2020, 2020/21, 2021/22 financial years attached;
- 5.4.1.8 Letter from the Public Protector to Dr Dombo requesting additional information, dated 15 May 2023;
- 5.4.1.9 Dr Dombo's response letter to the Public Protector dated 13 June 2023, with the Notice to Attend a Disciplinary Hearing and Charge Sheet dated 05 January 2022 and Mr Msiza's resignation letter dated 25 January 2022 attached thereto;
- 5.4.1.10 Letter from the Public Protector to Mr Maseleme requesting him to supplement Dr Dombo's response with additional information, dated 27 February 2024;
- 5.4.1.11 Letter from Dr NN Ndwamato, the Acting Head of Department of Health to the Public Protector regarding Mr Msiza's disciplinary matter, dated 20 March 2024;
- 5.4.1.12 Letter from the Public Protector to Mr Kgwale regarding Mr Msiza's ward councillor status, dated 21 May 2024;
- 5.4.1.13 Letter from the Public Protector to Mr Mohlala regarding Mr Msiza's ward councillor status, dated 22 May 2024;
- 5.4.1.14 Response letter from Mr Mohlala to the Public Protector, dated 24 May 2024;
- 5.4.1.15 Letter from the Public Protector to Mr Molepo requesting him to clarify his role in the disciplinary matter of Mr Msiza, dated 19 July 2024;

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- 5.4.1.16 Letter from the Public Protector to Mr NZ Molefe requesting him to clarify his role in the disciplinary matter of Mr Msiza, dated 19 July 2024;
- 5.4.1.17 Letter from the Public Protector to Mr J Maseleme requesting him to clarify his role in relation to the referral by Dr Rashokeng, dated 19 July 2024;
- 5.4.1.18 Letter from the Public Protector to Mr Msiza raising allegations made against him and requesting his response thereto, dated 22 July 2024;
- 5.4.1.19 Mr Msiza's letter to the Public Protector responding to the allegations against him, dated 29 July 2024;
- 5.4.1.20 Email from the Public Protector to Dr Rashokeng to confirm the delivery of his letter of 10 August 2018, dated 07 August 2024;
- 5.4.1.21 Email response from Dr Rashokeng's to the Public Protector, dated 07 August 2024;
- 5.4.1.22 Letter from Messrs. Mphoke PK Magane Attorneys Inc (on behalf of Mr Msiza) to the Public Protector requesting an extension of time to provide a response, dated 12 August 2024; and
- 5.4.1.23 Letter from Messrs. Mphoke PK Magane Attorneys Inc (on behalf of Mr Msiza) to the Public Protector responding to the allegations against Mr Msiza, dated 19 August 2024.

Documents

- 5.4.1.24 Department of Public Service and Administration Circular Minute on Participation of Public Service Act Employees in the Forthcoming Municipal Elections, 07 October 2005;

- 5.4.1.25 Department of Public Service and Administration Directive on Other Remunerative Work outside the Employee's Employment in the Relevant Department as Contemplated in Section 30 of the Public Service Act, 1994, dated 01 November 2016;
- 5.4.1.26 Limpopo Department of Health Circular on Participation of Public Service Act Employees in the Forthcoming Municipal Elections Number 52 of 2016;
- 5.4.1.27 Limpopo Department of Health Report into Allegations of Widespread Corruption, Maladministration, Abuse of Power and Resources and Non-Compliance to Policies at Groblersdal Hospital, 29 January 2020; and
- 5.4.1.28 Department of Public Service and Administration Guide on Managing Other Remunerative Work in the Public Service, dated June 2020.

5.4.2 **Legislation and other prescripts**

- 5.4.2.1 The Constitution of the Republic of South Africa, 1996;
- 5.4.2.2 The Public Protector Act, 1994;
- 5.4.2.3 The Public Service Act, 1994;
- 5.4.2.4 Public Service Regulations, 2016;
- 5.4.2.5 The Municipal Electoral Act, 2000; and
- 5.4.2.6 Municipal Systems Act, 2000.

5.4.3 **Case Law**

- 5.4.3.1 *Economic Freedom Fighters v Speaker of the National Assembly and other; Democratic Alliance v Speaker of the National Assembly and others* [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].

5.4.4 **Notice issued in terms of section 7(9)(a) of the Public Protector Act**

5.4.4.1 Section 7(9)(a) and (b) of the Public Protector Act provides that persons implicated in an investigation by the Public Protector, are to be allowed an opportunity to make representations regarding same. On 20 November 2024, a Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the following persons to provide them with an opportunity to respond to the likely adverse findings and proposed remedial action:

- a) Mr MR Msiza;
- b) Mr M Molepo;
- c) Mr NZ Molefe;
- d) Mr M Kgwale;
- e) Dr LJ Rashokeng;
- f) Mr J Maseleme; and
- g) Dr M Dombo.

5.4.4.2 Responses to the notice were received from the following persons:

- a) Dr Dombo;
- b) Mr Maseleme;
- c) Mr Molefe; and
- d) Mphoke PK Magane Attorneys Inc. on behalf of Mr Msiza.

5.4.4.3 No other responses were received on the notices served.

5.4.4.4 The responses and information/ evidence submitted in response to the notices, were duly considered by the Public Protector in relation to the substance of the allegations against the parties concerned or the grounds for adverse comments or findings against or remedial action involving them.

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

6.1 Whether Mr Msiza, an Administration Clerk employed by the Limpopo Department of Health, simultaneously served and was remunerated as a Ward Councillor at the Elias Motsoaledi Local Municipality, without obtaining permission from the Department as required by law, if so, whether such conduct is improper as envisaged in section 182(1) of the Constitution and constitutes maladministration in terms of section 6(4)(a)(i) of the Public Protector Act

Common cause

6.1.1 On 01 September 2008, Mr Msiza was appointed as an Administration Clerk at the Groblersdal Hospital.

6.1.2 In August 2016, he was elected as a ward councillor for the Elias Motsoaledi Local Municipality, and he served as a councillor until the end of that municipal term in October 2021.

6.1.3 He was re-elected as a ward councillor in November 2021, and he was also appointed as a Member of Mayoral Committee (MMC) responsible for Infrastructure.

6.1.4 He completed and submitted Financial Disclosure Forms to the Municipality for the years 2016 to 2022. In these disclosures, he declared that he was employed by the Department of Health.

6.1.5 He resigned from the Department on 12 January 2022.

Issue in dispute

- 6.1.6 The issue for the Public Protector's determination is whether Mr Msiza sought prior approval from the Department to serve as a councillor, in line with the applicable prescripts.

The Complainant's version

- 6.1.7 The Complainant contended that from 2016 to 2022, Mr Msiza, a full-time employee of the Department, simultaneously served as a full-time Ward Councillor at the Municipality.

The Municipality's response

- 6.1.8 In a letter dated 02 December 2021, the Public Protector Investigation Team (Investigation Team) raised the allegations with the Municipal Manager, Mr M Kgwale (Mr Kgwale), to establish whether Mr Msiza was serving as a councillor, and if so, whether the Municipality was aware that he was in the employ of the Department.
- 6.1.9 In a response letter dated 07 December 2021 to the Investigation Team, Mr Kgwale stated, *inter alia*, that:
- 6.1.9.1 Mr Msiza was a councillor for Ward 31, as elected in terms of Government Gazette No. 45447 of 09 November 2021;
- 6.1.9.2 Mr Msiza also served as a councillor of the Municipality during the previous municipal term from August 2016 to October 2021;
- 6.1.9.3 When elected or appointed, a councillor must within sixty (60) days declare in writing to the municipal manager the following financial interests held by that councillor:

- (a) Shares and securities in any company;
- (b) Membership of any close corporation;
- (c) Interest in any trust;
- (d) Directorships;
- (e) Partnerships;
- (f) Other financial interests in any business undertaking;
- (g) **Employment and remuneration** (*own emphasis*);
- (h) Interest in property;
- (i) Pension; and
- (j) Subsidies, grants and sponsorships by any organisations.

6.1.9.4 The Municipality was awaiting declarations from all councillors, including Mr Msiza, which declarations were due to be submitted on or before 08 January 2022. The Municipality would thus be able to respond properly to the letter upon receipt of the declarations by all the councillors, including Mr Msiza; and

6.1.9.5 In relation to the request for an explanation and/or reasons why Mr Msiza was sworn in to the new Council despite him being employed full-time, the Municipality was not conversant with any law that prohibits the swearing in of Mr Msiza as a councillor because he was duly elected in terms of Government Gazette No. 45447 of 09 November 2021.

The Department's version

6.1.10 On 06 December 2021, the Investigation Team wrote a letter to the then Head of Department (HoD) of Health, Dr FT Mhlongo (Dr Mhlongo), to establish whether the Department was aware that Mr Msiza worked as a Ward Councillor from August 2016 to October 2021. The HoD was also asked whether the Department was aware that Mr Msiza was re-elected as a Ward Councillor during the Local Government elections in November 2021 and whether the Member of the Executive Council (MEC) for Health granted Mr Msiza permission to perform the duties of a councillor whilst he was in the full-time employment of the Department.

- 6.1.11 On 19 January 2022, a response with attachments was received from the acting HoD, Dr M Dombo (Dr Dombo). In her response, Dr Dombo stated, *inter alia*, the following:
- 6.1.11.1 She was not aware of Mr Msiza's position as Ward Councillor for both the previous and current terms;
- 6.1.11.2 It had since been established by the Department that on or about April 2018, the Chief Executive Officer (CEO) for Groblersdal Hospital was alerted by the community of Motetema that Mr Msiza was their full-time Ward Councillor and was on the payroll of the local Municipality;
- 6.1.11.3 The CEO informed Mr Msiza per letter dated 02 May 2018 of the claims by the community of Motetema and requested him to, amongst others, provide a written explanation, with evidence, of his role in local government as well as requiring him to comply with section 30 of the Public Service Act, 1994;
- 6.1.11.4 Mr Msiza responded per letter dated 04 May 2018 by submitting an application to perform other remunerative work in terms of section 30 of the Public Service Act, in which he applied for permission to perform other remunerative work retrospectively, from 03 August 2016 to 03 August 2021;
- 6.1.11.5 This was non-compliance to paragraph 6.1.1 of the Directive on other Remunerative Work Outside the Employee's Employment in the Relevant Department as Contemplated in Section 30 of the Public Service Act, 1994, issued by the Minister for Public Service and Administration which stipulates that "Before undertaking other remunerative work, an employee must first obtain written permission from the executive authority or delegated authority in terms of applicable prescripts and this directive." The application was further in non-compliance to Paragraph 6.1.3 which stipulates that "The request to perform other

remunerative work should not exceed a period of 12 calendar months” (own emphasis);

- 6.1.11.6 The CEO responded per letter referenced S8/1 dated 22 May 2018, highlighting how the application did not comply with the provisions of the directive by the Minister and referred the matter to the Labour Relations unit per referral dated 10 August 2018. The Department was in the process of instituting disciplinary processes against Mr Msiza and his disciplinary hearing was scheduled for 27 to 28 January 2022;
- 6.1.11.7 According to their records, Mr Msiza did not have permission to hold the position of a councillor while in the service of the Department;
- 6.1.11.8 According to their records, the MEC did not grant Mr Msiza permission to hold the position of an office bearer for the previous and current councillorship. As indicated, the official only submitted an application to perform other remunerative work in May 2021, which application was defective in that it did not comply with paragraphs 6.1.1 and 6.1.3 of the Ministerial Directive;
- 6.1.11.9 According to a letter with reference S7/1 dated 08 December 2021, from the CEO, Mr Msiza did not submit leave forms or a copy of his candidacy certificate before the election; and
- 6.1.11.10 The Public Protector would be given progress on the process of the disciplinary hearing.

- 6.1.12 Attached to Dr Dombo's response were the following documents:

Letter from the CEO to Mr Msiza

- 6.1.12.1 The letter from Dr LJ Rashokeng (Dr Rashokeng), the CEO of Groblersdal Hospital, to Mr Msiza dated 02 May 2018, indicated that:

- (a) The office of the CEO has been inundated with calls and allegations from members of the community of Motetema who claim that Mr Msiza was their full-time appointed ward councillor and was on the payroll of local government;
- (b) Given the seriousness of the allegations, Mr Msiza was requested to furnish the office of the CEO with a written explanation with evidence if any, of his role in local government and if he was receiving any remuneration for his role at local government;
- (c) Mr Msiza should further note that should he be receiving any remuneration, he was expected to comply with the provisions of section 30 of Public Service Act, 1994 and that failure to do so may constitute a misconduct; and
- (d) He was requested to reply to the letter on or before 04 May 2018.

