



PUBLIC PROTECTOR  
SOUTH AFRICA  
Accountability • Integrity • Responsiveness



# BUSHBUCKRIDGE MUNICIPALITY

## REPORT NO. 32 OF 2024/2025

ISBN Number : 978-0-6398571-0-7

**INVESTIGATION INTO ALLEGATIONS OF IRREGULAR APPOINTMENT OF MR P ZWANE TO THE POSITION OF OCCUPATIONAL HEALTH AND SAFETY ADMINISTRATION CLERK AND MS TF KGWEDI TO THE POSITION OF HUMAN RESOURCE ADMINISTRATION CLERK BY THE FUNCTIONARIES OF BUSHBUCKRIDGE LOCAL MUNICIPALITY**



012 366 7000



[www.pprotect.org](http://www.pprotect.org)



@PublicProtectorSouthAfrica



Publicprotectorsouthafrica



Public Protector South Africa



<b>TABLE OF CONTENTS</b>		
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>PAGE NO.</b>
	<b>LIST OF ACRONYMS/ABBREVIATIONS</b>	<b>3</b>
	<b>EXECUTIVE SUMMARY</b>	<b>4</b>
<b>1.</b>	<b>INTRODUCTION</b>	<b>12</b>
<b>2.</b>	<b>THE COMPLAINT</b>	<b>13</b>
<b>3.</b>	<b>POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR</b>	<b>15</b>
<b>4.</b>	<b>ISSUE IDENTIFIED FOR INVESTIGATION</b>	<b>16</b>
<b>5.</b>	<b>THE INVESTIGATION</b>	<b>16</b>
<b>6.</b>	<b>THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS</b>	<b>22</b>
<b>7.</b>	<b>FINDINGS</b>	<b>71</b>
<b>8.</b>	<b>REMEDIAL ACTION</b>	<b>73</b>
<b>9.</b>	<b>MONITORING</b>	<b>74</b>

### LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS AND ABBREVIATIONS	AND	DESCRIPTIONS
<b>Constitution</b>		Constitution of the Republic of South Africa, 1996
<b>CV</b>		Curriculum Vitae
<b>DEMAWUSA</b>		Democratic Municipal and Allied Workers Union of South Africa
<b>EPWP</b>		Expanded Public Works Programme
<b>FET</b>		Further Education and Training
<b>IMATU</b>		Independent Municipal and Allied Trade Union
<b>Investigation Team</b>		Public Protector Investigation Team
<b>Municipality</b>		Bushbuckridge Local Municipality
<b>NSC</b>		National Senior Certificate
<b>NQF</b>		National Qualifications Framework
<b>OHS</b>		Occupational Health and Safety
<b>Public Protector</b>		Public Protector of the Republic of South Africa
<b>Public Protector Act</b>		Public Protector Act, 1994
<b>PRECCA</b>		Prevention and Combating of Corrupt Activities Act, 2004
<b>SALGA</b>		South African Local Government Association
<b>SAMWU</b>		South African Municipal Workers Union
<b>SAQA</b>		South African Qualifications Authority
<b>TUT</b>		Tshwane University of Technology

## EXECUTIVE SUMMARY

- (i) 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), 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, 1994 (Public Protector Act), which provides that the Public Protector may make known the findings, point of view or recommendation of any matter investigated by her.
- (ii) The report relates to an investigation into allegations of the irregular appointments of Mr P Zwane (Mr Zwane) and Ms TF Kgwedi (Ms Kgwedi) to the posts of Occupational Health and Safety Administration Clerk (OHS Admin Clerk) and Human Resource Administration Clerk (HR Admin Clerk), respectively, by the functionaries of the Bushbuckridge Local Municipality (the Municipality).
- (iii) The investigation originates from a complaint lodged by Mr H Nonyane (the Complainant), who is a member of the Democratic Municipal and Allied Workers' Union of South Africa (DEMAWUSA) with the Mpumalanga Provincial Office of the Public Protector on 15 July 2021.
- (iv) In essence, the Complainant alleged that:
  - (a) On 06 May 2021, the day on which interview sessions were to be held for the posts of OHS Admin Clerk as well as for HR Admin Clerk, representatives of DEMAWUSA were made aware of a rumour indicating the names of candidates to be appointed. DEMAWUSA immediately informed the former Municipal Manager, Ms CA Nkuna (Ms Nkuna) of the rumour;

- (b) The representatives of DEMAWUSA wrote the names of the candidates on a piece of paper and handed it over to Ms Nkuna before the interviews started, in line with the Prevention and Combating of Corrupt Activities Act;
- (c) This was done in the hope that Ms Nkuna would guard the process closely. The names of the candidates who were on the list given to Ms Nkuna, are the same as the successful candidates;
- (d) The Independent Municipal and Allied Trade Union (IMATU) representative was also present when the names were given to Ms Nkuna;
- (e) The appointed candidates do not meet the requirements of the advertised posts. The advertisement for the position of OHS Admin Clerk required that the candidates must have a Diploma in Human Resource Management and a minimum of two (02) years' working experience in the same environment, which is OHS and/or the Human Resource environment. The appointed candidate has a Bachelor's Degree in Public Administration and no working experience in the OHS environment. The appointed candidate worked at the office of the Speaker of the Council under the Participation Unit. The appointed candidate has close ties with senior politicians, thus his appointment while he did not meet the requirements for the position;
- (f) The advertisement for the position of HR Admin Clerk required the candidates to hold a Grade 12 (Matric) Certificate, without the option of equivalent qualifications, a National Diploma in Human Resource Management and a minimum of two (02) years' experience in the Human Resource environment. She worked in the office of the Executive Mayor as a trainee Secretary to the Mayor. She too has close ties with senior politicians, thus her appointment while she did not meet the requirements for the position;

- (g) The representatives of DEMAWUSA did not sign the attendance register and the score sheet as required by the Employment Practice Policy. Only the representatives of one (01) union signed, although there are three (03) trade unions at the Municipality; and
  - (h) The recruitment and appointment processes of the candidates were not done in line with the municipal policies, the Municipality secured and reserved the posts for the appointed candidates.
- (v) **Based on the analysis of the complaint, the following issue was considered and investigated:**
- (a) Whether the functionaries of the Bushbuckridge Local Municipality irregularly appointed Mr P Zwane and Ms TF Kgwedi to the posts of OHS Admin Clerk and HR Admin Clerk, respectively, despite them not meeting the minimum requirements for the posts as set out in the advertisement, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
- (vi) On 18 November 2024, a notice in terms of section 7(9)(a) of the Public Protector Act, 1994 (the Public Protector Act) read with Rule 42(1) of the *Rules relating to Investigations by the Public Protector and Matters Incidental Thereto*, 2018, as amended (the Rules), was issued to the following individuals, to afford them an opportunity to make representations in connection with the intended findings and proposed remedial action of the Public Protector:
- (a) The Municipal Manager of Bushbuckridge Local Municipality, Mr J Ngobenj;
  - (b) The former Municipal Manager of Bushbuckridge Local Municipality, Ms CA Nkuna;
  - (c) The recruitment panel members:

- (aa) The then Acting Director Corporate Services, Dr SR Shilenge;
  - (bb) The Risk Manager, Mr SP Mokganya;
  - (cc) The Internal Auditor, Ms RRL Mohlala;
  - (dd) The then Acting Director: Community Services, Mr AM Mnisi;
  - (ee) The then Director Technical Services, Mr E Mashava;
  - (ff) The then Acting HR Manger, Mr D Hobyane;
- (d) Implicated candidates:
  - (aa) The OHS Admin Clerk, Mr P Zwane; and
  - (bb) The HR Admin Clerk, Ms TF Kgwedi.
- (vii) Response received, noted and considered by the Public Protector, is the following:
  - (a) Mr Katekani Lamula, of Lamula KB Attorneys on behalf of the shortlisting and interviewing panel members, received on 11 December 2024.
- (viii) **Having regard to the evidence and regulatory framework determining the standard that the Municipality should have complied with, the Public Protector makes the following findings:**
  - (a) **Whether the functionaries of the Bushbuckridge Local Municipality irregularly appointed Mr P Zwane and Ms TF Kgwedi to the posts of OHS Admin Clerk and HR Admin Clerk, respectively, despite them not meeting the minimum requirements for the posts as set out in the advertisement, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act:**
    - (aa) The allegation that the functionaries of the Municipality irregularly appointed Mr Zwane and Ms Kgwedi to the posts of OHS Admin Clerk and



HR Admin Clerk, respectively, while they did not meet the minimum requirements for the posts, **is substantiated**.

- (bb) It is evident that at the time of his appointment, Mr Zwane neither held a National Diploma in Human Resources Management nor did he have a minimum of 2 years' work experience in the OHS/ Human Resource Environment as required in the advertisement.
- (cc) At the time of his appointment, Mr Zwane held a National Diploma in Public Management, 04 years' work experience as an intern only, in the office of the Speaker under the Participation Unit, and 12 months' experience as a Parks and Beautification Officer and another 12 months' experience as a Roads Maintenance Officer under EPWP. All the experience he acquired was not relevant for the post he was appointed to.
- (dd) The advertisement for the post of OHS Admin Clerk was prescriptive and did not accommodate any equivalent or alternative qualifications to the National Diploma in Human Resources Management qualification.
- (ee) Mr Zwane conceded that he was in possession of a National Diploma in Public Management and that he did not have 2 years' experience related to OHS/ Human Resource Environment at the time of his appointment.
- (gg) In respect of the appointment of Ms Kgwedi, the investigation concluded that although she had relevant work experience and a National Diploma in Human Resources, the National N3 Certificate (Business Studies: Acc/Admin) she submitted when she applied for the post is not equivalent to Grade 12/ Matric certificate as required in terms of the advertisement.

- (hh) The inference drawn from the pattern of scoring during the interview process might point to collusion between panel members to favour both Mr Zwane and Ms Kgwedi.
  
- (ii) The conduct of the shortlisting and interviewing panel members, namely, Dr SR Shilenge, the then Acting Director Corporate Services, Mr E Mashava, the then Director Technical Services, Mr AM Mnisi, the then Acting Director: Community Services, Mr D Hobyane, the then Acting HR Manager, Ms RRL Mohlala, Internal Auditor and Mr SP Mokganya, the Risk Manager, which resulted in the irregular appointment of Mr Zwane and Ms Kgwedi to the posts of OHS Admin Clerk and HR Admin Clerk respectively, is in contravention of the provisions of section 195(1) of the Constitution read together with clauses 6.3.1, 6.3.2 and 6.4 of the Municipality's Employment Practice Policy.
  
- (ii) The conduct of the aforesaid functionaries of the Municipality in this instance constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
  
- (ix) **The appropriate remedial action the Public Protector is taking in pursuit of section 182(1)(c), with the view to remedying the improper conduct and maladministration, is the following:**

#### **The Executive Mayor**

- (a) **Within ninety (90) calendar days** from the date of this report, in terms of section 56(3)(f) of the Municipal Structures Act (MSA), 1998, table the report before the Municipal Council for deliberation and obtain approval for the appropriate course of action to address the irregular appointments of Mr Zwane and Ms Kgwedi as the OHS Admin Clerk and the HR Admin

Clerk, respectively, including pursuing a judicial review, as provided for in section 158(1)(h) of the LRA.

- (b) **Within sixty (60) calendar days** from the date of receipt of this report, in line with section 59(1) of the Municipal Systems Act, develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances. This should include strengthening of internal controls regarding recruitment in general within the Municipality.

#### **The Municipal Manager**

- (c) **Within ninety (90) calendar days** from the date of receipt of this report, in line with section 55(1) of the MSA, read with Item 14 of the Code of Conduct of the MSA, initiate disciplinary proceedings against members of the shortlisting and interviewing panels, namely, Mr SR Shilenge, Mr AM Mnisi, Mr D Hobyane, Ms RRL Mohlala and Mr SP Mokganya, whose conduct resulted in the irregular appointment of Mr Zwane and Ms Kgwedi, in breach of Item 2 of the Code of Conduct of the MSA.
- (d) **Within sixty (60) calendar days** from the date of receipt of this report, in line with section 195(1)(h) of the Constitution read with section 10(1)(a) of the Public Administration Management Act, 2014, ensure that all officials in human resource management as well as any employee who participate in the recruitment process, are trained to comply with the Employment Practice Policy in order for future appointments to be made in full compliance with the Policy.