Response letter from Mr Msiza to Dr Rashokeng

6.1.12.2 Mr Msiza responded to Dr Rashokeng in a letter dated 04 May 2018 and stated as follows:

- (a) *“Compliance has been ensured in reference to performance of other remunerative work in terms of section 30 of the Public Service Act;*
- (b) *It is therefore advisable that your office should be familiarised with the public service and administration of the Republic of South Africa; and*
- (c) *You are further advised not to entertain or engage any personnel officer, community members etc. regarding to non-related issues to health (Groblersdal Hospital)”. (sic)*

Directive on other Remunerative Work Outside the Employee's Employment, 01 November 2016

- 6.1.12.3 The Directive sets out the application process for permission to perform other remunerative work and provisions to reduce possible, perceived and potential conflicts of interests.

Letter from Dr Rashokeng to Mr Msiza

- 6.1.12.4 The letter dated 18 May 2018 to Mr Msiza, signed by Dr Rashokeng on 22 May 2018, indicated that:

- (a) *"Your application for Other Remunerative Work dated 24 April 2018 was noted;*
- (b) *The application referred to herein was returned to you on 26 April 2018 to be duly completed as other sections of the application form were omitted;*
- (c) *You have since resubmitted the application on 03 May 2018;*
- (d) *After consultation with the Provincial Office on your application, your application cannot be processed further as it fails to adhere to the process as outlined in the Directive on Other Remunerative Work Outside The Employee's Employment in the Relevant Department as Contemplated in Section 30 of the Public Service Act, 1994 as issued by the Minister for the Public Service and Administration on 01 November 2016;*
- (e) *The specific provisions of the Directive that your application fails to comply with, are as follows:*

- (i) Section 6.1.1 states that “Before undertaking other remunerative work, an employee must first obtain written permission from the executive authority or delegated authority in terms of applicable prescription and this Directive.” Your application fails to comply in that the start of the period applied for was 03 August 2016, which was a date prior to 24 April 2018. You have neither previously applied nor obtained prior approval from the executing authority or delegated authority for the period starting 03 August 2016;
- (ii) Section 6.1.3 states that “The request to perform other remunerative work should not exceed a period of 12 calendar months”. Your application fails to comply in that the period he applied for ranged from 03 August 2016 to 03 August 2021, a period which is more than 12 calendar months. Find attached a copy of the Directive for reference and guidance on future applications.”
(sic)

Letter from Dr Rashokeng to the Labour Relations Unit

- 6.1.12.5 Dr Rashokeng addressed a letter dated 10 August 2018 to Messrs Molefe, Molepo and Ngwasheng in the Labour Relations Unit of the Department and stated the following:
- (a) Mr Msiza was employed as a full-time employee of Groblersdal Hospital. It had since emerged, and he acknowledged that he was also employed at Elias Motsoaledi Local Municipality, as a councillor since 03 August 2016; and
 - (b) Mr Msiza had never applied nor obtained permission to perform Other Remunerative Work Outside the Employee’s Employment as required by the Public Service Act, 1994 and the Directive by Minister of Public Service and Administration.

- 6.1.12.6 The letter reflects that Dr Rashokeng attached a copy of the communication with Mr Msiza and his acknowledgement and disclosure of the period of employment as councillor at Elias Motsoaledi Local Municipality; and
- 6.1.12.7 The letter served to request the recipients thereof to initiate a disciplinary enquiry process against Mr Msiza as his actions constituted misconduct and were still ongoing.

Letter from Dr Rashokeng to Dr Mhlongo

- 6.1.12.8 The Investigation Team sent a letter dated 06 December 2021 to Dr Mhlongo requesting her to respond to a set of questions regarding the matter in question. Dr Rashokeng responded to Dr Mhlongo in a letter dated 08 December 2021 and stated the following:
- (a) Groblersdal Hospital only became aware of Mr Msiza's position as a ward councillor in April/May 2018 for the previous term. For the current term, the institution was made aware in November 2021;
 - (b) Mr Msiza had not applied for permission prior to assuming councillorship in 2016 and also not in 2021. He only submitted an application for Remunerative Work Outside Public Service (RWOPS) after the institution was alerted of his councillorship in 2018;
 - (c) The MEC had not granted Mr Msiza permission to hold the position of an office bearer for the previous and current councillorships; and
 - (d) Mr Msiza did not submit leave forms or a copy of his candidacy certificate before the elections.
- 6.1.12.9 Dr Rashokeng further attached copies of the following documents to the letter:

- a) Mr Msiza's RWOPS application form;
- b) Dr Rashokeng's response to Mr Msiza's application;
- c) Referral of the matter to Labour Relations by Dr Rashokeng; and
- d) Dr Rashokeng's letter to Mr Msiza requesting him to provide reasons why he should not face disciplinary action.

Notice to Attend a Disciplinary Enquiry as well as the Charge Sheet

6.1.12.10 A Notice to Attend a Disciplinary Enquiry and Charge Sheet, both dated 05 January 2022 were issued by Mr MZ Mawasha (Mr Mawasha), the Deputy Director General, Corporate Services to Mr Msiza. The matter was set down for hearing from 27 to 28 January 2022. The charges as per the charge sheet were stated as follows:

- (a) Misconduct for performing remunerative work outside the public service without prior permission of the Department;
- (b) Gross insubordination; and
- (c) Failure to carry out lawful and reasonable instructions.

Letter from Mr Kgwale to the Investigation Team

6.1.13 The Investigation Team sent an email dated 29 August 2022, requesting further information from Mr Kgwale regarding the declarations made by Mr Msiza to the Municipality. In his response dated 29 August 2022, Mr Kgwale stated, *inter alia*, that:

6.1.13.1 The Municipality confirms that Mr Msiza was a Councillor for Ward 31 as elected in terms of Government Gazette No. 45447 of 09 November 2021, and that he submitted his declaration as required in terms of Item 8 of Schedule 7 of the Local Government: Municipal Structures Act, 1998.

- 6.1.14 Mr Kgwale attached the declaration forms of Mr Msiza from 2016 to 2022, wherein he declared to the Municipal Manager that he was employed by the Limpopo Department of Health as an Administrative Clerk.

Additional Information from the Department

- 6.1.15 On 15 May 2023, the Investigation Team wrote a further enquiry letter to Dr Dombo, requesting responses to the following questions:

6.1.15.1 What action did the Department take upon receipt of the referral by the CEO, Dr Rashokeng?

6.1.15.2 What were the reasons for the delay in taking disciplinary action against Mr Msiza for the period from 14 August 2018 to 04 January 2022?

6.1.15.3 Who were the officials responsible to initiate the disciplinary action against Mr Msiza and what action has the Department taken or intends to take against the said officials for what appears to be dereliction of duties?

6.1.15.4 What action, if any, has been taken or is contemplated against officials who neglected to act on the matter from 14 August 2018 until 04 January 2022?

Response from Dr Dombo to the Investigation Team

- 6.1.16 Dr Dombo responded through a letter dated 13 June 2023. The response did not provide answers to the above questions, but only stated the following:

“Kindly take note that upon receipt of the information, Mr Msiza was charged with misconduct as per the attached notice to the hearing. The hearing however could not be finalised because the employee resigned upon receipt of the notice to the hearing.”

- 6.1.17 Copies of the Notice to Attend a Disciplinary Hearing and the Charge Sheet were attached to the response. The Charge Sheet indicated that Mr Msiza acknowledged receipt thereof on 12 January 2022.

Additional information received from the Department

Investigation Report Number: LDH07/02/09/2017 by Risk Management Directorate, Department of Health

- 6.1.18 In June 2023, following a telephonic discussion between the Investigation Team and Dr HP Bila (Dr Bila), Director: Risk Management, he provided the Investigation Team with a redacted copy of an Investigation Report Number: LDH07/02/09/2017, dated 27 January 2020 titled: *“Report into Allegations of Widespread Corruption, Maladministration, Abuse of Power and Resources and Non-Compliance to Policies at Groblersdal Hospital”*.
- 6.1.19 The report was sent to Dr Mhlongo by Dr Bila on 27 January 2020. Dr Mhlongo signed the report on 29 January 2020. According to the report, an investigation was conducted following a formal request by Mr MH Mmanasoe (Mr Mmanasoe) and National Education, Health and Allied Workers’ Union (NEHAWU), represented by Mr Msiza, for the Department to investigate allegations of widespread corruption, maladministration, abuse of power and resources and non-compliance with policies at the Groblersdal Hospital by the CEO, Dr Rashokeng.
- 6.1.20 The scope of the investigation, included amongst others, allegations by Mr Mmanasoe and Mr Msiza that *“Employees are performing Remunerative Work Outside Public Service without Approval”*.
- 6.1.21 The investigation found that the allegations against Mr M and Mr N relating to their performance of other remunerative work outside the public service without

obtaining prior permission from the Department were unsubstantiated because the complainants failed to provide evidence.

- 6.1.22 The report further indicated that during the interview with Dr Rashokeng by the Department's investigation team, he indicated that Mr Msiza, who was a full-time employee of Groblersdal Hospital, was employed at the Elias Motsoaledi Local Municipality as a councillor since August 2016. It was further stated that he had neither applied for nor obtained permission to perform other remunerative work outside the Department. Mr Msiza only applied for permission in April 2018, whereas he started performing other remunerative work in August 2016. The matter had been referred to Labour Relations for a disciplinary enquiry.
- 6.1.23 The report recommended that the *“Director: Labour Relations (Provincial Office) should respond to the letter dated 10th/08/2018 referred by the CEO (Dr Rashokeng LJ) recommending disciplinary measures against Mr Msiza M R for performing other remunerative work (Ward councillor) without permission”*.

Letter from the Investigation Team to Mr J Maseleme

- 6.1.24 The Investigation Team sent a letter dated 27 February 2024 to Mr J Maseleme (Mr Maseleme), Director: Labour Relations at the Department, requesting him to provide a detailed explanation regarding the delay by the Department to institute a disciplinary enquiry against Mr Msiza, as referred to the Labour Relations unit by Dr Rashokeng, on 10 August 2018.
- 6.1.25 Dr NN Ndwamato (Dr Ndwamato), the then Acting HoD responded through a letter dated 20 March 2024, which was sent to the Investigation Team by Ms Lorraine Makopo (Ms Makopo) through an email of 26 April 2024. Dr Ndwamato stated as follows:
- 6.1.25.1 The Office of the Acting HoD wishes to confirm that upon becoming aware of

these allegations, after the conclusion of the investigation, disciplinary action was immediately instituted through the Provincial Labour Relations Office;

- 6.1.25.2 Subsequent to the receipt of the letter from the Investigation Team dated 15 May 2023, he can confirm that the letter of 10 August 2018 was emailed to the former District Executive Manager, Ms M L Maepa (Ms Maepa), whom it appears did not action the matter immediately; and
- 6.1.25.3 Between the period August 2018 and January 2022, the Department was engaged in the process of investigating administrative issues at Groblersdal Hospital, which included the allegations of performance of other remunerative work outside the public service by Mr Msiza. The officials from the Risk Management and the Department who were part of the investigation team are Mr TA Makaepa (Mr Makaepa), Mrs N E Maluleke (Ms Maluleke), Mrs M Mokoena (Mrs Mokoena) and Mr T Manganyi (Mr Manganyi).

Additional information from Dr Rashokeng

- 6.1.26 On 27 February 2024, the Investigation Team confirmed during a telephone discussion with Dr Rashokeng, that Mr Msiza was a member of the National Education, Health, and Allied Workers Union (NEHAWU) as well as a Shop Steward at the Hospital at the time that he (Dr Rashokeng) joined the Hospital in 2014 until his (Msiza's) resignation.

Additional information received from the Municipality

- 6.1.27 The Investigation Team sent a letter dated 22 May 2024 to the acting Municipal Manager, Mr M Mohlala (Mr Mohlala), enquiring whether Mr Msiza was a part time or full-time ward councillor during the 2016 and 2021 municipal terms.

- 6.1.28 In a letter to Investigation Team dated 24 May 2024, Mr Mohlala stated that Mr Msiza was a part time councillor for the 2016 to 2021 municipal term and then became a full-time councillor upon being re-elected for the 2021 to 2026 municipal term.

Correspondence between the Investigation Team and Mr Msiza

- 6.1.29 On 22 July 2024, the Investigation Team wrote a letter to Mr Msiza raising allegations that he was performing other remunerative work as a municipal councillor without permission from the Department and calling upon him to respond to the allegations.
- 6.1.30 Mr Msiza was requested to respond to the allegations letter by 29 July 2024. He requested an extension to respond by 12 August 2024. In his request for extension, he indicated that he needed to consult with his attorneys to properly respond to the allegations letter. An extension was acceded to by the Public Protector for a response by 05 August 2024, which was communicated to him by the Investigation Team on 31 July 2024. However, he failed to respond by the deadline acceded to by the Public Protector.