## 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 This report is submitted to the following persons 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 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 Ms S Nxumalo, the Executive Mayor of Bushbuckridge Local Municipality;
- 1.2.2 Ms R Raganya, the Speaker of Bushbuckridge Local Municipality;
- 1.2.3 Mr J Ngobeni, the Municipal Manager of Bushbuckridge Local Municipality;
- 1.2.4 Ms CA Nkuna, the former Municipal Manager of Bushbuckridge Local Municipality;
- 1.2.5 The following recruitment panel members:
- 1.2.5.1 Dr SR Shilenge, the then Acting Director Corporate Services;
- 1.2.5.2 Mr SP Mokganya, the Risk Manager;
- 1.2.5.3 Ms RRL Mohlala, the Internal Auditor;
- 1.2.5.4 Mr AM Mnisi, then Acting Director: Community Services;
- 1.2.5.5 Mr E Mashava, the then Director Technical Services;
- 1.2.5.6 Mr D Hobyane, the then Acting HR Manager;
- 1.2.6 Implicated candidates:

1.2.6.1 Mr P Zwane, the OHS Admin Clerk;

1.2.6.2 Ms TF Kgwedi, the HR Admin Clerk; and to

1.2.7 Mr H Nonyane, the Complainant.

1.3 This report relates to an investigation into allegations of improper conduct and maladministration relating to the irregular appointments of Mr P Zwane (Mr Zwane) and Ms TF Kgwedi (Ms Kgwedi) to the posts of Occupational Health and Safety Administration Clerk (OHS Admin Clerk) and Human Resource Administration Clerk (HR Admin Clerk), respectively, by the functionaries of the Bushbuckridge Local Municipality (the Municipality).

## **2. THE COMPLAINT**

2.1 The investigation originates from a complaint lodged on 15 July 2021 with the Mpumalanga Provincial Office of the Public Protector (the Public Protector) by Mr H Nonyane (the Complainant), who is a member of the Democratic Municipal and Allied Workers' Union of South Africa (DEMAWUSA).

2.2 In essence, the Complainant alleged that:

2.2.1 On 06 May 2021, the day on which interview sessions were to be held for the posts of OHS Admin Clerk as well as for HR Admin Clerk, representatives of DEMAWUSA were made aware of a rumour indicating the names of candidates to be appointed. DEMAWUSA immediately informed the former Municipal Manager, Ms CA Nkuna (Ms Nkuna) of the rumour;

2.2.2 The representatives of DEMAWUSA wrote the names of the candidates on a piece of paper and handed it over to Ms Nkuna before the interviews started, in line with the Prevention and Combating of Corrupt Activities Act;

- 2.2.3 This was done in the hope that Ms Nkuna would guard the process closely. The names of the candidates who were on the list given to Ms Nkuna, are the same as the successful candidates;
- 2.2.4 The Independent Municipal and Allied Trade Union (IMATU) representative was also present when the names were given to Ms Nkuna;
- 2.2.5 The appointed candidates do not meet the requirements of the advertised posts. The advertisement for the position of OHS Admin Clerk required that the candidates must have a Diploma in Human Resource Management and a minimum of two (02) years' working experience in the same environment, which is OHS and/or the Human Resource environment. The appointed candidate has a Bachelor's Degree in Public Administration and no working experience in the OHS environment. The appointed candidate worked at the office of the Speaker of the Council under the Participation Unit. The appointed candidate has close ties with senior politicians, thus his appointment while he did not meet the requirements for the position;
- 2.2.6 The advertisement for the position of HR Admin Clerk required the candidates to hold a Grade 12 (Matric) Certificate, without the option of equivalent qualifications, a National Diploma in Human Resource Management and a minimum of two (02) years' experience in the Human Resource environment. She worked in the office of the Executive Mayor as a trainee Secretary to the Mayor. She too has close ties with senior politicians, thus her appointment while she did not meet the requirements for the position;
- 2.2.7 The representatives of DEMAWUSA did not sign the attendance register and the score sheet as required by the Employment Practice Policy. Only the representatives of one (01) union signed, although there are three (03) trade unions at the Municipality; and

2.2.8 The recruitment and appointment processes of the candidates were not done in line with the municipal policies, the Municipality secured and reserved the posts for the appointed candidates.

2.3 In support of his complaint, the Complainant furnished the Public Protector with copies of a dispute raised with the Municipality and a response letter received from Ms Nkuna in respect of the OHS Admin Clerk and HR Admin Clerk posts.

### 3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution of the Republic of South Africa, 1996 (the Constitution), to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2 Section 182(1) of the Constitution provides that:

*“The Public Protector has the power, as regulated by national legislation –*

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
- (b) to report on that conduct; and*
- (c) to take appropriate remedial action.”*

3.3 Section 182(2) 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 powers to investigate and redress maladministration and related improprieties in the conduct of state affairs.

3.4 The Municipality is an organ of state in terms of section 239 of the Constitution and the conduct of its 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)(a) of the Public Protector Act.

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

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

4.1.1 Whether the functionaries of the Bushbuckridge Local Municipality irregularly appointed Mr P Zwane and Ms TF Kgwedi to the posts of OHS Admin Clerk and HR Admin Clerk, respectively, despite them not meeting the minimum requirements for the posts as set out in the advertisement, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

#### **5. THE INVESTIGATION**

##### **5.1 Methodology**

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

5.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.



## 5.2 Approach to the Investigation

- 5.2.1 The investigation process included an exchange of correspondence and documentation between the Public Protector, the Municipality and the South African Qualifications Authority (SAQA), interviews with functionaries of the Municipality, an analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.
- 5.2.2 The investigation was approached using an enquiry process that seeks to determine:
- 5.2.2.1 What happened?
  - 5.2.2.2 What should have happened?
  - 5.2.2.3 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?
  - 5.2.2.4 In the event of a deviation amounting to maladministration, abuse of power, improper conduct or resulting in prejudice, 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 what happened based on a balance of probabilities. In this particular case, the factual enquiry principally focused on whether the functionaries of the Municipality irregularly appointed Mr Zwane and Ms Kgwedi without following the prescribed recruitment prescripts and processes.

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 Municipality to the appointment of Mr Zwane and Ms Kgwedi.

### 5.3 Key sources of information

#### 5.3.1 Correspondence sent and received

5.3.1.1 Letter from the Complainant to Ms Nkuna, dated 07 May 2021;

5.3.1.2 Response from Ms Nkuna to the Complainant, dated 24 June 2021;

5.3.1.3 The complaint dated, 28 June 2021;

5.3.1.4 Public Protector's letter to Ms Nkuna, dated 02 September 2021;

5.3.1.5 Response from Ms Nkuna to the Public Protector, dated 08 October 2021;

5.3.1.6 Letter from the Public Protector to Dr Reddy, dated 09 November 2021;

5.3.1.7 Response from Dr Reddy to the Public Protector, on 16 November 2021;

5.3.1.8 Letter from the Public Protector to Mr Ngobeni, dated 15 February 2023;

5.3.1.9 Response from Mr Ngobeni, dated 24 February 2023;

5.3.1.10 Letter from the Public Protector to Ms Starr, dated 03 March 2023;

5.3.1.11 Response from Ms Starr to the Public Protector, dated 09 March 2023;

5.3.1.12 Letter from the Public Protector to Dr Rakometsi, dated 30 April 2024;

5.3.1.13 Response from Dr Rakometsi to the Public Protector, dated 09 May 2024;

5.3.1.14 Letter from the Public Protector to Dr Mushaathoni, dated 10 May 2024;

5.3.1.15 Email from Dr Mushaathoni to the Public Protector, on 14 May 2024;

5.3.1.16 Letter from Mr Katekani Lamula, the Director of Lamula KB Attorneys (Mr Lamula) to the Public Protector dated 29 November 2024;

5.3.1.17 Letter from Mr Lamula to the Public Protector dated 10 December 2024

5.3.1.18 Email from the Public Protector to Mr Lamula, dated 10 December 2024; and

5.3.1.19 Letter from Mr Lamula to the Public Protector, dated 11 December 2024.

### 5.3.2 Documents

5.3.2.1 Bushbuckridge Local Municipality Employment Practice Policy, 2013;

5.3.2.2 Umalusi Subject Certificate of Ms Kgwedi, dated July 2014;

5.3.2.3 Work Integrated Learning contract entered into between Ms Kgwedi and Bushbuckridge Local Municipality, on 01 July 2015;

5.3.2.4 Fixed Term Agreement of Internship entered into between Mr Zwane and Bushbuckridge Local Municipality, on 15 November 2016;

5.3.2.5 Mr Zwane's academic record of Diploma in Public Management, dated 22 August 2018;

5.3.2.6 Mr Zwane's EPWP contract of employment entered into between him and Bushbuckridge Local Municipality, on 15 July 2019;

5.3.2.7 EPWP contract of employment entered into between Mr Zwane and Bushbuckridge Local Municipality, on 30 June 2020;

5.3.2.8 Advertisement for the position of OHS Admin Clerk, dated 02 December 2020;

5.3.2.9 Advertisement for the position of HR Admin Clerk, dated 02 December 2020;

5.3.2.10 Ms Kgwedi's application for employment form to the position of HR Admin Clerk, dated 10 December 2020;

5.3.2.11 Mr Zwane's application for employment form to the position of OHS Admin Clerk, dated 14 December 2020;

- 5.3.2.12 Shortlisting report for the positions of OHS Admin Clerk and HR Admin Clerk, dated 20 April 2021;
- 5.3.2.13 Appointment letter of Ms Kgwedi, dated 17 June 2021;
- 5.3.2.14 Appointment letter of Mr Zwane, dated 17 June 2021;
- 5.3.2.15 Interview report for the positions of OHS Admin Clerk and HR Admin Clerk, approved on 25 June 2021;
- 5.3.2.16 Commission for Conciliation, Mediation and Arbitration (CCMA) Arbitration Award issued in the Arbitration between Mr Tshepo Mogakane and the Bushbuckridge Local Municipality, dated 27 February 2022;
- 5.3.2.17 Mr Mashego's affidavit, dated 16 February 2023;
- 5.3.2.18 Mr Mkhonto's affidavit, dated 16 February 2023;
- 5.3.2.19 Ms Kgwedi's Curriculum Vitae; and
- 5.3.2.20 Mr Zwane's Curriculum Vitae.
- 5.3.3 **Interviews held**
  - 5.3.3.1 Interview with Ms Nkuna held on 04 April 2023;
  - 5.3.3.2 Interview with Ms Kgwedi held on 03 May 2023; and
  - 5.3.3.3 Interview with Mr Zwane held on 03 May 2023.
- 5.3.4 **Legal Framework**
  - 5.3.4.1 The Constitution of the Republic of South Africa, 1996;
  - 5.3.4.2 The Public Protector Act, 1994;
  - 5.3.4.3 The Labour Relations Act, 1995;
  - 5.3.4.4 The Municipal Structures Act, 1998;

- 5.3.4.5 The Municipal Systems Act, 2000;
- 5.3.4.6 The Public Administration Management Act, 2014;
- 5.3.4.7 The Code of Conduct for Municipal Staff Members, Schedule 2 of the Municipal Systems Act, 2000; and
- 5.3.4.8 Bushbuckridge Local Municipality Employment Practice Policy, 2013.
- 5.3.5 **Case Law**
- 5.3.5.1 Economic Freedom Fighters v Speaker of the National Assembly and others; 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]; and
- 5.3.5.2 Kwadukuza Municipality v Rajamoney and Others (D880/10) [2013] ZALCD 17 (13 June 2013).
- 5.3.6 **Notice issued in terms of section 7(9)(a) of the Public Protector Act**
- 5.3.6.1 Section 7(9)(a) of the Public Protector Act provides that persons implicated in an investigation by the Public Protector, are to be afforded an opportunity to make representations regarding same.
- 5.3.6.2 On 20 November 2024, section 7(9)(a) notices were served on the following persons to afford them an opportunity to make representations regarding the likely findings and remedial action:
- (a) Ms Thandy Shai, the Executive Secretary to the Municipal Manager, who accepted the documents on behalf of Dr SR Shilenge, Mr SP Mokganya, Mr AM Mnisi, Mr D Hobyane, Ms RRL Mohlala, Mr E Mashava, members of the shortlisting and interview panels and Mr P Zwane, Ms TF Kgwedi, the appointed candidates;

- (b) Mr J Ngobeni, the Municipal Manager; and
- (c) Ms CA Nkuna, the former Municipal Manager.

5.3.6.3 A response, dated 11 December 2024, to the notice issued in terms of section 7(9)(a) of the Public Protector Act, was only received from Mr Lamula of Lamula KB Attorneys, on behalf of the Municipality and in particular, the shortlisting and interviewing panel members.