Letter from Mphoke Pk Magane Incorporated Attorneys, Mr Msiza's attorneys

- 6.1.31 On 12 August 2024, the Investigation Team received a letter from Mphoke Pk Magane Incorporated Attorneys, Mr Msiza's attorneys of record, stating that they were scheduled to meet with Mr Msiza on 13 August 2024 for a consultation and requested extension until 16 August 2024 to respond to the allegations letter.
- 6.1.32 Mr Msiza's Attorneys responded on 19 August 2024 and stated as follows:
- 6.1.32.1 Their failure to respond to any allegations and averments contained in the Public Protector's allegations letter of 22 July 2024 must not be interpreted and construed as admission by silence on the part of their client pertaining to the correctness

thereof and that they reserved their client's right to supplement the content of the response to the allegations letter and challenge the averments contained therein at the appropriate time in the future should the need arise;

- 6.1.32.2 They were instructed to respond to the allegations letter;
- 6.1.32.3 Mr Msiza was appointed as an Administration Clerk on 01 September 2008, serving at Groblersdal Hospital;
- 6.1.32.4 He served as a part-time ward councillor for the Municipality for the period of August 2016 to October 2021 and was re-elected as a ward councillor in November 2021;
- 6.1.32.5 Mr Msiza's conduct "*never intended to cause any malicious intent*" in that it was clear from the disclosure forms that he disclosed to the Municipality that he was employed by the Department;
- 6.1.32.6 At all material times, he had not been aware of the process as outlined in the Directive on other remunerative work outside the employee's employment in the relevant department as contemplated in Section 30 of the Public Service Act, particularly section 6.1.1 which reads that "*before undertaking other remunerative work, an employee must first obtain written permission from the executing authority or delegated authority in terms of applicable prescription (sic) or directive*";
- 6.1.32.7 The Ministry of Public Service and Administration provided the following guidelines to assist departments in managing the positions of employees who wish to stand as candidates and who are elected to municipal councils:
- (a) All staff should be informed of the provisions and conditions that regulate their participation and election to municipal councils; and
 - (b) Employees wishing to stand as candidates should be required to inform their respective departments of their intention and in turn, each department should

ensure that employees are properly informed of the conditions they will have to comply with.

- 6.1.32.8 On or about 12 to 15 September 2016, Mr Msiza attended an induction course at the Municipality, but the induction pack did not include information on the policy and/or directive mentioned above and was thus not familiar with the procedure;
- 6.1.32.9 Mr Msiza only learned or became aware of the process during April 2018 when he attempted to launch an application to perform other remunerative work in terms of section 30 of the Public Service Act and which application was declined for reasons stipulated in the letter written by the CEO;
- 6.1.32.10 On 02 May 2018, the CEO wrote a letter, as an after-thought, placing on record the allegations of other remunerative work whereas Mr Msiza had, at that time, employed a mechanism to correct the process;
- 6.1.32.11 The directive and/or the policy have a dual duty to the employer and the employee for purposes of procedure and compliance;
- 6.1.32.12 Mr Msiza had shown the zeal for compliance though such (zeal) was previously overlooked as he was unaware and had never been informed of such policy and procedure within the Department; and
- 6.1.32.13 It was trite to note that the quote *“ignorance of the law is not an excuse”* is not preponderant to the quote *“the employer must have clear rules and guidelines in the workplace and ensure that every employee is aware of these rules”*.

Responses to the section 7(9)(a) notice

- 6.1.33 A Notice in terms of section 7(9)(a) of the Public Protector Act was sent by email to Mr Msiza on 20 November 2024 for his response.

Response from Mphoke PK Magane Attorneys Incorporated, on behalf of Mr Msiza

- 6.1.34 On 06 December 2024, Mphoke PK Magane Attorneys Incorporated emailed a letter to the Investigation Team dated 04 December 2024 acknowledging receipt of the notice and stated as follows:
- 6.1.34.1 The Notice dated 19 November 2024 refers;
- 6.1.34.2 It is placed on record that as of 12 August 2024, Mphoke PK Magane Attorneys Incorporated has been on record for the matter at hand and in contact with Mr. Mahloko, an official of the Public Protector’s office. They are “*bemused*” by the ethical “*modus operandi*” to serve the Notice mentioned supra directly to Mr Msiza in isolation to them;
- 6.1.34.3 They are instructed to respond to the section 7(9)(a) Notice as follows:
- a) They request that future correspondence be directed at their office;
 - b) Mr Msiza only delivered the Notice to them on 03 December 2024, as he was “*gobsmacked*” by their silence in the matter; and
 - c) They therefore acknowledge receipt of the Notice and are yet to consult with Mr Msiza for the purpose of drafting a reply thereto.
- 6.1.35 On 10 December 2024, the Investigation Team sent a letter to Mphoke PK Magane Attorneys to indicate that the Notice in terms of Section 7(9)(a) of the Public Protector Act was served to Mr Msiza in line with the Public Protector Rules and that the time allowed for him to respond to the Notice lapsed on 04 December 2024.

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- 6.1.36 The Investigation Team further advised that Mr Msiza may request for an extension of time to respond to the Notice in terms of section 7(9) of the Public Protector Act, which request should be addressed to the Public Protector.
- 6.1.37 On 12 December 2024, the Investigation Team received a request for extension from Mphoke PK Magane Attorneys acting on behalf of Mr Msiza. The request for extension was forwarded to the Public Protector for her consideration.
- 6.1.38 The Public Protector considered the request for extension, and in a letter dated 13 December 2024, the Investigation Team informed Mphoke PK Magane Attorneys that the Public Protector had acceded to the extension request until 17 January 2025.
- 6.1.39 On 07 January 2025, the Investigation Team received a letter from Mphoke PK Magane Attorneys, which communicated Mr Msiza's response as follows:
- 6.1.39.1 Their failure to respond to any allegations and averments must not be interpreted and construed as admission by silence on the part of Mr Msiza pertaining to the correctness thereof. They reserve Mr Msiza's right to supplement the content of the letter and challenge the averments contained therein at the appropriate time in the future should a need arise;
- 6.1.39.2 In the premise, they note the contents of the Notice entailing investigations and findings in terms of section 7(9)(a) of the Public Protector Act;
- 6.1.39.3 They note the contents of section 30 (1) of the Public Service Act particularly clause 6.1.1 which requires a public servant to apply for and obtain written permission from the executive authority of the Department prior to embarking on any other paid work outside his formal employment with the Department;

- 6.1.39.4 They further note the contents of section 31(1)(a)(i) which states that *“If any remuneration, allowance or other reward is received by an officer or employee in connection with the performance of his or her work in the public service otherwise than in accordance with the provisions of this Act or a recommendation of the Commission, or is received contrary to the provisions of section 30 (b), that officer or employee shall pay into revenue an amount equal to the amount of such remuneration, allowance or other reward, or, where it does not consist of money, the value thereof as determined by the head of department in which he or she was employed at the time of the receipt thereof, and if he or she does not do so, it shall be recovered from him or her by that head by way of legal proceedings or in such other manner as the Treasury may approve, and be paid into revenue”*;
- 6.1.39.5 It is submitted that Mr Msiza’s conduct never intended to cause any malicious intent in that it is *“prudent”* from the disclosure forms that Mr Msiza disclosed that he is employed by the Department of Health;
- 6.1.39.6 The provisions of the *“Ministry of Public Service and Administration Republic of South Africa paragraph 5 thereof”* stipulate guidelines to assist departments in managing the position of employees who wish to stand as candidates and who are elected to Municipal Councils. The grey line herein is that the duty lies on both the employer and employee in that it states the following:
- (a) All staff should be informed of the provisions and conditions that regulate their participation and election to municipal councils as indicated in the circular;
and
 - (b) Employees wishing to stand as candidates should be required to inform their respective departments of their intentions. In turn, each department should ensure that employees are properly informed of the conditions they will have to comply with.

- 6.1.39.7 Mr Msiza only learned or became astute with the processes during April 2018, when he attempted to launch an application to perform other remunerative work in terms of section 30 of the Public Service Act as a sign of compliance and which application was declined for reasons stipulated in the letter by Dr Rashokeng;
- 6.1.39.8 In so far as the merits of the investigation, *“the horse has bolted”* and they humbly plead leniency on behalf of Mr Msiza and request a punishment as stipulated in the remedial action prescribed in sub-paragraph 8.5.4, which the Public Protector states *“Alternatively, make a determination in terms of section 31(1)(a)(iv) of the Public Service Act to approve the retention by Mr Msiza of the whole or a portion of the remuneration he received in contravention of section 30(1)”*; and
- 6.1.39.9 Mr Msiza’s conduct was not a deliberate disregard of the provisions of the PSA, may the Public Protector’s mercy and leniency not go in vain and it is pleaded that Mr Msiza be deterred from such conduct, by paying a damage of a partial portion to the remuneration he has received during office and continue to retain his current position.

*Telecommunication between the Investigation Team and Ms Tebogo Mampane,
CEO of Groblersdal Hospital*

- 6.1.40 On 26 March 2025, the Investigation Team held a teleconference with the current CEO of Groblersdal, Ms Mampane, with a view to enquire regarding the identities of the persons who signed Mr Msiza’s Declaration Forms to the Municipality, on behalf of the Department in the capacity of “Executive Authority”. During the discussion, Ms Mampane confirmed that both *“Lindiwe Elizabeth Matau”* and *“Sipho Nkosi”*, are officials in the employ of the hospital and were Mr Msiza’s supervisors.

Applicable law

The Constitution of the Republic of South Africa, 1996

6.1.41 Section 19(3)(b) of the Constitution provides that *“every adult citizen has the right to stand for public office and, if elected, to hold office”*.

6.1.42 Section 195(1)(a) of the Constitution states that *“public administration must be governed by democratic values and principles enshrined in the Constitution, including the following principle:*

(a) A high standard of professional ethics must be promoted and maintained.

The Public Service Act, 1994

6.1.43 Section 7(b) of the Public Service Act, prescribes that Heads of Departments are responsible for the efficient management and administration of departments, including the effective utilisation of staff.

6.1.44 Section 30(1) of the Public Service Act provides that *“no employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the relevant department, except with written permission of the executive authority of the department”*.

6.1.45 Section 31(1)(a) of the Act provides that:

“(i) If any remuneration, allowance or other reward (other than remuneration contemplated in section 38 (1) or (3)), is received by an employee in connection with the performance of his or her work in the public service otherwise than in accordance with this Act or a determination by or directive

of the Minister, or is received contrary to section 30, that employee shall, subject to subparagraph (iii), pay into revenue -

- (aa) an amount equal to the amount of any such remuneration, allowance or reward; or*
- (bb) if it does not consist of money, the value thereof as determined by the head of the department in which he or she was employed, at the time of the receipt thereof.*
- (ii) If the employee fails to so pay into revenue the amount or value, the said head of department shall recover it from him or her by way of legal proceedings and pay it into revenue*
- (iii) The employee concerned may appeal against the determination of the head of department to the relevant executive authority.*
- (iv) The accounting officer of the relevant department may approve that the employee concerned retains the whole or a portion of the said remuneration, allowance or reward”.*

6.1.46 Section 36 of the Public Service Act provides as follows:

- “(1) An employee may be a candidate for election as a member of the national assembly, a provincial legislature or a municipal council, subject to the code of conduct contemplated in section 41(1)(b)(v) and any other prescribed limits and conditions.*
- (2) An employee elected as a member of the national assembly or a provincial legislature or a full time member of a municipal council shall be deemed to have resigned from the public service with effect from the date immediately*

before the date he or she assumes office as such member...

(4) *An employee elected as a member of a municipal council –*

(a) *may only remain an employee in the public service if he/she serves as a part time member of the council; and*

(b) *shall comply with section 30(1)*".

The Public Service Regulations, 2016 (PSR)

6.1.47 Regulation 11(d) states that *"an employee shall abide by and strive to be familiar with all legislation and other lawful instructions applicable to his or her conduct and official duties"*.

6.1.48 Regulation 13(b) provides that *"an employee shall not engage in any conduct that is in conflict with or infringes on the execution of his/her official duties"*.

6.1.49 Regulation 14(j) states that *"an employee shall promote sound, efficient, effective, transparent and accountable administration"*.

6.1.50 Regulation 15(1) states that *"an employee who is issued with a certificate in terms of section 31(3) of the Electoral Act, 1998, stating that he/she is a candidate in an election, shall, no later than the next working day, inform his/her head of department in writing thereof and submit a copy of the certificate"*.

Public Service Regulations: Code of Conduct

6.1.51 The Code of Conduct for Public Servants is provided for in Chapter 2 of the new Public Service Regulations.

6.1.52 Item 14(e) of the Code of Conduct for Public Servants provides that an employee

shall “co-operate fully with other employees to advance the interest of the public”.

The Municipal Electoral Act, 2000

6.1.53 Section 16(1) of the Municipal Electoral Act states that “a person may be nominated to contest an election in a ward by –

(a) a registered party; or

(b) a person who is—

(i) ordinarily resident in the municipality in which that ward falls; and

(ii) registered as a voter on that municipality’s segment of the voters’ roll.

The Municipal Systems Act, 2000

6.1.54 Section 7(1)(g) of Schedule 1 of the Code of Conduct for Councillors of the Municipal Systems Act provides that “when elected or appointed, a councillor must within 60 days declare in writing to the municipal manager...the employment and remuneration”.

6.1.55 Section 8 of the Code of Conduct for Councillors provides that “a councillor who is a full-time council may not undertake any other paid work, except with the consent of a municipal council which consent shall not unreasonably be withheld”.

The Directive on Other Remunerative Work Outside the Employee’s Employment in the Relevant Department as Contemplated in section 30 of the Public Service Act, 1994, of 01 November 2016

6.1.56 Clause 2 of the Directive provides that the purpose of the Directive is to:

“2.1 Promote ethical behaviour among Public Service employees;

- 2.2 *Reduce possible, perceived and potential conflict of interest;*
- 2.3 *Set out the application process to perform other remunerative work;*
- 2.4 ...
- 2.5 ...
- 2.6 *Place a reporting obligation on Heads of Departments”*

6.1.57 Clause 6.1.1 of the Directive states that *“before undertaking other remunerative work, an employee **must first obtain written permission** from the executive authority or delegated authority in terms of applicable prescripts and this Directive.” (own emphasis)*

6.1.58 Clause 6.1.3 further states that *“the request to perform other remunerative work should not exceed a period of 12 calendar months”*.

The Department of Public Service and Administration (DPSA) Circular Minute 1/3/8/P of 07 October 2005

6.1.59 The DPSA issued Circular Minute 1/3/8/P dated 07 October 2005, which provides guidance to Departments on the management of public servants who are candidates in municipal elections and/or elected to municipal councils.

6.1.60 The Minute contains the following guidelines:

(5) *In order to assist departments in managing the position of employees who wish to stand as candidates and who are elected to municipal councils, the following guidelines are provided:*

“(5.1) All staff should be informed of the provisions and conditions that regulate their participation and election to municipal councils;...

(5.3) Should an employee be elected to a municipal council, he/she should be

required to inform a designated official of such an election, of the nature of his/her duties and responsibilities as a councillor, whether he/she will be required to perform duties during office hours and of the details of his/her remuneration;

(5.4) Departments should continuously monitor –

- (a) the nature and extent of the employee's duties and responsibilities as a councillor, and whether it could conflict with the employee's official duties;*
- (b) the impact that the employee's duties as a councillor will have on his/her attendance and performance of work; and*
- (c) the position and activities of the employee to ensure that no conflict of interest arises that could perhaps compromise the Department.*

(5.5) Should an employee be elected to a position as a full time Councillor, he/she will have to resign from the Public Service. As regards those who will take up part-time positions, departments should ensure that such employees perform their duties as councillors as far as possible outside the official hours of work. Specific approval has to be granted that an employee can retain his/her remuneration, as required by section 30 of the Public Service Act, 1994.

(5.6) If an employee has to perform duties as a councillor during his/her official hours of work, departments should require that vacation leave be taken on a basis of one day's leave for every eight hours of absence."

The Departmental Circular No. 52 of 2016

- 6.1.61 On 12 July 2016, the HoD of the Limpopo Department of Health issued Circular No. 52 of 2016 to all District Executive Managers, Chief Executive Officers, Heads of Vertical Programs and all staff members, titled "*Participation of Public Service Employees in the Forthcoming Municipal Elections*".

6.1.62 The aim of the Circular was to disseminate the DPSA Minute of 07 October 2005 to all parties mentioned in the Circular and to bring to their specific attention to Paragraphs 3, 4 and 5 of the Minute. The said paragraphs related to positions of employees who were candidates for election to municipal councils, those who were elected to municipal councils and further provided guidelines for managing such employees, as follows:

“3. Position of employees who are candidates for election to municipal councils

Section 158(2) (of the Constitution) determines that an employee may be a candidate subject to any limits or conditions established by national legislation. No such limits or conditions are laid down in national legislation and employees may therefore stand as candidates in municipal elections. However, section 36 of the Public Service Act, 1994 contains certain provisions that limit the activities of employees in this respect and departments must ensure that employees adhere to these provisions.

4. Position of employees who are elected to municipal councils

Section 158(1)(b) of the Constitution disqualifies employees from becoming members of municipal councils if such a disqualification is prescribed by national legislation. National legislation prescribes no specific prohibition in this regard, hence it follows that employees are not per se excluded from serving on municipal councils. It should nevertheless be borne in mind that councillors will be remunerated and serve in either full-time or part-time capacities on municipal councils. Departments have therefore, in terms of the measures and principles enshrined in section 30 of the Public Service Act, 1994 and the Code of Conduct, a duty to carefully consider the duties and responsibilities of an employee and his/her activities as a councillor. Departments are entitled to review an employee’s

position and require him/her to either withdraw as a councillor or resign from service.

Analysis

- 6.1.63 The evidence before the Public Protector indicates that during the local government elections in 2016, Mr Msiza was elected to serve as a part time councillor from 2016 until 2021. During this period, Mr Msiza was in the permanent employ of the Department as an Administrative Clerk from 2008.
- 6.1.64 Further evidence in the form of declaration forms provided by the Municipal Manager revealed that Mr Msiza declared his employment at the Department during both Municipal terms to the Municipality, as required by section 7 of Schedule 1 of the Municipal Systems Act, 2000. No evidence was, however, provided confirming that he informed the Department of his election to council albeit on a part-time basis.
- 6.1.65 Perusal of the of the Declaration Forms submitted by Mr Msiza to the Municipality for the financial year 2016/17 to 2019/20 indicate the signature of “*Nkosi Siph*” who signed on behalf of the department in the capacity of Executive Authority. In respect of the 2020/21 financial year, the declaration form reflects the signature of “*Lindiwe Elizabeth Matau*” who also signed in the capacity of Executive Authority for the department. However, verification by the investigation team regarding the identities of these officials and their authority to sign the declarations on behalf of the department revealed that both signatories were officials of Groblersdal Hospital and supervisors to Mr Msiza, as confirmed by Ms Mampane.
- 6.1.66 Analysis of the 2021/22 financial year declaration form indicates “*refused to sign*” under the signatory for the Executive Authority for the department, without indicating who it was the refused to sign.

- 6.1.67 According to the evidence before the Public Protector, Mr Msiza submitted an application dated 14 March 2018 to Dr Rashokeng requesting permission to perform other remunerative work (as a part time councillor) with retrospective effect from 03 August 2016 to 03 August 2021. The application was supported by his supervisor, Lindiwe Elizabeth Matau on 24 April 2018. The application was returned to Mr Msiza by Dr Rashokeng on 26 April 2018 on the basis that it was not properly completed.
- 6.1.68 In his response to the Investigation Team dated 19 January 2022, Dr Dombo indicated that Mr Msiza only submitted the application to perform other remunerative work in May 2021. This is contrary to the evidence before the Public Protector which indicates that Mr Msiza's application to perform other remunerative work is dated 14 March 2018 and was acknowledged by Dr Rashokeng as of 26 April 2018.
- 6.1.69 The evidence further indicates that on 22 May 2018, Dr Rashokeng advised Mr Msiza that his application was not compliant with section 30 of the Public Service Act and was returned to him on 26 April 2018 as certain sections of the application form were omitted. He further informed Mr Msiza that his application failed to adhere to the process as outlined in the Directive, which compels an employee to obtain prior written permission from the executive authority. Dr Rashokeng further advised Mr Msiza that he had neither previously applied nor obtained prior approval from the executive authority, as the period applied for was from 03 August 2016.
- 6.1.70 In this instance, Mr Msiza did not apply to perform other remunerative work prior to him standing for elections. Furthermore, he performed the remunerative work for a period in excess of twelve (12) calendar months in contravention of clause 6.1.3 of the Directive.
- 6.1.71 It should be noted that Mr Msiza applied for permission to perform other remunerative work on 14 March 2018, which was nineteen (19) months after

being elected as a municipal councillor. Mr Msiza ought to have made an application before assuming his position as a councillor in line with Clause 6.1.1 of the Directive.

- 6.1.72 Whilst Mr Msiza is not barred as an employee from standing as a candidate for municipal elections in terms of section 36(4) of the Public Service Act, which provides that an employee who has been elected as a part-time councillor may only remain an employee in the public service, however, he ought to have complied with the provisions of section 30(1) of the Public Service Act by requesting permission to perform other remunerative work from the executive authority.
- 6.1.73 The contention by Mr Msiza's attorneys of record that his conduct was not intended to cause any malice as he disclosed to the municipality that he was employed by the department, is misdirected. In terms of Regulation 15 of the PSR, an employee is required to inform his HoD, in writing, about his intention to stand as a candidate for election a day after receiving the certificate issued by the Independent Electoral Commission (IEC). Mr Msiza, therefore, had a duty to inform his employer, in this instance the Department of Health, in writing about his intention to stand for elections, however, he neglected to do so.
- 6.1.74 Furthermore, the contention by the attorneys that Mr Msiza had not been aware of the process as outlined in the Directive cannot be used as an excuse for non-compliance. In terms of Regulation 11(d) of the PSR, all employees shall abide and strive to be familiar with all legislation and other lawful instructions applicable to their conduct and official duties. It was, therefore, Mr Msiza's responsibility to familiarise himself with the Directive especially since he was keen to do the remunerative work over and above his normal work in the Department.
- 6.1.75 Further to the above, this contention cannot be supported as the declaration forms which Mr Msiza purportedly submitted to the Municipality were required to be signed by the Executive Authority of the Department of Health.

- 6.1.76 Furthermore, a Departmental Circular was issued on 12 July 2016 to all staff regarding public servants' participation in local elections which aimed to communicate the DPSA Minute of 07 October 2005. The circular drew the attention of all employees to the provisions and conditions that regulate their participation and election to municipal councils. Therefore, the contention by the attorneys that Mr Msiza only became aware of the provisions and conditions in 2018, cannot be true, as he clearly should have been aware since the circular was distributed to all staff in July 2016.
- 6.1.77 The contention by the attorneys that the induction pack received by Mr Msiza from the Municipality did not include the departmental policy, is acceded to by the Public Protector. However, the Municipality cannot be expected to provide policies/guidelines of the DPSA which are applicable to government departments and their employees. The Departmental Circular from the Department was distributed to all staff on 12 July 2016, which was just two (02) months before he underwent induction at the Municipality. It can therefore not reasonably be true that he did not know about the Circular at the time when he was inducted.
- 6.1.78 The evidence at the Public Protector's disposal further indicates that Mr Msiza was aware of the requirement to seek permission from his employer to perform other remunerative work, as far back as 2017 (when he himself was already serving as a municipal councillor) as he was a co-complainant in a matter, relating to allegations of *"employees performing remunerative work outside Public Service without approval"*. He was also a union shop steward at the hospital at that time. The fact that he could lodge a complaint about other employees performing remunerative work outside Public Service without approval, confirmed that he knew of the duty of public servants to inform their employer and request permission if they wished to perform other remunerative work.
- 6.1.79 It is evident that, at the time, Mr Msiza, as a co-complainant, was fully conversant

with the prohibition to perform other remunerative work without obtaining permission from the employer, but he brazenly continued in the performance of such other remunerative work as a part time ward councillor at the Municipality without having obtained the required prior permission from the Department. Therefore, Mr Msiza's assertion that he was not aware of the Directive cannot be true.