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

**6.1 Whether the functionaries of the Bushbuckridge Local Municipality irregularly appointed Mr P Zwane and Ms TF Kgwedi to the posts of OHS Admin Clerk and HR Admin Clerk, respectively, despite them not meeting the minimum requirements for the posts as set out in the advertisement, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act**

### *Common cause*

- 6.1.1 On 02 December 2020, the Municipality advertised the vacant posts of OHS Admin Clerk and HR Admin Clerk on its website, indicating the closing date for applications as 15 December 2020.
- 6.1.2 Mr Zwane and Ms Kgwedi were shortlisted and subsequently appointed to the posts of OHS Admin Clerk and HR Admin Clerk, respectively, with effect from 01 July 2021.

*Issue in dispute*

- 6.1.3 The issue for the Public Protector's determination is whether the functionaries of the Municipality followed the prescribed recruitment prescripts and process when they appointed Mr Zwane and Ms Kgwedi to the posts of OHS Admin Clerk and HR Admin Clerk, respectively.

*The Complainant's version*

- 6.1.4 The Complainant contended that the appointments of Mr Zwane and Ms Kgwedi to the posts of OHS Admin Clerk and HR Admin Clerk respectively, were irregular, in that they did not meet the requirements for the posts as advertised.
- 6.1.5 The advertisement for the post of OHS Admin Clerk required the candidate to have a Diploma in Human Resource Management and a minimum of two (02) years' working experience in the OHS and/or Human Resource environment.
- 6.1.6 Mr Zwane holds a Bachelor's Degree in Public Administration and he has no working experience in the OHS environment. At the time of his application, he worked in the office of the Speaker of Council in the Participation Unit;
- 6.1.7 The advertisement for the post of HR Admin Clerk required the candidates to have a Grade 12 (Matric) Certificate, a National Diploma in Human Resource Management and a minimum of two (02) years' experience in the Human Resource environment, without an option of an equivalent qualifications; and
- 6.1.8 Ms Kgwedi was working in the office of the Executive Mayor as a trainee Secretary to the Mayor. She allegedly had close ties with senior politicians, hence her appointment without meeting the requirements. Her appointment was not in line with the Employment Practice Policy of the Municipality.

*Documents received from the Complainant*

6.1.9 The Complainant submitted the following documents in support of the allegations:

*Letter of dispute in respect of the interviews for the posts of OHS Admin Clerk and HR Admin Clerk*

6.1.9.1 A letter of dispute dated 07 May 2021, from DEMAWUSA to Ms Nkuna stating, *inter alia*, that: “*the recommended candidates have confirmed our worst fears, please check the names that we gave you before the recommencement of the interviews yesterday*”. (sic)

*Response letter to the dispute from Ms Nkuna to DEMAWUSA, dated 24 June 2021*

6.1.9.2 In a letter dated 24 June 2021, from Ms Nkuna to DEMAWUSA, she stated, *inter alia*, that:

*“This office has no record of a submission by the union of certain names. However, if any official has sufficient reason to believe that an element of fraud and/or corruption is taking place in the Municipality, they are encouraged to report to this office for investigations.*

*Based on perusal of the recruitment documentation submitted, everything seemed to be in good order. You are welcome to submit any further evidence contrary to what you may have at your disposal for further scrutiny, if applicable*”. (sic)



*The Municipality's version*

- 6.1.10 On 02 September 2021, the Public Protector raised the allegations with Ms Nkuna. In her response letter dated 08 October 2021, Ms Nkuna stated, *inter alia*, that:
- 6.1.10.1 The claim that all candidates did not meet the requirements is incorrect. The advertisement for the OHS Admin Clerk position required 2 years' experience either in OHS or the Human Resource environment. OHS is a sub-unit of Human Resources, therefore, any clerk doing clerical work would be suitable for the position. The interpretation by the Complainant is narrow as the position does not require any specialised skill. Both candidates have the required experience; and
- 6.1.10.2 The Municipality adhered to its Employment Practice Policy and conducted both the selection and the interview processes within the ambit of the policy. The Municipality is not aware of the names alleged to have been circulated to the panel members prior to the interview session and the claim is therefore frivolous and malicious. The Municipality has conducted both the selection process and the interview process within the ambit of its Employment Practice Policy.

*Documentation received from the Municipality*

- 6.1.11 Ms Nkuna submitted the following documents together with her response dated 08 October 2021:

*Advertisement for the position of OHS Admin Clerk*

- 6.1.11.1 According to the advertisement, the requirements for the position of OHS Administration Clerk were:

*“Grade 12 (Matric); Diploma in Human Resource Management; Minimum of 2 years’ experience related in OHS / or Human Resource Environment; Proficient in Microsoft Word, Excel, PowerPoint, Outlook and Internet; Knowledge of Health and Safety Legislation; Able to multitask in multiple disciplines of Health & Safety; Excellent communication skills both written and verbal; Strong organisation skills; and Knowledge in Pastel Evolution”.*

- 6.1.11.2 The responsibilities listed in the advertisement for the position of OHS Administration Clerk were:

*“Daily management of all Health and Safety related documentation. Provide clerical support for all Health and Safety matters including, Training, Injury recording, Joint Health and Safety committees. Update, prepare, produce and distribute memorandums to the other units on time. Provide receptionist duties as required for the Health and Safety Office. Maintain training calendar and book training as required. Pastel memorandums for purposes. Make follow-ups on documents submitted to the other Directorates. Perform other duties as assigned”.*

*Application of Mr Zwane*

- 6.1.11.3 Mr Zwane’s “application for employment” form, dated 14 December 2020 indicated his qualifications and experience as shown in the table below:

Qualifications				
Name of School	Highest Qualification			Year Obtained
Bunny Khosa High School	Replacement Certificate	National	Senior	2010

Tertiary Education		
Name of Institution	Highest Qualification	Year Obtained
Tshwane University of Technology	Diploma in Public Management	2016
Tshwane University of Technology	B-Tech Degree in Public Management	2018
Experience		
Name of Employer	Position Held	Years/Months
Bushbuckridge Local Municipality	Internship, with no field specified	4 years

*CVs of shortlisted candidates for the position of OHS Admin Clerk*

6.1.11.4 Information obtained from the CVs of shortlisted candidates for the OHS Admin Clerk post indicates the following:

OHS Admin Clerk			
	Candidates	Qualifications	Experience
1.	Mr Zwane	Replacement National Senior Certificate, Diploma in Public Management and B-Tech Degree in Public Management	<p>4 years: Internship at the Office of the Speaker in the Participation Unit (Bushbuckridge Local Municipality), Administrative duties.</p> <p>12 months: Parks and Beautification Officer, Expanded Public Works Programme (Bushbuckridge Local Municipality), Cleaning duties.</p> <p>12 months: Roads Maintenance Officer, Expanded Public Works Programme</p>

			(Bushbuckridge Local Municipality), Cleaning duties.
2.	Candidate 2	National Senior Certificate, Bachelor of Administration (Public Administration)	1 year: Internship, Administration Clerk (Bushbuckridge Local Municipality), Administration duties. 1 year: Internship, Secretary, (Bushbuckridge Local Municipality), Administration duties.
3.	Candidate 3	National Senior Certificate, National Diploma Public Management	1 year: Volunteer, Administration Clerk (Magabotse Secondary School), Administration duties.  2 years: Data Capturer, (Bushbuckridge Local Municipality), Data Capturing duties.
4.	Candidate 4	National Senior Certificate, National Diploma Public Management, Diploma in Computer Practice, National Certificate in Environmental Practice	3 years: Experiential Training, Skills Development Assistant (Bushbuckridge Local Municipality), Training duties.
5.	Candidate 5	National Senior Certificate, National Diploma Human Resources Management,	3 years: Early Childhood Development Facilitator (Ripfumelo Creche), Facilitator.  14 months: Internship, Human Resources Assistant (Bushbuckridge Local Municipality), Human Resources duties.  3 months: Student Assistant (Tshwane University of Technology), Student Assistance duties.
6.	Candidate 6	National Senior Certificate, National Diploma Human Resources Management and Certificate in Health & Safety Functions	8 years, 6 months: Learner, Occupational Health and Safety Clerk (Bushbuckridge Local Municipality), OHS Administration Clerk duties.  6 months: Data Capturer, Expanded Public Works Programme (Bushbuckridge Local Municipality), Data Capturing duties.

7.	Candidate 7	National Senior Certificate, National Diploma Office Management and Certificate in Interactive Software Program	2 years: Internship, Administration Clerk, Information Communication Technology Unit (Bushbuckridge Local Municipality), ICT Administration Clerk duties.
8.	Candidate 8	National Senior Certificate, Bachelor of Administration (Public Administration) and Bachelor of Administration Honours.	<p>1 year: University Mentor (University of Venda), Student mentoring duties.</p> <p>1 year: Internship, Administration (Road Accident Fund), Administration duties.</p> <p>10 months: Field Worker (Wits Health Consortium), Researcher.</p> <p>1 year: Internship, Administration, Skills Development Unit (Bushbuckridge Local Municipality), Administration duties.</p> <p>1 year: Administration Officer (South African Forestry Company Limited), Administration duties.</p>

*Advertisement for the position of HR Admin Clerk*

- 6.1.11.5 According to the advertisement, the requirements for the position of HR Admin Clerk were: *“Grade 12 (Matric); Diploma in Human Resource Management; Minimum of 2 years’ experience in a Human Resource Environment; Proficient in Microsoft Word, Excel, PowerPoint and Outlook; Knowledge of HR Policies; Excellent communication skills both written and verbal; Strong organization skills; Knowledge in Pastel Evolution”*.
- 6.1.11.6 The responsibilities listed in the advertisement for the position of HR Admin Clerk were to *“assist in recruitment and selection. Receive applications and compile profile. Assist in arranging for shortlisting and interviews. Capturing of approved leave forms on the system. Open new files for employees. Handle service*

*terminations. Make follow ups on documents to the other Directorates. Perform other duties as assigned”.*

*Application of Ms Kgwedi*

6.1.11.7 Ms Kgwedi’s “*application for employment*” form dated 10 December 2020 indicated the qualifications and experience as captured in the table below:

<b>Qualifications</b>		
<b>Name of School</b>	<b>Highest Qualification</b>	<b>Year Obtained</b>
Bushbuckridge Technical College	National N3 Certificate (Business Studies: Acc/Admin	2009
<b>Tertiary Education</b>		
<b>Name of Institution</b>	<b>Highest Qualification</b>	<b>Year Obtained</b>
Bushbuckridge Technical College	National Diploma in Human Resources Management	2014
<b>Experience</b>		
<b>Name of Employer</b>	<b>Position Held</b>	<b>Years/Months</b>
Mpumalanga Department of Education	Internship, Admin Clerk	2 years
Bongane Rainmakers	Data Capturer	1 month
Bushbuckridge Local Municipality	Internship, Secretary to the Executive Mayor and HR Registry	4 years

*CVs of shortlisted candidates for the position of HR Admin Clerk*

6.1.11.8 Information obtained from CVs of all shortlisted candidates for HR Admin Clerk post indicates the following:

<b>HR Admin Clerk</b>			
	<b>Candidates</b>	<b>Qualifications</b>	<b>Experience</b>
1.	Ms Kgwedi	National N3 Certificate (Business Studies: Acc/Admin) and National Diploma Human Resources Management	<p>2 years: Internship, Administration Clerk (Mpumalanga Department of Education) Administration duties.</p> <p>2 years: Work Integrated Learning Contract, Human Resources Management (Bushbuckridge Local Municipality) Human Resources Clerical duties.</p> <p>3 years: Internship, Secretary to the Executive Mayor (Bushbuckridge Local Municipality) Administration duties.</p>
2.	Candidate 2	Senior Certificate and National Diploma Public Management	<p>1 year: Volunteer, Administration Clerk (Magabotse Secondary School), Administration duties.</p> <p>2 years: Data Capturer, (Bushbuckridge Local Municipality), Data Capturing duties.</p>
3.	Candidate 3	Senior Certificate and National Diploma Human Resources Management	<p>3 years: Early Childhood Development Facilitator (Ripfumelo Creche), Facilitator.</p> <p>14 months: Internship, Human Resources Assistant (Bushbuckridge Local Municipality), Human Resources duties.</p> <p>3 months: Student Assistant (Tshwane University of Technology), Student Assistance duties.</p>

4.	Candidate 4	Senior Certificate and Bachelor of Commerce	<p>1 year: Enumerator (Stats SA), Collecting data from households' duties.</p> <p>3 years: Internship, Human Resources Management (Mpumalanga Department of Education) Human Resources duties.</p> <p>4 years: Internship, Human Resources Management (Bushbuckridge Local Municipality) Human Resources duties.</p>
----	-------------	---	--

*Shortlisting and Interview Reports for the posts of OHS Admin Clerk and HR Admin Clerk*

6.1.11.9 On 13 April 2021, Dr SR Shilenge (Dr Shilenge), the Acting Director: Corporate Services, who was the Chairperson of the shortlisting panel, submitted the shortlisting report to Ms Nkuna. The report requested approval of eight (08) shortlisted candidates who were shortlisted on 12 April 2021, to be interviewed on 06 May 2021 for the position of OHS Admin Clerk and four (04) shortlisted candidates to be interviewed on the same date for the position of HR Admin Clerk. The shortlisting report was approved by Ms Nkuna on 20 April 2021.