- 6.1.80 The evidence before the Public Protector indicates that after being elected and becoming a ward councillor in 2016, Mr Msiza also did not declare his acceptance of the position of ward councillor to the Department as is required by the Circular Minute of October 2005. There is also no evidence to indicate that Mr Msiza submitted his IEC certificate to the HoD as prescribed by Regulation 15 of the PSR.
- 6.1.81 The evidence further shows that the 2018 application by Mr Msiza to obtain permission to perform other remunerative work was defective on two counts:
- 6.1.81.1 Firstly, the application was only made in April 2018 when he had been performing other remunerative work since August 2016, yet an application for permission to perform other remunerative work in terms of both section 30(1) of the PSA and clause 6.1.1 of the Directive cannot be granted with retrospective effect. The law as outlined in section 30(1) of the Public Service Act and clause 6.1.1 of the Directive, required him, as a public servant, to apply for and obtain written permission from the executive authority of the Department prior to embarking on any other paid work outside his formal employment with the Department; and
- 6.1.81.2 Secondly, the period for which he wanted to be granted permission spanned from 03 August 2016 to 03 August 2021, which amounted to five (05) years. In terms of clause 6.1.3 of the Directive, permission to perform other remunerative work can only be granted for a maximum period of twelve (12) calendar months at a time.

- 6.1.82 The Public Protector further established that Mr Msiza was re-elected during the 2021 local government elections and went on to serve as a full-time ward councillor. He was also appointed as the Member of the Mayoral Committee (MMC) for Infrastructure. In terms of section 36(2) of the PSA, an employee elected as a full-time member of a municipal council shall be deemed to have resigned from the public service with effect from the date immediately before the date, he/she assumes office as such member.
- 6.1.83 The evidence indicates that Mr Msiza only submitted his resignation on 25 January 2022, following receipt of a notice for disciplinary hearing on 12 January 2022, after having served as a full-time councillor for a period of three (03) months. It can be concluded that Mr Msiza would not have resigned from his position as an administrative clerk had it not been for the institution of a disciplinary process by the Department against him.
- 6.1.84 It is further safe to say that the institution of disciplinary steps by the Department against Mr Msiza was prompted by the intervention of the Public Protector's investigation which was launched on 06 December 2021. This is against the backdrop that the Department had been notified and requested to institute disciplinary proceedings against Mr Msiza by Dr Rashokeng, as early as August 2018.
- 6.1.85 The evidence also indicates that Mr Msiza continued serving in the position of a part-time councillor from April 2018 to October 2021, even though the Department had never approved his application. Even after he was re-elected as a fulltime ward councillor for the 2021-2026 municipal term, he neglected to apply and obtain approval from the Department to perform other remunerative work as such and he continued to hold both positions of administrative clerk at the hospital and ward councillor at the Municipality.
- 6.1.86 Furthermore, instead of addressing the defects in his application as highlighted by Dr Rashokeng, Mr Msiza was adamant in his response of 04 May 2018 to Dr

Rashokeng, that he had complied with all the prescripts. In a show of misplaced understanding regarding the prescripts governing this matter, he further sought to advise Dr Rashokeng “*to familiarise himself of the public service and administration of the Republic of South Africa and not to entertain or engage any personnel officer, community members, etc. regarding to non-related issues to health (Groblersdal Hospital)*”. (sic)

- 6.1.87 The above utterances and continued service as a councillor for the Municipality by Mr Msiza are a clear demonstration of contempt for authority considering that Dr Rashokeng was the CEO and the Accounting Officer who had a duty to ensure compliance with all prescripts. Mr Msiza’s conduct in this regard was in contravention of Item 14 (e) of the Code of Conduct for Public Servants which requires that employees should cooperate fully with other employees to advance the interest of the public.
- 6.1.88 Mr Msiza thereafter continued to serve as a full-time councillor from November 2021 to January 2022. During this period, he received remuneration from the Municipality as an MMC and from the Department as an Administrative Clerk. By then he was fully aware that serving as a councillor and receiving remuneration of such service without permission from the Department was in contravention of section 13(b) of the PSR which states that “*an employee shall not engage in any transaction or action that is in conflict with, or infringes on the execution of, his/her official duties*”, as he had already attempted to apply for permission to perform other remunerative work in 2018.
- 6.1.89 The evidence also indicates that Mr Msiza did not inform Dr Rashokeng or his immediate supervisor about the acceptance of his election to the municipal council, hence no information was submitted to the Department as required by the Departmental Circular 52 of 2016. This Circular was disseminated to all staff members of the Department on 12 July 2016 at various levels and offices. The conduct that Mr Msiza displayed was unwarranted, considering that the Department did inform all employees of the procedures to be followed by

employees who would have accepted election to municipal councils.

- 6.1.90 The conduct of Mr Msiza in not declaring his acceptance of the position of ward councillor at the Municipality to the Department when he had a duty to do so, was incongruent with the constitutional requirement to maintain a high standard of professional ethics in public administration as espoused in section 195(1)(a) of the Constitution.
- 6.1.91 The failure by Mr Msiza to declare to the Department his assumption of office as a municipal councillor was not in line with the promotion of sound, efficient, effective, transparent, and accountable administration as required by the provisions of section 14(j) of the Public Service Regulations.
- 6.1.92 In his response dated 20 March 2024, Dr Ndwamato stated that “*between the period August 2018 and January 2022, the Department was engaged in the process of the investigation of administrative issues at Groblersdal Hospital, which included the allegations of performance of other remunerative work outside the public service by Mr Msiza*”. However, the information gleaned from the report showed that Mr Msiza was a co-complainant in the matter and not the subject of the investigation. The persons alleged to have engaged in the performance of other remunerative work were Mr M and Mr N.
- 6.1.93 Section 19(3) of the Constitution affords Mr Msiza the right to stand for public office and to hold office should he be elected. However, Mr Msiza had the ethical duty to declare his outside remunerative work to the executive authority of the Department as espoused in section 195(1)(a) of the Constitution which enjoins public servants to maintain a high standard of professional ethics.
- 6.1.94 Section 31(1)(a)(i) of the Public Service Act, prescribes that if any remuneration, allowance or other reward is received by an employee, in connection with the performance of his work in the public service, contrary to section 30, that

employee shall pay should pay into the revenue account of the province, an amount equal to the remuneration so received. Mr Msiza received remuneration from the Municipality as a ward councillor contrary to section 30 of PSA. No evidence was provided indicating that the Department recovered such amount from Mr Msiza or that Mr Msiza paid back the remuneration he received as ward councillor as required in terms section 31(1)(a)(i) of the PSA.

- 6.1.95 In response to the section 7(9)(a) Notice, Mr Msiza's attorneys of record, Mphoke PK Magane Attorneys, noted the provisions of sections 30(1) and 31(1)(a)(i) of the Public Service Act and submitted that *"his conduct never intended to cause any malicious intent"*.
- 6.1.96 Mr Msiza, through his attorneys, admitted that he had a duty to inform his employer should he wish to stand as a candidate in municipal elections as per the provisions of paragraph 5.2 of the Circular Minute of 07 October 2005.
- 6.1.97 Through his attorneys of record, Mr Msiza further confirmed that he became aware of the requirement to apply for and obtain permission from his employer to perform other remunerative work during 2018 when he attempted to launch an application to perform other remunerative work as a municipal ward councillor. The application was declined by the Department, but still he did not desist from performing other remunerative work as municipal councillor knowing full well that he did not have the requisite permission.
- 6.1.98 Mr Msiza knowingly continued to perform other remunerative work as a municipal ward councillor without permission from the Department even when he knew that it was wrong to do so.
- 6.1.99 Through his attorneys, Mr Msiza acknowledged the findings of the investigation to the effect that he contravened section 30(1) of the Public Service Act and other applicable prescripts regulating the performance of other remunerative work. He pleaded for leniency when it came to the remedial action proposed against him,

with specific reference to the provisions of section 31(1)(a)(iv) of the Public Service Act and further submitting that his conduct was not a deliberate disregard of the provisions of the Public Service Act.

Conclusion

6.1.100 Based on the evidence before the Public Protector and the analysis thereof, it is concluded that Mr Msiza, whose permanent occupation was that of an Administration Clerk at the Department, simultaneously served as a ward councillor at Elias Motsoaledi Municipality from August 2016 to January 2022 and received remuneration for both such services, without obtaining the prior permission from the Department, as required by law.

6.2 Whether the functionaries of the Limpopo Department of Health failed to effectively manage remunerative work in accordance with the Remunerative Work Outside the Employees' Employment Directive, which resulted in Mr Msiza's continued employment as a councillor of the Elias Motsoaledi Local Municipality, if so, whether such conduct is improper as envisaged in section 182(1) of the Constitution and amounts to maladministration in terms section 6(4)(a)(i) of the Public Protector Act

Common cause

6.2.1 Mr Msiza was permanently employed by the Department as an Administration Clerk and attached to the Groblersdal Hospital from 01 September 2008, until his resignation on 12 January 2022.

6.2.2 Mr Msiza was elected as a part time ward councillor in August 2016 at the Elias Motsoaledi Local Municipality and served until the end of that municipal term in October 2021.

- 6.2.3 He was re-elected as a full-time ward councillor in November 2021 and subsequently appointed as a Member of Mayoral Committee (MMC) responsible for Infrastructure.

Issue in dispute

- 6.2.4 The issue for the Public Protector's determination is whether the Limpopo Department of Health failed put measures in place to ensure that Mr Msiza did not simultaneously serve and be remunerated in two (02) public positions without obtaining prior approval from the Department, in contravention of the applicable prescripts.

The Complainant's version

- 6.2.5 The Complainant alleged that Mr Msiza held two (02) public positions, namely that of a ward councillor at the Municipality whilst being employed on a permanent basis as an Administration Clerk at the Hospital and thus received two (02) public salaries at the same time.

The Municipality's version

- 6.2.6 Paragraphs 6.1.8 to 6.1.9.5, paragraphs 6.1.13 to 6.1.14 as well as paragraphs 6.1.27 to 6.1.28 discussed above, are *mutatis mutandis* applicable to the version of the Municipality under this second issue.

The Department's version

- 6.2.7 Paragraphs 6.1.10 to 6.1.12.10 as well as paragraphs 6.1.15 to 6.1.26 discussed above, are *mutatis mutandis* applicable to the version of the Department under this issue.

- 6.2.8 On 06 December 2021, the Investigation Team wrote a letter to Dr Mhlongo to establish whether the Department was aware that Mr Msiza worked as a ward councillor from August 2016 to October 2021. A response was received from Dr Dombo through a letter dated 19 January 2022, wherein she indicated that:
- 6.2.8.1 There was non-compliance with paragraph 6.1.1 of the Directive on other Remunerative Work Outside the Employee's Employment in the Relevant Department as Contemplated in section 30 of the Public Service Act, 1994 (the Directive) issued by the Minister of Public Service and Administration which stipulates that *"before undertaking other remunerative work, an employee must first obtain permission from the executive authority or delegated authority in terms of applicable prescripts and this directive"*;
- 6.2.8.2 Dr Rashokeng (CEO) explained to Mr Msiza how his application did not comply with the Directive by the Minister and referred the matter to the Labour Relations Unit as per a referral letter dated 10 August 2018; and
- 6.2.8.3 The Department was in the process of instituting a disciplinary enquiry against Mr Msiza and his hearing is scheduled between 27 to 28 January 2022.
- 6.2.9 Attached to Dr Dombo's response was a referral letter dated 10 August 2018, which was addressed to the following functionaries:
- 6.2.9.1 Mr Ntsodi Zachariah Molefe, the Sekhukhune District Labour Relations Officer;
- 6.2.9.2 Mr Mabitsela Molepo, the Deputy Director, Security Management, Provincial Office (previously based at Labour Relations); and
- 6.2.9.3 Mr Vincent Ngwasheng, Labour Relations Officer, Provincial Office (deceased).

Correspondence with functionaries of the Department

- 6.2.10 On 19 July 2024, the Investigation Team wrote letters to the following functionaries of the Department to provide an explanation in respect of their involvement in the matter after the Dr Rashokeng's letter was sent to them:
- 6.2.10.1 Mr Maseleme, the Director: Labour Relations at the Provincial Office;
 - 6.2.10.2 Mr Molepo, the then Deputy Director: Labour Relations Unit at the Provincial Office;
and
 - 6.2.10.3 Mr Molefe, the Sekhukhune District Labour Relations Officer.

Response from Mr Molepo

- 6.2.11 On 26 July 2024, an email response was received from Mr Molepo, who stated as follows:
- 6.2.11.1 The matter was referred to the Office of the Director: Labour Relations who decides on what to do with a referral;
 - 6.2.11.2 He played no role in the matter of Mr Msiza; and
 - 6.2.11.3 He was transferred from the Labour Relations Unit to the Security Management Unit in September 2020 and the Office of Labour Relations will be the relevant unit to respond to the matter.