6.1.11.10 The shortlisting panel for both posts comprised of the following members:

No.	Name and Initials	Position	Role
1.	Shilenge SR	Acting Director: Corporate Services	Chairperson
2.	Mashava E	Director: Technical Services	Panel Member
3.	Mnisi AM	Acting Director: Community Service	Panel Member
4.	Hobyane D	Acting HR: Manager	Panel Member
5.	Mokganya SP	Risk Manager	Panel Member



6.	Maluka G	Senior Admin Clerk	Scriber
7.	Mkhonto BR	IMATU Representative	Observer
8.	Baloyi J	SAMWU Representative	Observer
9.	Makondo HJ	DEMAWUSA Representative	Observer

6.1.11.11 The interview panel for both posts comprised of the following persons:

No	Name and Initials	Position	Role
1	Shilenge SR	Acting Director: Corporate Services	Chairperson
2	Mnisi AM	Acting Director: Community	Panel Member
3	Mokganya SP	Risk Manager	Panel Member
4	Mohlala RRL	Internal Auditor	Panel Member
5	Hobyane D	Acting HR: Manager	Panel Member
6	Godi Z	SAMWU Representative	Observer
7	Mashego PS	DEMAWUSA Representative	Observer
8	Mkhonto BR	IMATU Representative	Observer
9	Mashele P	Acting HR Practitioner	Scriber

6.1.11.12 The final scoring of the panel members for the position of OHS Admin Clerk was listed as follows:

No.	Candidates	Shilenge DR SR	Mnisi AM	Hobyane D	Mokganya SP	Mohlala RRL	Total
1.	Zwane P	24	23	22	20	25	114
2.	Candidate 2	16	19	17	19	18	89
3.	Candidate 3	16	18	19	18	23	94
4.	Candidate 4	13	19	18	19	17	83
5.	Candidate 5	15	19	19	19	17	88

6.	Candidate 6	13	18	20	18	18	83
7.	Candidate 7	11	22	19	22	21	92
8.	Candidate 8	14	24	20	24	22	100

6.1.11.13 The final scoring of the panel members for the position of HR Admin Clerk was listed as follows:

Candidates	DR S.R Shilenge	Mnisi AM	Hobyane D	Mokganya SP	Mohlala RRL	Total
1. Candidate 1	16	16	17	17	19	82
2. Ms Kgwedi	24	23	23	25	20	115
3. Candidate 3	16	17	20	16	17	86
4. Candidate 4	18	15	21	22	25	101

6.1.11.14 Dr Shilenge submitted the interview report on 07 May 2021 to Ms Nkuna to approve the successful candidates for the posts of OHS Admin Clerk and HR Admin Clerk, respectively. Ms Nkuna approved the appointments of Mr Zwane and Ms Kgwedi on 25 June 2021.

*Appointment Letter of Mr Zwane*

6.1.11.15 According to the appointment letter dated 17 June 2021, signed by Ms Nkuna, Mr Zwane was appointed as the OHS Admin Clerk, with effect from 01 July 2021.

*Appointment Letter of Ms Kgwedi*

6.1.11.16 The appointment letter dated 17 June 2021, signed by Ms Nkuna, appointed Ms Kgwedi as the HR Admin Clerk, with effect from 01 July 2021.

*Additional response from the Municipality*

6.1.12 On 15 February 2023, the Public Protector requested additional information from the Municipality relating to the allegations.

6.1.13 On 24 February 2023, the current Municipal Manager, Mr J Ngobeni (Mr Ngobeni) responded to the allegations and stated that:

*“Human Resource Management and Public Management are almost the same qualifications. A candidate who possesses a Diploma in Human Resource Management and one who holds a Diploma in Public Management undergo the same training at tertiary institutions.*

*Mr Zwane had Human Resource Management as a module towards fulfilling the requirements of the position of OHS Admin Clerk. A Diploma in Public Management and B-Tech in Public Management are relevant to the job specifications in implied terms.*

*If interpreting the requirements of the advertised position is to mean that the candidate must strictly possess a Diploma in Human Resource Management, this narrow interpretation would have dire consequences for the millions of job seekers who possess qualifications in Public Management.*

*Ms Kgwedi has a National N3 Certificate which is the last qualification she completed before she enrolled for her Diploma in Human Resource Management. She also has a subject certificate accredited by UMALUSI which serves the same purpose as a matric certificate.*

*Matric is defined as a qualification a learner obtains after finishing their high school training or home education. If Matric or Grade 12 would be understood in a narrow context of having passed a NSC then the whole objective of streamlining education between the highly gifted learners who proceed to Further Education and Training (FET) and those who after passing Grade 12 pursue vocational training, would be defeated. Most learners would not access the job market.” (sic)*

*Additional information submitted by the Municipality*

6.1.14 On 22 February 2023, the Municipality further submitted the following documents:  
*Academic record of Mr Zwane*

6.1.14.1 Mr Zwane's academic record for the National Diploma in Public Management issued by the Tshwane University of Technology on 22 August 2018, indicates that he passed Human Resource Management as one of the modules.

*Mr Zwane's Fixed Term Agreement of Internship*

6.1.14.2 A Fixed Term Agreement of Internship entered into between Mr Zwane and Talent Emporium Academy as the primary host employer on 15 November 2016, indicates that he "*shall undertake all duties, functions and responsibilities associated with the position of intern as allocated to him by the Municipality as the secondary host employer.*"

*Mr Zwane's Expanded Public Works Programme (EPWP) contracts of employment*

6.1.14.3 The Municipality also submitted Mr Zwane's EPWP contract of employment entered into with the Municipality on 15 July 2019 in the role of a Parks and Beautification Officer for a period of twelve (12) months, from 01 July 2019 to 30 June 2020 outlining his duties as follows:

- (a) Street cleaning and litter picking;
- (b) Waste collection, grass cutting and cleaning;
- (c) Cleaning and identifying illegal dumping; and
- (d) Render any other duties as may be requested by the Department (Road and Storm Water Unit).

6.1.14.4 The Municipality submitted a further EPWP contract of employment entered into between Mr Zwane and the Municipality on 30 June 2020 appointing him as a Roads Maintenance Officer for a period of twelve (12) months with effect from 01 July 2020 until 30 June 2021. He performed exactly the same duties as he did in his previous position, namely:

- (a) Street cleaning and litter picking;
- (b) Waste collection, grass cutting and cleaning;
- (c) Cleaning and identifying illegal dumping; and
- (d) Render any other duties as may be requested by the Department (Road and Storm Water Unit).

*Ms Kgwedi's Work Integrated Learning Contract*

6.1.14.5 The Work Integrated Learning contract entered into between Ms Kgwedi and the Municipality on 01 July 2015, indicated that she was placed in the Corporate Service Department with the job purpose of "*providing human resource functions to the local authority in compliance with legislation, council policy and the South African Local Government Association (SALGA) directives*".

*Umalusi Subject Certificate of Ms Kgwedi*

6.1.14.6 The Subject Certificate from UMALUSI indicates that Ms Kgwedi passed IsiZulu and English subjects in a senior certificate examination with effect from July 2014. The Subject Certificate was submitted by Ms Kgwedi to the Municipality in 2016 during her application for the position of an Intern: Secretary to the Executive Mayor.

*Affidavit deposed by Mr PS Mashego (DEMAWUSA Representative)*

6.1.15 On 15 February 2023, an email was sent to both DEMAWUSA and IMATU representatives, namely Mr PS Mashego (Mr Mashego) and Mr BR Mkhonto (Mr

Mkhonto), respectively, to provide the Public Protector Investigation Team (the Investigation Team) with affidavits to confirm their versions of the incidents on the day of the interview sessions of 06 May 2021.

6.1.16 Mr Mashego provided the Investigation Team with his affidavit on 16 February 2023, wherein he stated that:

6.1.16.1 During the interview sessions for the posts of the OHS Admin Clerk as well as HR Admin Clerk held on 06 May 2021, he was made aware of the names of the candidates to be appointed and he immediately informed Ms Nkuna;

6.1.16.2 He gave Ms Nkuna the names of the candidates who were supposed to be appointed by the panel before the interviews started in the presence of DEMAWUSA representative, in line with the Prevention and Combatting of Corrupt Activities Act; and

6.1.16.3 He did so with the hope that Ms Nkuna as the Accounting Officer would guard the processes very closely. The names of the candidates that he gave to her, are the same as those of the successful candidates. According to Mr Mashego, that constituted recruitment fraud. The IMATU representative was present when he gave Ms Nkuna the names of the candidates to be appointed.

*Affidavit deposed by Mr Mkhonto (IMATU Representative)*

6.1.17 On 16 February 2023, IMATU Representative, Mr Mkhonto provided his affidavit to the Investigation Team wherein he states that:

6.1.17.1 He had a duty as a union member to observe the shortlisting and interview processes for the posts of the OHS Admin Clerk as well as HR Admin Clerk for the purpose of fairness in the selection process;

- 6.1.17.2 During the interview session of the above-mentioned posts held on 06 May 2021, the union was made aware of the names of the candidates to be appointed. He and the union member from DEMAWUSA immediately communicated the message to Ms Nkuna;
- 6.1.17.3 He gave Ms Nkuna the names of the candidates that were supposed to be appointed by the panel before the interviews started in the presence of IMATU representative, in line with the Prevention and Combatting of Corrupt Activities Act; and
- 6.1.17.4 He did so with the hope that Ms Nkuna as the Accounting Officer will guard the processes very closely. The names of the candidates that he gave to her, are the same as those of the successful candidates and that constituted recruitment fraud.

*Independently sourced information from the South African Qualification Authority (SAQA) and Tshwane University of Technology (TUT)*

- 6.1.18 On 09 November 2021, a letter was sent to SAQA requesting clarity on whether a candidate holding a Diploma in Public Management can be regarded as holding the same qualification as a candidate with a Diploma in Human Resources Management.
- 6.1.19 On 16 November 2021, Dr J Reddy (Dr Reddy), the then Chief Executive Officer of SAQA, responded through an undated letter and stated that SAQA is not able to comment on the merits of the Public Administration qualifications against that of the Human Resource qualifications.
- 6.1.20 On 10 May 2024, a letter was sent to the Registrar of TUT, Dr Avhashoni Michael Mushaathoni (Dr Mushaathoni) to provide clarity on whether a Diploma in Public Management is equivalent to a Diploma in Human Resource Management.