Teleconference between the Investigation Team and Mr Molepo

- 6.2.12 On 06 August 2024, the Investigation Team telephoned Mr Molepo to clarify the contents of his letter. Mr Molepo indicated that he did not recall ever receiving the letter of 10 August 2018 from Dr Rashokeng. He further stated that such communication would have been sent to the District Office of the Department, in line with the decentralisation of discipline management.

Mr Maseleme's response

- 6.2.13 On 29 July 2024, a response letter was received from Mr Maseleme who stated as follows:
- 6.2.13.1 The CEO's letter of 10 August 2018, which was referred to the Labour Relations Unit, was not brought to his attention for consideration and action at the time, he was therefore not aware of the letter;
- 6.2.13.2 Discipline management in the Department is decentralized to heads of hospitals, heads of districts and the provincial head office. During this period, the district (and as such Groblersdal hospital) was under the leadership of Ms Maepa, who was the District Executive Manager (DEM). She has since resigned from the Department;
- 6.2.13.3 He does not have any record that the addressees mentioned in the said letter namely, Mr Molefe, Mr Molepo and Mr Ngoasheng, implemented disciplinary measures;
- 6.2.13.4 Upon becoming aware of the matter and the allegations, he immediately ensured that a disciplinary inquiry was instituted during January 2022; and
- 6.2.13.5 It is his duty and responsibility as the Director: Labour Relations that every matter that is brought to him receives immediate attention or action and he must ensure that action (be it investigation or disciplinary process) is implemented within a reasonable time or time frames as provided for in the disciplinary code and procedure.
- 6.2.14 No response was received from Mr Molefe and all attempts to reach him were not successful.

Additional information from Dr Rashokeng

6.2.15 On 07 August 2024, the Investigation Team sent an email to Dr Rashokeng requesting him to respond to the following questions and to provide further clarity on his letter of 10 August 2018:

6.2.15.1 To whom the letter of 10 August 2018 was hand-delivered?

6.2.15.2 Whether there was proof of acknowledgement of receipt of the letter by the recipient? and

6.2.15.3 Whether the CEO's office was in possession of a copy of the email through which the letter was electronically sent to the Department?

Dr Rashokeng's response

6.2.16 Dr Rashokeng responded through an email on 07 August 2024 and stated as follows:

6.2.16.1 The letter was hand-delivered to Mr Molefe, the (Sekhukhune) District Labour Relations Officer and to Mr Ngwasheng, the Provincial Labour Relations Officer;

6.2.16.2 Both recipients of the letter verbally acknowledged receipt thereof;

6.2.16.3 The letter was sent through email on 14 August 2018 to Mr Molepo, the then Deputy Director: Labour Relations. The email transcript confirming the transmission was attached to the CEO's response;

6.2.16.4 The Sekhukhune District Executive Manager, Ms Maepa, who was his supervisor at the time, was copied in this correspondence. Ms Maepa acknowledged receipt of the letter and supported the contents thereof; and

6.2.16.5 Mr Molepo, at that time, reported directly to Mr Maseleme, the Director: Labour Relations at the Provincial Office.

Telecom between the Investigation Team and Dr Rashokeng

- 6.2.17 Dr Rashokeng followed up his response above with a telephone call to the Investigation Team on the same day. During the telephone discussion, he stated the following:
- 6.2.17.1 He was no longer working for the Department. Sometime in 2020, he was suspended, his office was “*raided*”, and all documents were seized for investigation purposes. He had, however, saved some of the information through his private email and was thus able to provide the information stated above;
- 6.2.17.2 When the issue of Mr Msiza performing other remunerative work surfaced in 2018, he initially reported the matter to Ms Maepa, who in turn, sought advice and guidance from the Provincial Labour Relations Office. In response, Mr Molepo, Mr Molefe, Mr Ngwasheng and a fourth individual, whose identity he could not recall, were sent to the hospital to provide advice on the issue. This resulted in his letter of 10 August 2018 being addressed to Mr Molepo, Mr Molefe and Mr Ngwasheng; and
- 6.2.17.3 In 2019, when Mr Msiza was re-elected as a municipal ward councillor at the Municipality, he again notified the Department, but he could not recall how that notification was made.

Responses to the section 7(9)(a) notice

- 6.2.18 Notices in terms of section 7(9)(a) of the Public Protector Act were sent to the following persons on 20 November 2024:
- 6.2.18.1 Dr Rashokeng;
- 6.2.18.2 Dr Dombo;
- 6.2.18.3 Mr Molefe;

- 6.2.18.4 Mr Maseleme;
- 6.2.18.5 Mr Kgwale; and
- 6.2.18.6 Mr Molepo.

Response from Dr M Dombo

- 6.2.19 On 05 December 2024, Dr Dombo acknowledged receipt of the notice on behalf of the Department and stated as follows:
 - 6.2.19.1 The powers and jurisdiction as referred to in paragraph 3 of the Public Protector's Notice, specifically, paragraph 3.4 relating to organs of state, are acknowledged. Furthermore, in so far as the remedial action as proposed in the Public Protector's Notice for implementation, the department pledged the intention to action same, to the extent possible, upon receipt of the final report;
 - 6.2.19.2 However, in line with paragraph 9 of the Notice, the Department is of the respectful view that paragraph 8.5.4 flies in the face of the spirit of the investigation, findings and purport of the legal prescripts which are relevant and applicable herein, in that, the alternative given to the head of department is rather on the unfair side as it negates the findings made by the Investigation Team. In addition, it also negates paragraphs 3.7.3 and 3.7.4 of the Notice;
 - 6.2.19.3 Furthermore, the remedial action in respect of the functionaries of the department is rigidly stated, in that disciplinary action is imposed against the functionaries while the department is afforded an alternative not to punish Mr Msiza, but to make a determination to approve retention of the remuneration;
 - 6.2.19.4 Mr Msiza occupied two (02) public positions in government (*albeit* at provincial and local levels) and the Notice under reply points to responsibilities of the two (02) Accounting Officers. The department sought clarity on whether a similar Notice for the Municipality, which also includes remedial action to be taken by the Accounting

Officer thereof and has a similar effect to that of the department, exists. If so, a copy was requested; and

- 6.2.19.5 However, if not, the department is of the view that remedial action should be proposed for the Accounting Officer of the Municipality, which should include, *inter alia*, steps to be taken by the Municipal Manager, upon discovery that a councillor is employed on a full time basis in another organ of state, whether the discovery was made through a formal declaration or any other means.

The Investigation Team's response to Dr Dombo

- 6.2.20 On 10 December 2024, the Investigation Team wrote a letter to Dr Dombo, providing the clarity which she requested in her letter of 05 December 2024 and stated as follows:
- 6.2.20.1 The Investigation Team appreciated Dr Dombo's pledge and intention to action the remedial action as proposed in the section 7(9)(a) Notice which are to be incorporated into the final formal report;
- 6.2.20.2 The Investigation Team indicated that the contents of paragraph 8.5.4 of the Notice were derived from and based on the provisions of section 31(1)(a)(iv) of the Public Service Act which allows for the consideration, by the accounting officer of the relevant department, for the approval that the employee concerned can retain the whole or a portion of the remuneration received as set out in paragraph 6.2.27 of the Notice. The provision could not be overlooked in the framing of the proposed remedial action as it is provided for in the law. Furthermore, there is no obligation on the accounting officer to take this course of action, safe to say that the provision gives the accounting officer the discretion to consider such an option;
- 6.2.20.3 The remedial action proposed by the Public Protector is guided by specific legal provisions relating to the conduct that needs to be remedied. In this regard, section

15(6)(a) of the Public Administration Management Act and sections 7(3)(b) and 16A(2) of the Public Service Act provide for taking of appropriate disciplinary steps against the employees who do not comply with provisions of the Public Service Act; and

6.2.20.4 The Municipality had been served with the Notice in terms of Section 7(9)(a) and will also be served with a copy of the final report. However, no remedial action is prescribed for implementation by the Municipality as no legal provision was found to have been contravened by either the Municipality or Mr Msiza in connection with the formal relationship between the Municipality and Mr Msiza. The Limpopo Department of Health was the primary employer of Mr Msiza and contravention of section 30 of the Public Service Act, related to the employer-employee relationship between the Department and him.

Response from Mr Molefe

6.2.21 Mr Molefe acknowledged receipt of the Notice by way of an email dated 27 November 2024 and requested clarity regarding what was required of him.

6.2.22 Through an email dated 02 December 2024 the Investigation Team provided clarity to Mr Molefe as follows:

6.2.22.1 The purpose of the Notice in terms of section 7(9)(a) of the Public Protector Act was to provide him, as a person who may be implicated in or adversely affected by the findings of the Public Protector in the final report that will be issued following the finalisation of the investigation, an opportunity to respond to the issues raised in the Notice in so far as they affect or relate to him; and

6.2.22.2 He could either agree with what the investigation had unearthed regarding his role as indicated by the evidence provided to the Public Protector and reflected in the Notice or he could provide a version that rebuts or negates what was contained in the Notice in so far as it related to him and should the Public Protector not receive

further communication from him, it will be assumed that he is in agreement with the contents of the Notice.

6.2.23 No further communication was received from Mr Molefe.

Response from Mr Maseleme

6.2.24 In the letter dated 07 December 2024 and transmitted to the Investigation Team by way of email on 08 December 2024, Mr Maseleme responded as follows:

6.2.24.1 He indicated that he believes in the rule of law and respects all institutions established by the Constitution of the Republic of South Africa, including the Office of the Public Protector, hence his cooperation with the investigation;

6.2.24.2 He contended that the letter of Dr Rashokeng dated 10 August 2018 was not brought to his attention but was addressed to Mr Molefe, who was employed as Labour Relations Practitioner at Sekhukhune District, Mr Molepo who was the Deputy Director: Labour Relations in his office (now working in Security Management) and Mr Ngoasheng, Deputy Director Labour Relations at Capricorn District, who resigned from the department during August 2018. Mr Ngoasheng has since passed on during 2021;

6.2.24.3 He acknowledged that the letter dated 10 August 2018 was addressed to Messrs Molefe, Molepo and Ngwasheng in the Labour Relations unit of the department, however, it was not clear to him how it was served on the three (03) officials;

6.2.24.4 He noted that in response to the section 7(9)(a) Notice, Mr Molepo indicated that the letter was referred to the Office of the Director: Labour Relations, who decides on what to do with a referral. However, Mr Molepo was assigned to take care and assist Sekhukhune District (and its institutions) with labour related matters, including grievance resolution, discipline management and dispute (Arbitrations) resolution;

- 6.2.24.5 Furthermore, the practice is that all matters referred to Labour Relations would first come to his office for assessment and determination, once he has analysed the matter, he would allocate to the relevant Deputy Director. The statement that the matter was referred to the office of the Director Labour Relations cannot be correct. If the matter was referred to him by the district or hospital, it would have been attended by him before allocation to Mr Molepo, and if Mr Molepo had the letter, he would have as the manager responsible for Sekhukhune, engaged him for discussion and decision on the way forward. This is confirmed by Mr Molepo himself, in the Investigation Team's interaction with him as per paragraph 6.2.12 of the Notice;
- 6.2.24.6 Regarding hand-delivery of the letter to Mr Molefe, of the District Office by Dr Rashokeng, he could not admit or deny such because he was not part of that hand-delivery process;
- 6.2.24.7 Regarding hand-delivery to Mr Ngwasheng at the provincial office, he confirmed that Mr Ngwasheng was working at the Capricorn District Office at the time;
- 6.2.24.8 In paragraph 6.2.16.3 of the Notice it is stated that the letter was sent to Mr Molepo through email, however, he did not have a record of the email transmitting the letter of 10 August 2018;
- 6.2.24.9 Furthermore, there was no confirmation from Dr Rashokeng or the district that the matter or letter was brought to his attention. There was nowhere in the findings where Dr Rashokeng indicated that he telephonically called him or spoke to him when the matter was not receiving the necessary attention;
- 6.2.24.10 He noted the assertion in the Notice about the functionaries in Labour Relations Unit initially claiming ignorance of the matter, he still contended that there was no evidence either from Dr Rashokeng or the District Executive Manager's office or emails that the letter of 10 August 2018 was brought to his attention;

- 6.2.24.11 Paragraph 6.2.42 of the Notice was incorrect and misleading because it suggested that the former District Executive Manager, Ms Maepa sought advice of Mr Maseleme, who was the head of the Labour Relations in the provincial office, yet in the whole report/findings there was no indication or proof that the matter was referred to his office even by Ms Maepa;
- 6.2.24.12 The “*finding*” introduces a new aspect altogether which is not supported by evidence. He disputed that Mr Molepo, Mr Molefe, Mr Ngwasheng and another individual were dispatched to the hospital. Further, he was not aware of this process, and it was highly impossible because Mr Ngwasheng was at that time at Capricorn District Office (not responsible for Sekhukhune) and had left the department in August 2018. It is also noted that Mr Molepo had not spoken about this visit;
- 6.2.24.13 He does not agree with the finding that he failed to take action after becoming aware in 2018 of Mr Msiza’s election as ward councillor. He found the contents of paragraph 7.2.3 of the Notice to be unfounded and unfair as he claimed that he was not aware of the letter of 10 August 2018 as it was not brought to his attention; and
- 6.2.24.14 He concluded by submitting that he should not be held accountable for the delay in taking action based on the letter of 10 August 2018 given the reasons outlined in his responses and submissions.