- 6.1.21 A response was received from Dr Mushaathoni on 14 May 2024 stating that a Diploma in Public Management and a Diploma in Human Resource Management are not similar or equal qualifications.
- 6.1.22 Dr Mushaathoni also provided the Investigation Team with copies of the prospectus to clarify the differences in the above qualifications, as illustrated in the tables below:

National Diploma: Public Management Qualification Code: NDPA01-NQF Level 6			
First Year			
First Semester			
Code	Subject	Credit	Prerequisite Subject(s)
PEG121T	Public Resource Management I	(0,167)	
PUI101T	Public Information Services I	(0,167)	
PUI101T	Public Information Services I	(0,167)	
PUI101T	Public Information Services I	(0,167)	
PUI101T	Public Information Services I	(0,167)	
PUI101T	Public Information Services I	(0,167)	
PUI101T	Public Information Services I	(0,167)	
PUI101T	Public Information Services I	(0,167)	
PUI101T	Public Information Services I	(0,167)	
PUI101T	Public Information Services I	(0,167)	
PUI101T	Public Information Services I	(0,167)	
<b>Total Credits for the Semester:</b>		<b>0,500</b>	
Second Semester			
PUB101T	Public Decision-Making I	(0,167)	
PUV101T	Public Service Delivery I	(0,167)	
SEF101T	Self-Management I	(0,166)*	
<b>Total Credits for the Semester:</b>		<b>0,500</b>	
<b>Total Credits for the First Year:</b>		<b>1,000</b>	
Second Year			
First Semester			
PFN211T	Public Financial Management II	(0,167)	Public Resource Management I
PUE201T	Public Information Practices II	(0,167)	Public Information Services I



PUG201T	Public Human Resource Management II	(0,166)	Public Resource Management I
<b>Total Credits for the Semester:</b>		<b>0,500</b>	
<b>Second Semester</b>			
FUN201T	Fundamentals of Research II	(0,167)	
PJF201T	Project Management II	(0,167)	Public Services Delivery I
PLU201T	Public Procurement and Logistics Management II	(0,166)	Public Resource Management I
<b>Total Credits for the Semester:</b>		<b>0,500</b>	
<b>Total Credits for the Second Year:</b>		<b>1,000</b>	
<b>Third Year</b>			
<b>First Semester</b>			
FPM301T	Financial and Procurement Management III	(0,143)	Public Financial Management II
MOI301T	Management of Information III	(0,143)	Public Information Practices II
PUG301T	Public Human Resource Management III	(0,142)	Public Human Resource Management II
<b>Total Credits for the Semester:</b>		<b>0,428</b>	
<b>Second Semester</b>			
ICN301T	Intersectoral Collaboration III	(0,143)	
PRQ301T	Programme Management III	(0,143)	Project Management II
PUQ301T	Public Management Practice III	(0,143)	
PUQ301R	Public Management Practice III	(0,000)	
PYU301T	Policy Studies III	(0,143)	
<b>Total Credits for the Semester:</b>		<b>0,572</b>	
<b>Total Credits for the Third Year:</b>		<b>1,000</b>	
<b>Total Credits for the Qualification:</b>		<b>3,000</b>	

National Diploma: Human Resources Management Qualification Code: NDHRF0-NQF Level 6			
First Year			
Code	Subject	Credit	Prerequisite Subject(s)
FPBBS01	Foundation Basic Business Skills	(0,100)	
FPBFC01	Foundation Basic Financial Calculations	(0,100)	
FPENG03	Foundation English	(0,100)	
FPIRS01	Foundation Industrial Relations I	(0,100)	
FPPRM01	Foundation Personnel Management I	(0,100)	
<b>Total Credits for the First Year:</b>		<b>0,500</b>	
Second Year			
BMN120T	Business Management I	(0,100)	Foundation Basic Business Skills
ENG120T	English (A level)	(0,100)	Foundation English
PRM110T	Personnel Management I	(0,100)	Foundation Personnel Management I
<b>Plus one of the following Subjects:</b>			
ACP100T	Accounting for Personnel Practitioners	(0,100)	Foundation Basic Financial Calculations
QTQ100T	Quantitative Techniques I	(0,100)	Foundation Basic Financial Calculations
First Semester			
EUC10AT	End-User Computing IA	(0,100)	
Second Semester:			
EUC10BT	End-User Computing IB	(0,100)	
<b>Total Credits for the Second Year:</b>		<b>0,600</b>	

Third Year			
BMN230T	Business Management II	(0,200)	Business Management I
IRS100T	Industrial Relations I	(0,100)	Foundation Industrial Relations I
LLA100T	Labour Law	(0,200)	
MTN100T	Management of Training I	(0,200)	Foundation Basic Business Skills
PRM210T	Personnel Management II	(0,200)	Personnel Management I
<b>Total Credits for the Third Year:</b>		<b>0,900</b>	
Fourth Year			
BMN330T	Business Management III	(0,250)	Business Management II
IRS200T	Industrial Relations II	(0,250)	Industrial Relations I
MTN200T	Management of Training II	(0,250)	Management of Training I
PRM310T	Personnel Management III	(0,250)	Personnel Management II
<b>Total Credits for the Fourth Year:</b>		<b>1,000</b>	
<b>Total Credits for the Qualification:</b>		<b>3,000</b>	

*Independently sourced information from SAQA and Umalusi*

- 6.1.23 On 03 March 2023, a letter was sent to SAQA requesting confirmation whether the National N3 Certificate (Business Studies: Acc/Admin) is equivalent to Grade 12 (Matric).
- 6.1.24 Ms N Starr (Ms Starr), the Chief Executive Officer of the SAQA responded through a letter dated 09 March 2023, stating that:
- 6.1.24.1 The National Certificate: N3 Business Studies: Accounting/Administration (SAQA ID# 67458) is registered on the National Qualifications Framework (NQF);

- 6.1.24.2 A learner who completed the National N3 Certificate (Business Studies: Acc/Admin) will be issued with a National Senior Certificate (NSC) if a learner has satisfied the requirements for the National Certificate: N3 Business Studies: Accounting/Administration and has passed two languages as required by the NSC;
- 6.1.24.3 The information provided indicates that the National N3 Certificate (Business Studies: Acc/Admin) with two additional languages are equivalent to a Grade 12 (Matric). Therefore, Ms Kgwedi must contact the provincial Department of Education to have her National N3 Certificate and the results of the two additional languages combined so that she may be awarded the Senior Certificate.
- 6.1.25 On 30 April 2024, the Investigation Team sent a letter to the Chief Executive Officer of Umalusi, Dr Mafu Rakometsi (Dr Rakometsi) seeking clarity on whether the National N3 Certificate on its own, without the combination of the Subject Certificate, is equivalent to a Grade 12 (Matric).
- 6.1.26 In his response letter dated 09 May 2024, Dr Rakometsi stated that:
- 6.1.26.1 The National N3 Certificate is not equivalent to a Grade 12 Senior Certificate. Both the National N3 Certificate and the Subject Certificate of Ms Kgwedi were issued by Umalusi. He confirmed that the combination of the two sets of certificates will qualify Ms Kgwedi for the awarding of a Senior Certificate.
- 6.1.27 Dr Rakometsi further stated that *“to date no request was received by the Council for the combination of the two certificates issued to Ms Tshwarelo Francinah Kgwedi”*. He added that the Senior Certificate will be issued upon request from the Department of Education.

*Interviews conducted by the Investigation Team*

*Interview with Ms Nkuna*

- 6.1.28 In an interview held with Ms Nkuna on 04 April 2023, she stated that:
- 6.1.28.1 The appointments of Mr Zwane and Ms Kgwedi were approved by her based on the recommendations made by the interview panel as well as the application documents submitted by the appointed candidates. She satisfied herself that the recommended candidates met all the requirements of the posts before she approved their appointments. She further confirmed that she had every right not to accept the recommendations of the interview panel;
- 6.1.28.2 Members of the unions came to her office at some point (as they usually do from time to time whenever there is an appointment) and wanted to give her a piece of paper alleging to contain the names of the candidates to be appointed. She told the union members that she was not going to look at any piece of paper and advised them to raise a formal objection with her office;
- 6.1.28.3 The labour unions are invited to participate in the recruitment process as observers and as such they know the channels to observe and raise their concerns for disputes if any should arise; and
- 6.1.28.4 She cannot remember whether an investigation was instituted or whether the matter was referred to the Human Resource Management Component after she received the dispute letter on 07 May 2021, in respect of the appointments of the OHS Admin Clerk and HR Admin Clerk from DEMAWUSA, as the incident occurred in 2021.

*Interview with Mr Zwane*

- 6.1.29 On 03 May 2023, the Investigation Team conducted an interview with Mr Zwane, who was accompanied by the Secretary of the South African Municipal Workers Union (SAMWU), Mr R Zitha (Mr Zitha), to obtain clarity relating to his academic qualifications and work experience and to confirm the information contained in his CV.
- 6.1.30 During this interview, Mr Zwane stated that:
- 6.1.30.1 He was not ear-marked for the position and that he met the qualification requirements of the post as he holds Public Management qualifications which has Human Resource Management modules as the major subjects. The Public Management does not have OHS modules and subjects, but he was of the view that the successful candidate is required to provide clerical support for all health and safety matters. He concurs with the fact that the appointed candidate should have knowledge of OHS.
- 6.1.30.2 He worked as an intern at the office of the Speaker in the Participation Unit and he never worked at any institution performing OHS and/or Human Resource duties before he joined the Municipality; and
- 6.1.30.3 He only assisted the Human Resource section of the Municipality with human resource related duties for a period of six months, as and when he was called in for assistance. He does not have two years' work experience in OHS and/or Human Resource Component as required by the advertisement. (own emphasis)

*Interview with Ms Kgwedi*

- 6.1.31 During the interview held on 03 May 2023, by the Investigation Team with Ms Kgwedi, she stated that:

- 6.1.31.1 She noticed that the advert required a Grade 12/ Matric, and she thought that she met the academic requirements of the post as she is in possession of an N3 Certificate, which is equivalent to Matric;
- 6.1.31.2 She passed two languages and made an application for the combination of the N3 Certificate (Business Studies: Acc/Admin) and the Subject Certificate with two languages in 2016 at Bushbuckridge Department of Education, to be issued with the NSC. She made several follow ups with the Department of Education and she is still waiting to receive the NSC. She holds a National Diploma in Human Resources Management;
- 6.1.31.3 She only submitted her N3 Certificate (Business Studies: Acc/Admin) without a subject Certificate with two languages, when she applied for the post and that it was a human error on her part. She was not aware that she should have submitted the N3 Certificate (Business Studies: Acc/Admin) and Subject Certificate with two languages when applying, in order for her to meet the Grade 12 (Matric) requirements; and
- 6.1.31.4 She joined the Municipality as a work integrated learner, she was placed under Human Resource Registry for a period of 24 months before she was appointed as the Secretary in the Executive Mayor's office.

**Response to the notice in terms of section 7(9)(a) of the Public Protector Act**

- 6.1.32 On 20 November 2024, the Public Protector issued a notice in terms of section 7(9)(a) of the Public Protector Act (the Notice) to the shortlisting and interviewing panel members affording them an opportunity to make representations regarding the intended findings and remedial action of the Public Protector.

*Response to the Notice from Mr Katekani Lamula of Lamula KB Attorneys*

- 6.1.33 On 10 December 2024, the Public Protector received a letter dated 29 November 2024 from Mr Katekani Lamula of Lamula KB Attorneys (Mr Lamula) requesting extension until 13 December 2024 to respond to the Notice on behalf of the Municipality and in particular the interviewing panel members.
- 6.1.34 The Public Protector received another letter from Mr Lamula, dated 10 December 2024, wherein he requested to be provided with the affidavits deposed by Mr Mashego and Mr Mkhonto; recordings of the interviews with Ms Nkuna, Mr Zwane and Ms Kgwedi; statements filed by Mr Ngobeneni; and the list of all individuals interviewed for the purposes of this investigation.
- 6.1.35 The Public Protector responded through an email dated 10 December 2024 to Mr Lamula informing him that his clients were supposed to have responded to the Notice within ten (10) calendar days upon receipt of the Notice which has lapsed on 29 November 2024. However, he was granted extension to provide the response on 11 December 2024.
- 6.1.36 In the same email, Mr Lamula was referred to section 7(2) of the Public Protector Act, which provides that, *notwithstanding anything to the contrary contained in any law, no person shall disclose to any other person the contents of any document in the possession of a member of the office of the Public Protector or the record of any evidence given before the Public Protector, the Deputy Public Protector or a person contemplated in subsection (3)(b) during an investigation, unless the Public Protector determines otherwise.*
- 6.1.37 He was further advised to bring urgent application to the Information Officer of the Public Protector to obtain access to the above-mentioned information in terms of the Promotion of Access to Information Act, 2000.



6.1.38 Mr Lamula thereafter responded to the Notice on behalf of the shortlisting and interviewing panel in a letter dated 11 December 2024. In his response, he stated the following:

6.1.38.1 *The response will deal with the aspects of the Public Protector's investigation report which are directly linked to the shortlisting and interviewing panel. The Municipality advertised the position for OHS Admin Clerk and the position for the HR Admin Clerk;*

6.1.38.2 *Subsequent to the advertisements, applicants applied for the positions and the Municipality constituted a shortlisting and interviewing panel. The panel members for the shortlisting for both posts were as follows:*

- (a) SR Shilenge (Chairperson of the Panel);*
- (b) E Mashava (Panel Member);*
- (c) AM Mnisi (Panel Member);*
- (d) D Hobyane (Panel Member);*
- (e) SP Mokganya (Panel Member);*
- (f) G Maluka (Scriber);*
- (g) BR Mkhonto (Observer from IMATU);*
- (h) J Baloyi (Observer from SAMWU); and*
- (i) HJ Makondo (Observer from DEMAWUSA).*

6.1.38.3 *The panel members for the interviews were as follows:*

- (a) SR Shilenge (Chairperson of the Panel);*
- (b) RRL Mohlala (Panel Member);*
- (c) AM Mnisi (Panel Member);*
- (d) D Hobyane (Panel Member);*
- (e) SP Mokganya (Panel Member);*
- (f) P Mashele (Scriber);*

- (g) BR Mkhonto (Observer from IMATU);
- (h) Z Godi (Observer from SAMWU); and
- (i) PS Mashego (Observer from DEMAWUSA).

- 6.1.38.4 *It should be noted that during shortlisting there were no objections raised by the panel members as well as the observers. It should be noted that the shortlisting was done in an open and transparent manner by the shortlisting panel and as such there was no bias exhibited by the panel members towards certain candidates;*
- 6.1.38.5 *As indicated before there was no biasness towards any candidate during the process of shortlisting. It should be noted that when shortlisting was done, the panel members took time to peruse the CVs of the applicants and shortlisted on the basis of whether they meet the requirements of the position for Occupational Health and Safety Admin Clerk (OHS).*
- 6.1.38.6 *In this case, the CV of Mr Zwane indicated that he had 4 years' experience as an intern at the Office of the Speaker in the Public Participation Unit and a B-Tech Degree in Public Management. Upon perusing the CV, it was clear that Mr Zwane had studied Human Resource at the tertiary for a period of three years as part of his Public Management Diploma;*
- 6.1.38.7 *It was on this basis that the shortlisting panel was of the view that Mr Zwane met the qualification requirement. It should be noted that the position for OHS Admin Clerk is not a position that requires a specialist Occupational Health and Safety such that a narrow interpretation for the requirements ought to have been applied in the circumstances. It was the view of the shortlisting panel that any person who has done Human Resource Management is legible for shortlisting;*
- 6.1.38.8 *As indicated above, the OHS position did not require a specialist with vast experience in OHS. The shortlisting panel, when dealing with the issue of*

*experience in the OHS Admin Clerk position, it was of the view that the duties performed at the office of the Speaker in the Public Participation unit are related to Occupational Health and Safety as well as Human Resource. It was on this basis that Mr Zwane was shortlisted as he met the requirements for the position of OHS;*

6.1.38.9 *Subsequent to the shortlisting process being concluded, no objection was raised by the panel members or the observers regarding the shortlisted candidates and Mr Zwane in particular;*

6.1.38.10 *The shortlisting for the position of Human Resource Administrative Clerk (HR) process was similar to the one as done in the OHS position. CV's of applicants were perused in order to check if they meet the minimum requirement and shortlisted if they meet the requirements;*

6.1.38.11 *In the case of Ms Kgwedi, her CV indicated that she possesses an N3 Certificate and a National Diploma in Human Resource Management. The shortlisting panel had to contend with the issue of N3 certificate against Matric Certificate. The shortlisting panel used the internet to check the NQF level of the N3 Certificate and it was discovered that the N3 certificate has the same NQF level as the Matric Certificate, they are both NQF level 4. It was on this basis that the candidate Ms Kgwedi was accepted to have met the requirement for a matric. Further, it is generally accepted that a person will not possess a National Diploma without first fulfilling the requirements of obtaining a certificate in line with Matric or similar to Matric. It was on this basis that Ms Kgwedi was deemed to have met the requirements as she had a diploma as well as the required experience;*

6.1.38.12 *Subsequent to the shortlisting process being concluded, no objection was raised by the panel members or the observers regarding the shortlisted candidates and Ms Kgwedi in particular;*

- 6.1.38.13 *After the shortlisting, interviews were held for the position of HR wherein candidates were given the chance to express themselves in relation to the HR Admin Clerk position. The panel members posed relevant questions to the candidates and the observers were present to witness the proceedings. At the end of the interviews for the HR position, the name of Ms Kgwedi was confirmed to have received the highest scoring and recommended to be appointed as the HR Admin Clerk;*
- 6.1.38.14 *It was at this stage that the IMATU representative and the DEMAWUSA representative left the interview session. This they did without raising a specific dispute of the matter but simply registered their displeasure at the candidate recommended. The displeasure of the two observers had no basis at all;*
- 6.1.38.15 *It should be noted that the interviewing panel proceeded to conduct interviews for the position of OHS in the absence of the two observers that left the interviewing session due to their displeasure at Ms Kgwedi being recommended for the HR Admin Clerk position. The SAMWU representative was present and witnessed all the proceedings. The interviews for OHS proceeded, and the name of Mr Zwane was recommended as the candidate to be appointed for the position of OHS;*
- 6.1.38.16 *The Public Protector in its investigation report avers that the scoring by the panel members raises questions regarding the credibility of the process as it points to favouritism and collusion between panel members, which give credence to the allegation of a predetermined outcome by the union representatives. This comment by the investigator is highly unfortunate as it is made without any form of evidence adduced by anyone in the investigation that points to favouritism and more so to collusion between the members;*
- 6.1.38.17 *It should be noted that the complainants who filed affidavits with the Public Protector were not present during the OHS interview and as such could not have possibly known how the candidates fared in their interviews. Similarly, there is no*

*evidence at the disposal of the Public Protector that may point to collusion or favouritism. This comment is made despite the fact that the Public Protector has failed to interview the functionaries who conducted the interviews and further failed to interview the representative of SAMWU that was present the entire time of the interview proceedings;*

*6.1.38.18 As indicated above, the process was conducted in line with the Employment Practice Policy of the BLM and as such there was no biasness towards any candidate. The comment that seeks to legitimise the allegations of a predetermined outcome is without any form of basis and it is made to the detriment of the functionaries' reputation and integrity;*

*6.1.38.19 It should be noted that candidates are scored solely based on their performance during the interview and panel members are not obliged to see or view the interview the same. Dr Shilenge scoring the candidate low and the others scoring the candidate high is in no way evidence that there was favouritism or collusion between the panel members. There is nothing sinister with the scoring of the panel members. The scoring simply reflected the individual view of panel members about the candidates. The panel members conducted their duties in good faith, honestly and in a transparent manner. They acted impartially and without any form of favour and their actions did not prejudice anyone;*

*6.1.38.20 What is generally clear is that it would seem the observers in the form of IMATU and DEMAWUSA had their own preferred candidates for the posts, and this is so because they never objected to the shortlisted candidates but only raised a dispute of the process when their preferred candidate was not appointed. Subsequent to the interviews, a dispute was lodged with the CCMA wherein it was alleged that the Municipality treated one candidate in the OHS position unfairly and one candidate in HR position unfairly. The dispute was dismissed by the CCMA;*

- 6.1.38.21 *The referral to the CCMA were only on behalf of their preferred candidates and not the entire candidates that were shortlisted and interviewed. This is another indication that the complainants did not necessarily have any problem with the process but rather had a problem with the fact that their preferred candidates were not appointed. The Union were at liberty to challenge the process on behalf of every other candidate but did not do so but rather for their own preferred candidates. Furthermore, the award of the CCMA was taken to the Labour Court and same was dismissed by the Labour Court as there was no merit to the case. This is evidence enough that the allegations that the panel members had a predetermined outcome were baseless and only raised when the preferred candidates of the mentioned Unions did not succeed;*
- 6.1.38.22 *There is no evidence which suggests there was favouritism and collusions by the members of the panel when it comes to scoring or that they had a predetermined outcome. There was no predetermined outcome, and candidates were scored mainly on how they performed in the interviews;*
- 6.1.38.23 *As indicated above the appointments of Mr Zwane and Ms Kgwedi were done in line with the prescripts that govern recruitment and selection of employees within the BLM. The Public Protector has applied a narrow interpretation of the requirements whereas the panel members of shortlisting basically applied a wider interpretation of the requirements which was definitely the purpose of the BLM when it determined the requirements of the two positions;*
- 6.1.38.24 *The fact that the institution of higher learning such as TUT does not deem the qualification of Public Management and Human Resource Management as the same does not necessarily mean that the qualifications may not serve the same purpose more especially when it comes to clerical work. It should be noted that TUT is an institution of higher learning, but it is not an authority on the grading of qualifications. SAQA is the relevant authority that could have given a proper answer on the matter of Public Management and Human Resource Management;*

- 6.1.38.25 *The conduct of the shortlisting and interviewing panel was not in violation of section 195(1) of the Constitution in that the panel conducted itself in an open, honest and transparent manner. The allegations of a predetermined outcome are without any form of basis and cannot be used to sustain the remedial actions proposed by the public protector in relation to the functionaries of the shortlisting and interviewing panel. Further, the conduct of the shortlisting and interviewing panel was in line with clauses 6.3.1, 6.3.2 and 6.4 as the appointed candidates met the qualifications and experiential requirements of the two positions respectively;*
- 6.1.38.26 *The remedial action that the shortlisting and interviewing panel cannot be sustained as there is no evidence which suggests that the shortlisting and interviewing panel acted mala fide and with biasness towards a certain candidate. Even in the event wherein the Public Protector was correct that the appointments were irregular, that would still not sustain a disciplinary proceeding against the panel members as they did not act outside the spirit of the Constitution and at most what would be appropriate would be to train the panel members in properly interpreting requirements of a positions within the Municipal sector;*
- 6.1.38.27 *Furthermore, the remedial action to order the Municipal Manager to discipline the shortlisting and interviewing panel is generally flawed in law as the Public Protector has no authority to order the Municipal Manager to discipline the employees;*
- 6.1.38.28 *The conduct of the Public Protector in conducting the investigation was indicative of someone who investigates with a predetermined outcome in mind. It is quite astounding that in an investigation of this nature the Public Protector would not interview the panel members who were directly involved with the process that is the subject of the investigation. The Public Protector has afforded the panel members little to no opportunity to comprehensively deal with the report and its content;*

- 6.1.38.29 *Further, the BLM requested information from the Public Protector in order to enable it to properly respond to the allegations levelled against its functionaries, the Public Protector failed to assist with such information despite the fact that providing such information would not prejudice anyone and would in fact assist the BLM to comprehensively respond to the allegations levelled against it;*
- 6.1.38.30 *It is very clear that in the shortlisting and interviewing panels there were three unions but somehow the Public Protector saw it fit to only interview two unions which is IMATU and DEMAWUSA and completely ignored SAMWU. The Public Protector has not mentioned in its report why it did not interview or sought the views of SAMWU in this matter;*
- 6.1.38.31 *Furthermore, the Public Protector did not interview the observers from SAMWU and DEMAWUSA who sat in the shortlisting panel. Had the Public Protector interviewed these people, it would have probably realised that there was no favouritism and collusion between members. The Municipality has been prejudiced by the conduct of the Public Protector of failing to provide it with the requested information and failing to interview all interested and relevant parties in the investigation. The comments by the Public Protector which have a potential to damage the reputation of the panel members would probably not have been made had panel members been interviewed and SAMWU as well; and*
- 6.1.38.32 *The shortlisting and interviewing panel acted accordingly in terms of the Employment Practice Policy and the appointments were made in line within the prescripts of labour and employment laws of the Republic of South Africa. (sic)*

*Applicable law*



## **The Constitution of the Republic of South Africa, 1996**

6.1.39 Section 195(1) of the Constitution provides, amongst others, that:

*“Public Administration must be governed by the 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) ...*
- (c) ...*
- (d) ...*
- (e) ...*
- (f) Public administration must be accountable.*
- (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.*
- (h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated”.*

## **Local Government: Municipal Structures Act, 1998**

6.1.40 In relation to Executive Mayors, section 56(3)(f) of the Municipal Structures Act, (MSA) states that:

“...

*(3) The executive mayor in performing the duties of office, must-*

- (a) ...*
- (b) ...*
- (c) ...*
- (d) ...*
- (e) ...*
- (f) perform such duties and exercise such powers as the council may delegate to the executive mayor in terms of section 59 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)...*”

### **Public Administration Management Act, 2014**

- 6.1.41 Section 10(1)(a) of the Public Administration Management Act provides that *“the head of an institution, must through the education and training of its employees develop its human resource capacity to a level that enables it to perform its functions in an efficient, quality, collaborative and accountable manner”*.

### **Labour Relations Act, 1995**

- 6.1.42 Section 158(1)(h) of the Labour Relations Act (LRA) deals with the powers of the Labour Court and provides that *“The Labour Court may review any decision taken or any act performed by the State in its capacity as employer, on such grounds as are permissible in law”*.