A Report on the investigation into the Management of Public Servants in Terms of Prevailing Provisions who are elected as Municipal Councillors in the Limpopo and Western Cape Provinces, 2007

- 6.2.25 On 10 December 2024, the Investigation Team obtained a copy of an investigation report issued by the Public Service Commission in August 2007, titled “*Report on the investigation into the Management of Public Servants in Terms of Prevailing*

*Provisions who are elected as Municipal Councillors in the Limpopo and Western Cape Provinces, 2007*⁴.

- 6.2.26 The report stated that the Department of Public Service and Administration (DPSA) issued a Circular Minute in October 2005⁵, stating that the election of public servants as part-time municipal councillors should be dealt with in terms of section 30(3)(b) of the Public Service Act, 1994.⁶
- 6.2.27 The report recommended that special care must be taken by departments in ensuring the following:⁷
- 6.2.27.1 The details of all public servants employed by the department in general, and those elected as municipal councillors in particular, are recorded accurately on the Personnel Salary System (PERSAL) of South Africa;
- 6.2.27.2 Liaison takes place between the relevant departments and municipalities to ensure that details in this regard are captured in a comprehensive manner, promptly and correctly;
- 6.2.27.3 Information about public servants elected as municipal councillors is updated on PERSAL, should changes in the employment relationship occur; and
- 6.2.27.4 Departments should, as a minimum, update and maintain accurate records of aspects such as the notification of departments when public servants are elected as municipal councillors, the nature of their duties/responsibilities as councillors and details of the remuneration to be paid to them and requests by public servants

⁴ Published by The Public Service Commission, August 2007, ISBN: 978-0-621-37314-1

⁵ Reference no: 1/3/8/P: Participation of Public Service Act Employees in the Forthcoming Municipal Elections, dated 07/10/2005

⁶ Page 24 par 1

⁷ Page 34-35

elected as municipal councillors to perform remunerative work outside the Public Service and approvals granted.

- 6.2.28 In addition, it was recommended that departments should consider requiring public servants elected as municipal councillors to enter into an agreement with the departments and that such agreement, forming part of the policy, should cater for the following:
- 6.2.28.1 Timeous written application for the extension of the approval to perform remunerative work outside the Public Service;
 - 6.2.28.2 Confirmation that Council-related duties performed will in no way interfere with official commitments, or that the Department will in no way be compromised;
 - 6.2.28.3 Specification of the maximum number of hours (per day/month/quarter, etc) that the remunerative work outside the Public Service will be undertaken;
 - 6.2.28.4 Subjection of the number of hours of remunerative work undertaken outside the Public Service to an audit, if required;
 - 6.2.28.5 Withdrawal/termination of the approval to perform remunerative work outside the Public Service in instances where the amount of time allocated to Council-related activities negatively affects an employee's ability to perform his/her official work;
 - 6.2.28.6 Recording of the hours of attendance, e.g. requiring the relevant employees to sign in and out each time they enter/exit the building/institution where they perform their basic duties; and
 - 6.2.28.7 Non-compliance with agreed conditions/control measures will lead to disciplinary action.

Applicable law

The Constitution of the Republic of South Africa, 1996

6.2.29 Section 195 of the Constitution provides that *“Public Administration must be governed by democratic values and principles enshrined in the Constitution, including the following principles:*

- (a) A high standard of professional ethics must be promoted and maintained;*
- (b) Efficient, economic and effective use of resources must be promoted;...*
- (f) Public administration must be accountable;*
- (h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.*

The Public Administration Management Act, 2014 (PAMA)

6.2.30 The Preamble of the PAMA states that *“we, the people of South Africa, recognise that administration in every sphere of government is governed by the values and principles governing public administration in section 195(1) of the Constitution”.*

6.2.31 Section 15(6)(a) of PAMA states that *“notwithstanding subsection 5(b), every institution has the responsibility to ensure that it deals with matters relating to misconduct without undue delay”.*

The Public Service Act, 1994 (Public Service Act)

6.2.29 Section 7(3)(b) of the Public Service Act provides as follows:

“The Head of Department shall be responsible for the efficient management and administration of his or her department, including the effective utilisation and training of staff, the maintenance of discipline, the promotion of sound labour relations and the proper use and care of State property, and he or she shall

perform the functions that may be prescribed”.

6.2.30 Section 16A(2)(a),(b) and (c) of the Public Service Act provides as follows:

“A head of a department shall immediately take appropriate disciplinary steps against an employee of the department who does not comply with a provision of this Act, or a regulation, determination or directive made thereunder, immediately report to the Director-General: Public Service and Administration the particulars of such non-compliance and as soon as possible report to that Director-General the particulars of the disciplinary steps taken”.

6.2.31 Section 30(1) provides that *“no employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the relevant department, except with the written permission of the executive authority of the department”.*

6.2.32 Section 31(1)(a)(i)(aa) provides that *“if any remuneration, allowance or other reward (other than remuneration contemplated in section 38(1) or (3)), is received by an employee in connection with the performance of his or her work in the public service otherwise than in accordance with this Act or a determination by or directive of the Minister, or is received contrary to section 30, that employee shall, subject to subparagraph (iii), pay into revenue an amount equal to the amount of such remuneration, allowance or reward...”*

6.2.33 Section 31(1)(a)(ii) provides that *“if the employee fails to so pay into the revenue the amount or value, the said head of department shall recover it from him or her by way of legal proceedings and pay it into revenue”.*

6.2.34 Section 31(1)(a)(iv) provides that *“the accounting officer of the relevant department may approve that the employee concerned retains the whole or a portion of the said remuneration, allowance or reward”.*

Public Service Regulations, 2016

6.2.35 The Code of Conduct for Public Servants is provided for in Chapter 2 of the new Public Service Regulations.

6.2.36 Subsections of Item 14 of the Code of Conduct for Public Servants provides that an employee shall-

“(c) Be punctual in the execution of his/her duties;

(d) Execute his/her official duties in a professional and competent manner;...

(h) Be committed ...to the promotion of sound labour relations;...

(j) Promote sound, efficient, effective, transparent and accountable administration;...

(q) shall immediately report any non-compliance of the act to the head of department.”

Circular Minute 1/3/8/P, 07 October 2005

6.2.37 In October 2005, a Circular was issued by the DPSA, which provided guidance to Departments on the management of public servants who are candidates in municipal elections and/or elected to municipal councils.

6.2.38 Paragraph 5 of the Circular contains the following guidelines:

“(5.1) All staff should be informed of the provisions and conditions that regulate their participation and election to municipal councils as indicated in this circular;

- (5.2) *Employees wishing to stand as candidates should be required to inform their respective departments of their intentions. In turn each department should ensure that employees are properly informed of the conditions they will have to comply with.*
- (5.3) *Should an employee be elected to a municipal council, he/she should be required to inform a designated official of such an election, of the nature of his/her duties and responsibilities as a councillor, whether he/she will be required to perform duties during official hours and of the details of his/her remuneration;*
- (5.4) *Departments should continuously monitor –*
- (a) *the nature and extent of the employee's duties and responsibilities as a councillor and whether it could be in conflict with the person's official duties;*
 - (b) *the impact that the employee's duties as a councillor will have on his/her attendance and performance of work; and*
 - (c) *the position and activities of the employee to ensure that no conflict of interest arises that could perhaps compromise the Department.*
- (5.5) *Should an employee be elected to a position as a full time Municipal Councillor, he/she will have to resign from the Public Service. As regards those who will take up parttime positions, departments should ensure that such employees perform their duties as councillors as far as possible outside official hours of work. Specific approval has to be granted that an employee can retain his or her remuneration, as required by section 30 of the Public Service Act, 1994.*
- (5.6) *If an employee has to perform duties as a councillor during his/her official hours of work, departments should require that vacation leave be taken on a basis of one (01) day for every eight (08) hours of*

absence.”

The Departmental Circular No. 52 of 2016

- 6.2.44 On 12 July 2016, the Department issued Circular No. 52 of 2016 titled *“Participation of Public Service Act Employees in the Forthcoming Municipal Elections”* to all District Executive Managers, Chief Executive Officers, Heads of Vertical Programs and all staff members forwarding the Circular of 07 October 2005.
- 6.2.45 In the Circular, the Department drew the attention of all its employees to the provisions of the Circular Minute of October 2005, amongst others, *“Guidelines for managing employees who wish to stand as candidates and who are elected to municipal elections”* (sic).
- 6.2.46 The Circular further requested Heads of Branches/Sub-Branched/Divisions/Sub-Divisions, District Executive Managers, Chief Executive Officers, and Heads of Vertical Programs to submit information regarding employees who would have accepted election to municipal councils by no later than 15 August 2016 *“without fail”*.

Analysis

- 6.2.47 The evidence before the Public Protector indicates that the Department was aware, as early as August 2018, that Mr Msiza was performing other remunerative work as a councillor at the Municipality. Dr Rashokeng wrote a letter to the Labour Relations Unit on 10 August 2018 informing them about the performance of other remunerative work by Mr Msiza and requesting that disciplinary measures be instituted against him.

- 6.2.48 Despite the Department having been notified and requested by Dr Rashokeng to take disciplinary steps against Mr Msiza, evidence before the Public Protector indicates that no action was taken by the functionaries of the Department to prevent him from continuing to perform outside remunerative work for the period from August 2018 to January 2022. This inaction by the functionaries of the Department violated the constitutional imperatives which they must meet as set out in section 195 of the Constitution in the administration of the conduct of its employees and the efficient and economical management of its human and other resources.
- 6.2.49 The evidence before the Public Protector indicates that, when the matter came to his knowledge, Dr Rashokeng notified Ms Maepa. Subsequently Mr Molepo, Mr Molefe, Mr Ngwasheng and another individual attended the hospital to provide guidance on the matter. This is confirmed by the letter written by Dr Rashokeng to Mr Molepo, Mr Molefe, Mr Ngwasheng, dated 10 August 2018.
- 6.2.50 Mr Maseleme contended that he was not aware of Mr Msiza's election as ward councillor, as well as the letter of Dr Rashokeng dated 10 August 2018. This was disputed by Dr Rashokeng, who confirmed to the Investigation Team that there was various communication between Mr Maseleme and himself in this regard, which resulted in the team comprised of Head Office and the District Office officials being sent to the Hospital to meet, discuss and advise him on the matter.
- 6.2.51 The evidence further shows that following the intervention by the Labour Relations team Dr Rashokeng then emailed the referral dated 10 August 2018 to Mr Molepo and Ms Maepa and hand-delivered the same letter to Mr Molefe and Mr Ngwasheng. The above evidence indicates that both Dr Rashokeng and Ms Maepa acted on the information regarding Mr Msiza's election as a ward councillor in line with section 15(6)(a) of PAMA, which requires every institution to ensure that it deals with matters relating to misconduct without undue delay. On the other hand, Messrs Molefe, Ngwasheng and Molepo did not act on the referral, which was in contrast with the expectation of section 15(6)(a) of PAMA.

- 6.2.52 Mr Maseleme, who was highest ranking official in the Labour Relations Unit within the Department, stated that he was not aware of a serious labour matter from August 2018 until December 2021, when the Public Protector raised the allegations. This is of concern considering that as a manager who is delegated the responsibility for maintenance of discipline and sound labour relations, he is expected to monitor the performance of his unit to ensure the provision of effective and efficient management in accordance with section 7(3)(b) of the Public Service Act.
- 6.2.53 During a telephone discussion with the Investigation Team on 07 August 2024, Dr Rashokeng informed the Investigation Team that in 2021, he once more notified the functionaries of the Labour Relations Unit, led by Mr Maseleme, about the re-election of Mr Msiza as a ward councillor in 2021. However, no action was taken by the functionaries of the Labour Relations Unit.
- 6.2.54 The delay in taking disciplinary steps against Mr Msiza by the functionaries of the Department did not accord with the provisions of section 7(3)(b) of the PSA, which requires the head of Department to ensure efficient management and administration of his or her department, including the maintenance of discipline and the promotion of sound labour relations, a function that is delegated to the Labour Relations Unit.
- 6.2.55 The evidence before the Public Protector shows that, even though Dr Rashokeng informed the Labour Unit of the Department about Mr Msiza's possible misconduct, the Department delayed for almost four (04) years to take any decisive action against him. By inordinately delaying taking disciplinary action against Mr Msiza, the functionaries of the Department deviated from the provisions of section 16A(2)(a) of the Public Service Act and section 15(6)(a) of the PAMA by failing to deal with matters relating to the misconduct of Mr Msiza for non-compliance with the provisions of section 30(1) of the Public Service Act.