### **Local Government: Municipal Systems Act, 2000**

- 6.1.43 Section 50(1) of the Municipal Systems Act (MSA) states that local public administration is governed by the democratic values and principles embodied in section 195(1) of the Constitution.
- 6.1.44 In relation to Municipal Managers, section 55(1) of the MSA states that:
- “As head of administration the municipal manager of a municipality is, subject to the policy directions of the municipal council, responsible and accountable for-*
- (a) ...*
  - (b) ...*
  - (c) ...*
  - (d) ...*
  - (e) ...*
  - (j) ...*
  - (g) the maintenance of discipline of staff...*

(h) *the promotion of sound labour relations and compliance by the municipality with applicable labour legislation”.*

6.1.45 Section 59(1) of the Municipal Systems Act provides that a municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances.

**The Code of Conduct for Municipal Staff Members, Schedule 2 of the Municipal Systems Act (The Code of Conduct)**

6.1.46 The Code of Conduct for municipal staff members is provided for in Schedule 2 of the MSA.

6.1.47 Item 2 of the Code of Conduct provides that a staff member of the Municipality must at all times:

- (a) loyally execute the lawful policies of the municipal council;
- (b) perform the functions of office in good faith, diligently, honestly and in a transparent manner;
- (c) act in such a way that the spirit and objects of section 50 are promoted;
- (d) act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and
- (e) act impartially and treat all people including other staff members, equally without favour and prejudice.

6.1.48 According to Item 14 of the Code of Conduct, breaches of the code must be dealt with in terms of the disciplinary procedures of the municipality.

## **Bushbuckridge Local Municipality Employment Practice Policy, 2013**

- 6.1.49 Clause 6.3.1 of the Bushbuckridge Local Municipality Employment Practice Policy (the Employment Practice Policy) deals with the General Principles Governing Selection and states that:

*“Selection criteria shall be objective and related to the inherent requirements of the job and realistic future needs of the Municipality. The central guiding principle for selection shall be competence in relation to the inherent requirements of the job provided that selection shall favour, as determined by the targets, suitably qualified applicants as defined in section 20(3) of the Employment Equity Act”.*

- 6.1.50 Clause 6.3.2 of the Employment Practice Policy provides that the purpose of selection is to identify the most suitable candidates from all the persons who applied and to eliminate unsuitable candidates in the fairest way possible.

- 6.1.51 Clause 6.4 of the Employment Practice Policy provides that *“the appointment of an applicant may take place only in accordance with the requirements of the post concerned and the merit of the applicant”*.

### **Case Law**

#### **Kwadukuza v Rajamoney and Others**

- 6.1.52 In the matter of *Kwadukuza Municipality v Rajamoney and Others*<sup>1</sup>, the court set out the following:

*“For the requirements of an advertised post to be met therefore, cognisance must be taken of the objective of the policy to ensure that the candidate who best meets the selection criteria is appointed. The short listing of a candidate who least meets the set selection criteria will ordinarily fly on the clear face of the objective of the*

---

<sup>1</sup> (D880/10) [2013] ZALCD 17 (13 June 2013), paragraph 15.

*policy. Such short listing would then be arbitrary as contrary to the selection criteria. The applicant set out requirements to be met for the contested post. The fairness of the selection process lay in the screening of all candidates against the set requirements in a similar approach. It has to be borne in mind that there would be people who desired to apply for the contested post but did not submit their applications merely because they did not meet the set requirements. It would also be unfair to set all candidates who met all requirements against any candidates who lack any of the requirements.”*

6.1.53 The appointment of candidates without appropriate qualifications was dealt with by the court in *the matter of Khumalo and Another v Member of the Executive Council for Education*<sup>2</sup>, the court held, *inter alia*, that:

*“Section 11(2) of the Public Service Act does not state explicitly that only those who meet the requirements may be appointed. However, section 11(2)(a) does create an entitlement for those who apply and qualify for a position to be considered. The purpose of section 11(2) is to ensure that applicants are considered on their merits and on the basis of equality and objectivity. It follows, as a corollary to these express terms, that those who do not apply or do not qualify are not entitled to be considered.*

*Section 11(2) must be read in the context of the state’s obligations under section 195(1)(i) of the Constitution and the right to fair labour practices under section 23 of the Constitution. Section 195(1)(i) stresses the importance of ensuring that appointment processes in the public sector are based on ability, objectivity and fairness. Fairness in employment practices and labour relations requires the state to be even-handed and transparent not only to those whom it employs, but so too to those who may wish to apply for employment at a state institution. It would not be fair if the state were to employ persons who do not meet the very requirements that the state itself sets. It is neither fair nor in compliance with the dictates of*

---

<sup>2</sup> (CCT 10/13) [2013] ZACC 49, at par 61 and 62

*transparency and accountability for the state to mislead applicants and the public about the criteria it intends to use to fill a post. The formulation and application of requirements for a particular post is a minimum prerequisite for ensuring the objectivity of the appointment process. Persons who do not meet the requirements for a post in the public sector ought not to be appointed”.*

- 6.1.54 The court further held that public functionaries, as the arms of the state, are further vested with the responsibility, in terms of section 7(2) of the Constitution, to “respect, protect, promote and fulfil the rights in the Bill of Rights.” As bearers of this duty and in performing their functions in the public interest, public functionaries must, where faced with an irregularity in the public administration, in the context of employment or otherwise, seek to redress it. This is the responsibility carried by those in the public sector as part of the privilege of serving the citizenry who invest their trust and taxes in the public administration<sup>3</sup>.

#### *Analysis*

- 6.1.55 The Municipality advertised the posts of OHS Admin Clerk and HR Admin Clerk on 02 December 2020 with the closing date indicated as 15 December 2020. According to the shortlist report for both positions approved on 20 April 2021, eight (08) candidates were shortlisted for the OHS Admin Clerk and five (05) candidates for the HR Admin Clerk.
- 6.1.56 Evidence before the Public Protector indicates that of the eight (08) candidates shortlisted and interviewed for the post of OHS Admin Clerk, only two (02) were in possession of the required National Diploma in Human Resource Management. A further observation from the shortlisting report is that six (06) candidates, including Mr Zwane, did not have a National Diploma in Human Resource Management and only one (01) candidate had the relevant experience as stipulated in the advertisement.

---

<sup>3</sup> Par. 36

- 6.1.57 Mr Ngobeni contended that a National Diploma in Human Resource Management and a National Diploma in Public Management *are almost the same qualifications* and that a candidate who holds a National Diploma in Human Resource Management and one who holds a National Diploma in Public Management undergo the same training at tertiary institutions.
- 6.1.58 Mr Ngobeni's contention is misguided considering confirmation by the TUT that a National Diploma in Public Management and a National Diploma in Human Resources Management are neither the same nor equal. The National Diploma in Public Management is a three-year qualification while the National Diploma in Human Resources is a four-year qualification. Furthermore, the prospectus provided by TUT clearly indicates that the two qualifications do not consist of the same modules.
- 6.1.59 Mr Lamula's contention in his response to the Public Protector's section 7(9)(a) Notice that the fact that the institution of higher learning such as TUT does not deem the qualification of Public Management and Human Resources Management as the same does not necessarily mean that the qualifications may not serve the same purpose more especially when it comes to clerical work, is baseless, as the shortlisting and interview panels had the responsibility to ensure that the shortlisted and appointed candidate(s) held the qualifications and have the necessary experience as specified in the advertisement.
- 6.1.60 The argument that Mr Zwane completed Public Human Resource Management as a module does not place him in the same position as a candidate who holds a National Diploma in Human Resources Management. The Human Resources Management qualification offers Personnel Management module over a period of three years as opposed to Public Management qualification, which offers Public Human Resource Management as module over two (02) semesters only. The National Diploma in Human Resources Management further covers a variety

of human resource modules, i.e. Labour Law, Industrial Relations, Management of Training, which are not provided for in the National Diploma in Public Management. Mr Zwane's qualification does not include the modules critical to human resource management mentioned in paragraph 6.1.52 above.

- 6.1.61 Mr Zwane was therefore not eligible for shortlisting and appointment to the post of OHS Admin Clerk, especially since the advertisement did not make provision for alternative or related qualifications.
- 6.1.62 Evidence further indicates that the Municipality appointed Mr Zwane although he did not meet the experience requirements for the post of OHS Admin Clerk. Mr Zwane also confirmed during interview with the Investigation Team on 03 May 2023 that he did not have two (02) years' experience in OHS/or in the Human Resource field.
- 6.1.63 The Public Protector notes Mr Lamula's response to the Notice that Mr Zwane had four (04) years' experience, a B-Tech Degree in Public Management and that he studied Human Resources at "tertiary" for a period of three years as part of his Public Management qualification, and that this was the basis for his shortlisting as he "was considered to have met the qualification requirement and therefore legible for shortlisting".
- 6.1.64 Mr Zwane's CV, however, shows that he has four (4) years' internship experience in the Participation Unit in the Office of the Speaker, where he performed administrative functions. His CV further indicates that he was employed as an EPWP Contract Worker over a period of twenty four (24) months performing cleaning related functions. The duties as per the advertised post requires the candidate to have experience in OHS and/or human resource related functions.
- 6.1.65 From the evidence in the Public Protector's possession, it is concluded that there is no correlation between Mr Zwane's experience as per his CV and the



experience as per the job requirements in accordance with Clause 6.4 of the Employment Practice Policy. Therefore, Mr Zwane should not have been considered for shortlisting, let alone be appointed.

- 6.1.66 The shortlisting and appointment of Mr Zwane by the functionaries of the Municipality is in contrast with the provisions of the Bushbuckridge Local Municipality Employment Practice Policy, which requires that the selection criteria be objective and related to the inherent requirements of the job and realistic future needs of the Municipality.
- 6.1.67 Regarding Ms Kgwedi's appointment, Mr Lamula's stated in response to the Notice that the shortlisting panel used the internet to check the NQF level of the N3 Certificate and it was discovered that the N3 Certificate has the same NQF level as a Matric Certificate, namely both at NQF level 4. However, evidence obtained by the Public Protector from SAQA shows that the National N3 Certificate with two additional languages is equivalent to a Grade 12 (Matric), provided they are combined.
- 6.1.68 Evidence before the Public Protector indicates that Ms Kgwedi was selected and appointed to the position of HR Admin Clerk without her holding a Grade 12 (Matric) certificate, which was one of the inherent requirements of the post. Ms Kgwedi holds a National N3 Certificate (Business Studies: Acc/Admin) and a Subject Certificate with two languages, without a certificate from the Department of Education confirming that it is equivalent to Grade 12 or NSC.
- 6.1.69 Ms Kgwedi confirmed that the Subject Certificate with two languages did not form part of the qualifications she submitted at the time of her application for the post. She further states that she was still waiting to be issued with the National Senior Certificate by the Department of Education.

- 6.1.70 The advertisement of the post of Human Resources Administration Clerk required the candidate to be in possession of a Grade 12 (Matric) certificate and a Diploma in Human Resources Management, without an option for equivalent qualification.
- 6.1.71 According to the interview report signed on 07 May 2021 and copies of the CVs, four (04) candidates, including Ms Kgwedi, were shortlisted and interviewed. All other candidates submitted their National Senior Certificates as required by the advertisement, except for Ms Kgwedi, who submitted the National N3 Certificate (Business Studies: Acc/Admin) without the two languages.
- 6.1.72 Confirmation was received from SAQA, which is the only legislated authority that makes the determination on the general qualifications and the levels thereof, that Ms Kgwedi's National N3 Certificate and her results of two languages, do not represent a Matric Certificate. However, a combination of the two will qualify Ms Kgwedi to be awarded a Senior Certificate but will require her to make a request for a combination through the Department of Education.
- 6.1.73 SAQA confirmed that no request had been received by the Council for the combination of Ms Kgwedi's National N3 Certificate and the results of the two languages she passed as at the time of the investigation. The Municipality should not have shortlisted and appointed Ms Kgwedi without a valid Matric or NSC.
- 6.1.74 Umalusi, which determines the standards of general education and further training, also confirmed that the combination of the two sets of qualifications would have qualified Ms Kgwedi to be awarded with a Senior Certificate. However, Umalusi confirmed that it never received a request from the Department of Education for the combination of the two certificates and, as at the time of the investigation, no National Senior Certificate had been issued to Ms Kgwedi.