- 6.2.56 It is concerning to note that, although Dr Rashokeng was informed in 2018 about Mr Msiza's election as a ward councillor, there is no evidence that he put measures in place to ensure that the nature and extent of Mr Msiza's duties and responsibilities as a councillor were continuously monitored as required by the directive in the Circular Minute of 2005. Furthermore, no evidence was provided indicating that Mr Msiza performed his duties as a councillor as far as possible outside official hours and that, should he be required to perform council duties during office hours, vacation leave was accordingly applied for.
- 6.2.57 The DPSA Circular Minute of 07 October 2005 provides clear guidelines to all state departments on how employees who participate in municipal elections and get elected as municipal councillors should be dealt with, and the Department is subject to the application of the guidelines.
- 6.2.58 Circular Minute 7, October 2005, provides that should an employee be elected as a full time Municipal Councillor, he/she will have to resign from the Public Service. Having been made aware of Mr Msiza's election as a full-time ward councillor and MMC in 2021, Dr Rashokeng and the functionaries of the Labour Relations Unit ought to have taken steps to ensure that Mr Msiza's services with the Department were terminated in accordance Circular Minute as indicated above.
- 6.2.59 In this regard, the Head of the Department at the time, did not comply with the provisions of provisions of section 7(3)(b) of the PSA which required of him or her to ensure maintenance of discipline of staff and promotion of sound labour relations.
- 6.2.60 The evidence further shows that it took the Department almost four (04) years (from August 2018 to January 2022) after the matter had been brought to the attention of the Labour Relations Unit, to initiate disciplinary steps against Mr Msiza for continuing to perform other remunerative work as a ward councillor without permission from the executive authority. The delay by Dr Rashokeng and the functionaries of the Labour Relations Unit in not terminating the services of

Mr Msiza once elected as a full-time councillor, is at variance with the requirements of Circular 52 of the DPSA.

- 6.2.61 The evidence further indicates that Mr Msiza received remuneration from both the Department and the Municipality from September 2016 to January 2022 (i.e. 5 years and 4 months) when he resigned from the Department. No evidence was provided indicating that the Department requested Mr Msiza to pay back the remuneration, allowance or other reward he received while servicing as a ward councillor in accordance with section 31(1)(a)(i) of the PSA. It was not correct for the Department to accept Mr Msiza's resignation without taking appropriate steps as provided for in section 31 of the PSA.
- 6.2.61 The remuneration received by Mr Msiza from the Municipality for the period from August 2016 to January 2022 was received in contravention of the provisions of section 30(1) of the Public Service Act and should thus have been recovered in terms of section 31(1)(a)(ii) of the PSA.
- 6.2.62 There is no evidence that shows that the details of Mr Msiza being elected as a municipal councillor were recorded on PERSAL. There is also no evidence of liaison between the Department and the municipality to ensure that his details were captured in a comprehensive manner, promptly and correctly even after the Department became aware of his election as a councillor. Therefore, the recommendations, as set out in *"The Report of the Public Service Commission on the Investigation into the Management of Public Servants in Terms of Prevailing Provisions who are elected as Municipal Councillors in the Limpopo and Western Cape Provinces"*, were not followed by the Department in the case of Mr Msiza.
- 6.2.63 The non-regulation of Mr Msiza's responsibilities in the Department in relation to his performance of remunerative work at the Municipality gives credence to the complaint by the Community of Motetema that he had conflicting priorities between his functions in the Department and those at the municipality, which

negatively impacted on the services he was expected to perform as a ward councillor.

- 6.2.64 The attorneys for Mr Msiza contended that the Directive and/or the policy have a dual duty to the employer and the employee for the purposes of procedural compliance. The evidence indicates that the Department issued Circular 52 of 2016 to all staff to alert employees who wish to participate in the local election to inform the Department of their intention to stand for elections to enable the Department to exercise oversight over these employees. A conclusion can therefore be drawn that the Department fulfilled its responsibility to inform employees of the requirements for participation in the local government elections.
- 6.2.65 The laxity with which the functionaries of the Department managed Mr Msiza's performance of remunerative work without the permission of the executive authority is in violation of the constitutional imperatives as set out in section 195 of the Constitution.

Conclusion

- 6.2.66 Based on the evidence in the Public Protector's possession, it can be concluded that the functionaries of the Department did not follow the DPSA guidelines to manage the participation of Mr Msiza in municipal elections and subsequent election to the municipal council.
- 6.2.67 The functionaries of the Department also fell short of their constitutional imperatives outlined in section 195 of the Constitution in ensuring the promotion and maintenance of a high standard of professional ethics and ensuring that there is efficient management and administration in the Department in line with section 7(3)(b) of the Public Service Act.

7. FINDINGS

Having regard to the evidence, the regulatory framework determining the standards Mr Msiza and other functionaries of the Department should have complied with, the Public Protector makes the following adverse findings against Mr Msiza and the functionaries of the Department:

7.1 **Whether Mr Msiza, an Administration Clerk employed by the Limpopo Department of Health, simultaneously served and was remunerated as a Ward Councillor at the Elias Motsoaledi Local Municipality, without obtaining permission from the Department as required by law, if so, whether such conduct is improper as envisaged in section 182(1) of the Constitution and constitutes maladministration in terms of section 6(4)(a)(i) of the Public Protector Act**

- 7.1.1 The allegation that Mr Msiza, an Administration Clerk employed by the Limpopo Department of Health, performed other remunerative work as a Ward Councillor at the Elias Motsoaledi Local Municipality outside of his official duties, without obtaining the required permission from the executive authority, **is substantiated.**
- 7.1.2 The evidence obtained during the investigation revealed that Mr Msiza was elected as a ward councillor of ward 31, Elias Motsoaledi Municipality from August 2016 and performed other remunerative work, while employed by the Department without obtaining permission from the executive authority as required by section 30(1) of the PSA.
- 7.1.3 Mr Msiza failed to comply with the provisions of section 30(1) of the Public Service Act in that his application to perform other remunerative work was only made nineteen (19) months after he occupied the position as a ward councillor and the said application was found to be incomplete and defective and was thus never approved. He, however, only declared his financial interests to the

Municipality as required in terms of section 7(1)(g) of Schedule 1 of the Municipal Systems Act, 2000.

- 7.1.4 Mr Msiza also failed to comply with the guidelines of Circular Minute of 07 October 2005, requiring him to inform his employer of his position as a ward councillor.
- 7.1.5 The conduct of Mr Msiza accordingly constitutes improper conduct as envisaged by section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
- 7.2 Whether the functionaries of the Limpopo Department of Health failed to effectively manage remunerative work in accordance with the Remunerative Work Outside the Employees' Employment Directive, which resulted in Mr Msiza's continued employment as a councillor of the Elias Motsoaledi Local Municipality, if so, whether such conduct is improper as envisaged in section 182(1) of the Constitution and amounts to maladministration in terms section 6(4)(a)(i) of the Public Protector Act**
- 7.2.1 The allegation that the functionaries of the Limpopo Department of Health failed to follow the Department of Public Service and Administration Guidelines and other applicable prescripts to regulate the participation of its employee, Mr Msiza, in municipal elections and his subsequent election to the municipal council of the Elias Motsoaledi Local Municipality, **is substantiated.**
- 7.2.2 Mr Msiza was elected as ward councillor at the Municipality from August 2016 and the Department only became aware of his service as a ward councillor in 2018. Dr Rashokeng and Ms Maepa failed to take the appropriate steps to ensure that Mr Msiza's performance of remuneration work is managed in accordance with Circular Minute 1/3/8/P, 07 October 2005.

- 7.2.3 The functionaries of the Labour Relations Unit, Mr Molepo and Mr Molefe, failed to take corrective action against Mr Msiza after Dr Rashokeng referred the transgression to them for advice and action in August 2018. The Department only acted on 12 January 2022, by instituting disciplinary proceedings against Mr Msiza, after the Public Protector had raised the allegations relating to the conduct of Mr Msiza with the Department.
- 7.2.4 The conduct of the functionaries in delaying instituting disciplinary action against Mr Msiza was in contrast with section 7(3)(b) of the PSA, which provides for maintenance discipline and promotion of sound labour relations.
- 7.2.5 The functionaries of the Department failed to recover the remuneration paid to Mr Msiza by the Municipality while he remained in the employ of the Department and further missed the opportunity to recover same when he resigned. Such failure was in contrast with section 31(1)(a)(ii) of the PSA which empowers the accounting officer to recover the remuneration, so paid, by way of legal proceedings, should the recipient fail to pay same into the provincial revenue.
- 7.2.6 The failure of the functionaries of Department to act promptly in dealing with the misconduct of Mr Msiza amounts to maladministration and improper conduct in terms of section 182(1) of the Constitution and section 6(4)(a)(i) and (v) of the Public Protector Act.

8. REMEDIAL ACTION

- 8.1 The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action with a view of redressing the conduct referred to in this report upon the conclusion of an investigation where adverse findings are made.

- 8.2 In *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng, CJ held that the remedial action taken by the Public Protector has a binding effect.
- 8.3. Although the provisions of the PAMA and Public Service Act require the HoD to act promptly when there is contravention of section 30(1) of the PSA, no remedial action can be taken against Dr Dombo as the current Acting Head of Department since as she did not occupy the position at the time of the contravention and as such, cannot be held responsible.
- 8.4. No remedial action can be taken against Dr LJ Rashokeng as he has since left the Department and is currently in private practice.
- 8.5. Having regard to the evidence, the regulatory framework determining the standard the functionaries of the Department and Mr Msiza should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Head of Department:

- 8.5.1 Within **thirty (30) calendar days** from the date of receipt of this report, institute legal proceedings against Mr Msiza for the recovery of the remuneration he received from the Municipality as a Municipal Councillor without the permission of the executive authority in terms of section 31(1)(a)(ii) of the Public Service Act;
- 8.5.2 Alternatively, make a determination in terms of section 31(1)(a)(iv) of the Public Service Act to approve the retention by Mr Msiza of the whole or a portion of the remuneration he received in contravention of section 30(1) of the Public Service

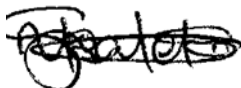
Act. In the exercise of the discretion as provided for in the above legal provision, the Head of Department should consider the seriousness of Mr Msiza's conduct in this regard, who continued to serve as a councillor knowing that he did not have approval of the executive authority to do so.

- 8.5.2.1 Within ninety (90) calendar days from the date of receipt of this report, and in terms of section 195(1)(a) of the Constitution, conduct a full audit in respect of all employees within the Department who may be serving as municipal councillors or undertaking any other remunerative work, to ascertain whether they have obtained the required permission as required by section 30(1) of the Public Service Act;
- 8.5.3 If it is found that there are current employees of the Department who are in contravention of section 30(1) of the Public Service Act, **within thirty calendar (30) days** of such discovery, implement the guidelines as per the Circular Minute 1/3/8/P, 07 October 2005 and the recommendations of the Public Service Commission Report as outlined in paragraph 6.2.42;
- 8.5.4 Within **sixty calendar days (60)**, take corrective action against the following functionaries of the Department for the inordinate delay in initiating disciplinary proceedings against Mr Msiza, in line with section 15(6)(a) of PAMA, section 7(3)(b) of the Public Service Act and section 16A(2)(a) of the Public Service Act:
- 8.5.4.1 Mr N Z Molefe, the Sekhukhune District Labour Relations Officer; and
- 8.5.4.2 Mr M Molepo, the Deputy Director, Labour Relations, Provincial Office.

9 MONITORING

- 9.1 The Head of Department to submit an action plan to the Public Protector within thirty (30) calendar days from the date of this report on the implementation of the remedial action referred to in paragraph 8 above.

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



ADV KHOLEKA GCALEKA
PUBLIC PROTECTOR
REPUBLIC OF SOUTH AFRICA
DATE: 31 MARCH 2025

Assisted by:

Mr Bernard Mahloko & Ms Nthoriseng Motsitsi

Provincial Investigations and Integration: Inland (LP)