- 6.1.75 The functionaries of the Municipality ought to have verified Ms Kgwedi's and all other candidates' qualification as part of the recruitment process. Had the verification been properly done, both SAQA and Umalusi would have advised both the functionaries and Ms Kgwedi to ensure compliance with the requirements of the posts as per the advertisement. Considering the provisions of Clause 6.4 of the Employment Practice Policy, Ms Kgwedi was not eligible for shortlisting at the time of the application as she was not in possession of a Grade 12 (Matric) certificate issued by the Department of Education.
- 6.1.76 The conduct of the functionaries of the Municipality is at variance with section 59(1) of the Municipal Systems Act. Which provides for the municipal council to develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances.
- 6.1.77 Evidence before the Public Protector indicates that Ms Kgwedi met the experience requirement relating to the post of HR Admin Clerk as advertised. She had a two (2) year Work Integrated Contract within the Human Resources Management with the Municipality, where she performed Human Resources Clerical duties before she was appointed Secretary to the Executive Mayor. Her 2-year experience in the human resources environment is in line with the requirement of the advertisement.
- 6.1.78 Evidence indicates that Dr Shilenge, who chaired both the shortlisting and interview processes for both positions scored both Mr Zwane and Ms Kgwedi above 20 and all other candidates below 20. All the other panel members scored both Mr Zwane and Ms Kgwedi above 20 and gave varying scores to other candidates, mostly below 20.
- 6.1.79 Evidence also indicates that Candidate 8 (OHS Clerk post), who possessed the correct qualification and had over eight (8) years' experience as an OHS Learner and OHS Clerk, was given a score of 14 by Dr Shilenge and scored above 20 by

all other panel members. The way panel members scored Mr Zwane and Ms Kgwedi raises questions regarding the credibility of the process as it might point to favouritism and possible collusion between panel members, which give credence to the allegation of a predetermined outcome by the union representatives.

- 6.1.80 The Public Protector noted Mr Lamula's assertion that there is no evidence at the disposal of the Public Protector that may point to collusion and favouritism, however, the Public Protector's position is based on the scores by the interview panel. The absence of the minutes of the interview panel makes it difficult to determine the reason for the inconsistent scoring and to justify the scores. The findings and remedial action of the Public Protector are not based on favouritism, but rather on whether the functionaries followed due process to ensure that the shortlisted and appointed candidates met the requirements as captured in the advertisement. It should be noted that further engagements with the functionaries who conducted the interviews and SAMWU would not have made a difference in terms of the actual qualifications and real experience of the appointed candidates.
- 6.1.81 Of concern is that the Municipality did not provide the minutes of the shortlisting process to determine how the process was conducted. The conduct of the interviewing panel was at variance with the schedule 2 of Code of Conduct for Municipal Staff Members, which requires, amongst others, staff members to perform their functions in good faith, diligently, honestly and in a transparent manner as well as act impartially and treat all people, including other staff members, equally without favour and prejudice.
- 6.1.82 Having regard to clauses 6.3.1, 6.3.2 and 6.4 of the Employment Practice Policy, the Municipality was required to eliminate unsuitable candidates and to select and appoint suitably qualified applicants in relation to the inherent requirements of the post as stated in the advertisement. The Municipality was further required to develop a system of delegation that will maximise administrative and

operational efficiency and provide for adequate checks and balances in accordance with section 59(1) of the Municipal Systems Act.

- 6.1.83 The constitutional principles outlined in section 195(1) of the Constitution enjoined the Bushbuckridge Local Municipality to maintain a high standard of professional ethics and to cultivate sound human resource management when it recruited and appointed candidates for the posts of OHS Admin Clerk and HR Admin Clerk.
- 6.1.84 *Kwadukuza Municipality v Rajamoney and Others* discourages the shortlisting of candidates who do not meet the requirements of the advertised post. The court in this case encouraged the screening of all candidates against the set requirements to avoid uncertainty in the recruitment and selection process. The court further highlighted the disadvantage and prejudice that could be suffered by people who desired to apply for the contested post but did not submit their applications merely because they realised that they did not meet the set requirements. The court held *that the shortlisting of a candidate who least meets the set selection criteria will ordinarily fly in the clear face of the objective of the policy.*
- 6.1.85 In the shortlisting and appointment of Mr Zwane and Ms Kgwedi, the selection and interview panels disregarded the requirements of the advertisement and failed to strictly adhere to the provisions in clauses 6.3.1, 6.3.2 and 6.4 of the Employment Practice Policy and as espoused in the *Kwadukuza* judgment.
- 6.1.86 Ms Nkuna, as the then accounting officer and the functionaries who were responsible for the recruitment and selection process were expected to ensure that due processes, applicable laws and policy directions that regulate the shortlisting and appointment of suitable candidates were duly followed.

- 6.1.87 On 11 December 2024, in his response to the Notice, Mr Lamula submitted a copy of the CCMA Arbitration Award issued on 27 February 2022 in the Arbitration between Mr Tshepo Mogakane and the Bushbuckridge Local Municipality. The Public Protector noted his argument that a dispute was lodged after the interviews that the Municipality treated one candidate in the OHS Admin Clerk position and one candidate in HR Admin Clerk position unfairly and that the dispute was dismissed by the CCMA.
- 6.1.88 Mr Lamula further contended that the award of the CCMA was taken to the Labour Court, and it was dismissed by the Labour Court as there was no merit of the case. According to Mr Lamula, this is evidence enough that the allegations that the panel members had a predetermined outcome were baseless and only raised when the preferred candidates of the mentioned Unions did not succeed.
- 6.1.89 Notwithstanding, the fact that the CCMA Award was issued on a different dispute of unfair discrimination, the fact remains that Ms Kgwedi was not in possession of Grade 12/Matric Certificate and that Mr Zwane was neither in possession of a National Diploma in Human Resources Management nor did he have a minimum of 2 years' work experience in the OHS/Human Resource Environment as required in the advertisement, which is the focus of this investigation.
- 6.1.90 The Public Protector takes note of Mr Lamula's contention that the Municipality has been prejudiced by failure of the Public Protector to provide it with the requested information and failing to interview all interested and relevant parties in the investigation.
- 6.1.91 These assertions by Mr Lamula are baseless, as on 10 December 2024 the Public Protector in its response email to his request of information letter with the same date, referred Mr Lamula to section 7(2) of the Public Protector Act, which provides that, *notwithstanding anything to the contrary contained in any law, no person shall disclose to any other person the contents of any document in the possession of a member of the office of the Public Protector or the record of any evidence given*

*before the Public Protector, the Deputy Public Protector or a person contemplated in subsection (3)(b) during an investigation, unless the Public Protector determines otherwise.*

- 6.1.92 In the same email, he was advised to apply to the Information Officer of the Public Protector to obtain access to the requested information in terms of the Promotion of Access to Information Act, 2000, which he did not do.
- 6.1.93 It should be noted that in terms of Rule 20(2) of the Public Protector Rules, as amended, the Public Protector shall decide how the complaint will be dealt with. As such, the engagements with the interview and SAMWU members would not have changed the Public Protector's findings and remedial action rather not comments as alluded by Mr Lamula, which was based on the proven facts that appointed candidates were irregularly shortlisted and appointed without meeting the requirements as outlined in the advert in contravention of the provisions of the Constitution and of the Municipality's Employment Practice Policy.

### *Conclusion*

- 6.1.94 Having considered the evidence before the Public Protector, the analysis and the application of the legal prescripts to the facts, it can be concluded that both Mr Zwane and Ms Kgwedi did not meet the minimum requirements for the posts to which they were appointed.
- 6.1.95 The conduct of the functionaries of the Municipality in the appointment process of both Mr Zwane and Ms Kgwedi, is in contravention of section 195 of the Constitution, was not in line with clauses 6.3.1, 6.3.2 and 6.4 of the Employment Practice Policy and did not adhere to the basic values and principles governing the Municipality's recruitment process.

## 7. FINDINGS

Having regard to the evidence, the regulatory framework determining the standard that the functionaries of the Municipality should have complied with and the impact thereof on good administration, the Public Protector is likely to make the following adverse findings:

### 7.1 **Whether the functionaries of the Bushbuckridge Local Municipality irregularly appointed Mr P Zwane and Ms TF Kgwedi to the posts of OHS Admin Clerk and HR Admin Clerk, respectively, despite them not meeting the minimum requirements for the posts as set out in the advertisement, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act**

7.1.1 The allegation that the functionaries of the Municipality irregularly appointed Mr Zwane and Ms Kgwedi to the posts of OHS Admin Clerk and HR Admin Clerk, respectively, while they did not meet the minimum requirements for the posts, **is substantiated.**

7.1.2 It is evident that at the time of his appointment, Mr Zwane neither held a National Diploma in Human Resources Management nor did he have a minimum of 2 years' work experience in the OHS/ Human Resource Environment as required in the advertisement.

7.1.3 At the time of his appointment, Mr Zwane held a National Diploma in Public Management, 04 years' work experience as an intern only, in the office of the Speaker under the Participation Unit, and 12 months' experience as a Parks and Beautification Officer and another 12 months' experience as a Roads Maintenance Officer under EPWP. All the experience he acquired was not relevant for the post he was appointed to.



- 7.1.4 The advertisement for the post of OHS Admin Clerk was prescriptive and did not accommodate any equivalent or alternative qualifications to the Human Resources Management qualification.
- 7.1.5 Mr Zwane conceded that he was in possession of a National Diploma in Public Management and that he did not have 2 years' experience related to OHS/ Human Resource Environment at the time of his appointment.
- 7.1.6 In respect of the appointment of Ms Kgwedi, the investigation concluded that although she had relevant work experience and a National Diploma in Human Resources, the National N3 Certificate (Business Studies: Acc/Admin) she submitted when she applied for the post is not equivalent to Grade 12/ Matric certificate as required in terms of the advertisement.
- 7.1.7 The inference drawn from the pattern of scoring during the interview process might point to collusion between panel members to favour both Mr Zwane and Ms Kgwedi.
- 7.1.8 The conduct of the shortlisting and interviewing panel members, namely, Dr SR Shilenge, the then Acting Director Corporate Services, Mr E Mashava, the then Director Technical Services, Mr AM Mnisi, the then Acting Director: Community Services, Mr D Hobyane, the then Acting HR Manager, Ms RRL Mohlala, Internal Auditor and Mr SP Mokganya, the Risk Manager, which resulted in the irregular appointment of Mr Zwane and Ms Kgwedi to the posts of OHS Admin Clerk and HR Admin Clerk respectively, is in contravention of the provisions of section 195(1) of the Constitution read together with clauses 6.3.1, 6.3.2 and 6.4 of the Municipality's Employment Practice Policy.
- 7.1.9 The conduct of the aforesaid functionaries of the Municipality in this instance constitutes improper conduct as envisaged in section 182(1) of the Constitution

and maladministration as envisaged in section 6(4)(a)(i) 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 notice 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 The Public Protector has taken cognizance that the erstwhile accounting officer of the Municipality, Ms Nkuna who approved the appointment of the two incumbents and Mr Mashava, are no longer in the employ of the Municipality.

8.4 Having regard to the evidence, the regulatory framework determining the standard the functionaries of the Municipality should have complied with and the impact on the Complainant, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

### **The Executive Mayor**

8.4.1 **Within ninety (90) calendar days** from the date of this report, in terms of section 56(3)(f) of the Municipal Structures Act (MSA), 1998, table the report before the Municipal Council for deliberation and obtain approval for the appropriate course of action to address the irregular appointments of Mr Zwane and Ms Kgwedi as the OHS Admin Clerk and the HR Admin Clerk, respectively, including pursuing a judicial review, as provided for in section 158(1)(h) of the LRA.

8.4.2 **Within sixty (60) calendar days** from the date of receipt of this report, in line with section 59(1) of the Municipal Systems Act, develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances. This should include strengthening of internal controls regarding recruitment in general within the Municipality.

#### **The Municipal Manager**

8.4.3 **Within ninety (90) calendar days** from the date of receipt of this report, in line with section 55(1) of the MSA, read with Item 14 of the Code of Conduct of the MSA, initiate disciplinary proceedings against members of the shortlisting and interviewing panels, namely, Mr SR Shilenge, Mr AM Mnisi, Mr D Hobyane, Ms RRL Mohlala and Mr SP Mokganya, whose conduct resulted in the irregular appointment of Mr Zwane and Ms Kgwedi, in breach of Item 2 of the Code of Conduct of the MSA.

8.4.4 **Within sixty (60) calendar days** from the date of receipt of this report, in line with section 195(1)(h) of the Constitution read with section 10(1)(a) of the Public Administration Management Act, 2014, ensure that all officials in human resource management as well as any employee who participate in the recruitment process, are trained to comply with the Employment Practice Policy in order for future appointments to be made in full compliance with the Policy.

### **9. MONITORING**

9.1 The Municipal Manager, together with the Executive Mayor of the Municipality, to submit an action plan to the Public Protector on the implementation of the remedial action referred to in paragraph 8 above, **within thirty (30) days** from the date of this report.

- 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: Ms N Motsitsi*  
*Executive Manager: PII Inland*





PUBLIC PROTECTOR  
SOUTH AFRICA