

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



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO: 36 OF 2024/2025

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**INVESTIGATION INTO ALLEGATIONS OF IRREGULAR APPOINTMENT OF MS MC
SEPHEKA TO THE POSITION OF DIRECTOR: COMMUNITY SERVICES BY THE
FUNCTIONARIES OF MALUTI-A-PHOFUNG LOCAL MUNICIPALITY AND THE
MUNICIPAL COUNCIL**

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LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS/ABBREVIATIONS	DESCRIPTION
Constitution	The Constitution of the Republic of South Africa, 1996
MSA	Municipal Systems Act, 2000
Public Protector Act	Public Protector Act, 1994
Public Protector Rules	The Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018, as amended
Section 56 Managers	Managers directly accountable to the Municipal Manager in terms of section 56 of the Local Government: Municipal Systems Act, 2000
Regulations	Local Government: Regulations on Appointment and Conditions of Appointment of Senior Managers, 17 January 2014 in terms of the Municipal Systems Act, 2000

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 (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 is issued in respect of an investigation into allegations of the irregular appointment of Ms MC Sepheka (Ms Sepheka) to the position of Director: Community Services by the functionaries of the Maluti-A-Phofung Local Municipality (the Municipality) and the Municipal Council (the Council)
- (iii) The investigation originates from a complaint submitted by an anonymous complainant (the Complainant) to the Free State Provincial office of the Public Protector on 10 October 2022
- (iv) In the main, the Complainant alleged that:
 - (a) During February 2022, the Municipality advertised numerous vacant positions for senior managers directly accountable to the Municipal Manager (also known as Section 56 Managers), including the position of Director: Community Services;
 - (b) The positions were filled around July 2022 and the Municipality appointed Ms Sepheka to the position of Director: Community Services, while she did not meet the minimum requirements for the position;

- (c) One of the requirements for appointment as per the advertisement, was that potential candidates should undergo a Competency Based Assessment as required by law and regulations within local government;
 - (d) Ms Sepheka obtained a score of “Basic” on the Competency Based Assessment, which means that she fell short of the minimum requirements stipulated in the relevant regulations and legislation within local government; and
 - (e) The Municipality failed to “*show caution*” by providing sound, sufficient and reasonable grounds why Ms Sepheka was appointed, whereas other candidates who obtained “competent” on the Competency Based Assessment, were not considered.
- (v) Based on the analysis of the complaint, the following issue was considered and investigated:
- (a) Whether the functionaries of the Maluti-A-Phofung Local Municipality and its Council irregularly appointed Ms Sepheka to the position of Director: Community Services, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.
- (vi) The investigation was conducted in terms of section 182(1) of the Constitution and section 6(4) of the Public Protector Act. It included an analysis of all the relevant documents, application of relevant laws, case law and related prescripts.
- (vii) Notices in terms of section 7(9)(a) of the Public Protector Act (section 7(9) notices), dated 11 December 2024, were delivered to:

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- (a) Mr TZ Mokoena (Mr Mokoena), the Member of Executive Council (MEC) responsible for Cooperative Governance and Traditional Affairs in the Free State Province;
 - (b) Ms M Melato (Ms Melato), the Executive Mayor;
 - (c) Mr G Mokotso (Mr Mokotso), the former Executive Mayor;
 - (d) Mr M Dlamini (Mr Dlamini) the Speaker of the Municipality;
 - (e) Mr M Mofokeng (Mr Mofokeng), the Municipal Manager;
 - (f) Mr F Mothamaha (Mr Mothamaha), the Chairperson of the Selection Panel;
 - (g) Ms T Lebenya, Ms M Mofokeng and Mr LL Khiba (Selection Panel Members);
 - (h) Ms Sepheka, the Director Community Services; and
 - (i) Mr WH Ungerer (Mr Ungerer), the former Acting Municipal Manager.
- (viii) The responses and information/evidence submitted in response to the section 7(9) notices were duly considered by the Public Protector. Responses were received from the following parties:
- (a) Mr Mothamaha on 18 December 2024;
 - (b) Mr Khiba on 20 December 2024;
 - (c) Mr Ungerer on 23 December 2024;
 - (d) Mr Mokotso and Ms Mofokeng on 07 January 2025;
 - (e) Ms Lebenya on 08 January 2025;
 - (f) Mr Dlamini on 09 January 2025;
 - (g) Mr Mofokeng on 26 March 2025
 - (h) No responses were received from Ms Melato and Ms Sepheka.

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- (ix) Having regard to the evidence and regulatory framework determining the standard that the Municipality should have complied with, the following findings are made:
- (a) Whether the functionaries of the Maluti-A-Phofung Local Municipality and its Council irregularly appointed Ms Sepheka to the position of Director: Community Services, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.
- (aa) The allegation that the functionaries of the Municipality and its Council irregularly appointed Ms Sepheka to the position of Director: Community Services, **is substantiated.**
- (bb) Candidate A and Ms Sepheka did not meet the requirements of Regulation 9(1) of the Appointment Regulations as they both obtained a score of “Basic” in the Competency-Based Assessment and were therefore deemed unsuitable for the role of senior manager.
- (cc) The selection panel did not reconvene to make a recommendation to Council on the appointment of Ms Sepheka to the position of Director: Community Services. Mr Mokotso presented his report to Council that was based on a draft report which was not signed by Mr Mothamaha, which misled Council on the true circumstances of the appointment process.
- (dd) Council resolved to appoint Ms Sepheka despite her not meeting the relevant competency requirements for the post as set out in Annexure A of the Appointment Regulations without exercising caution and recording the reasons for approving such an appointment.

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- (ee) The recommendation by Mr Mokotso and subsequent appointment of Ms Sepheka by Council was in contravention of the provisions of section 195(1) (a), (f), (g) and (h) of the Constitution, Regulations 9(1), 16(5) of the Appointment Regulations and paragraph 2 of the Code of Conduct for Councillors.
 - (ff) The conduct of Mr Mokotso and Council 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.
 - (x) The appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, are the following:

The Member of the Executive Council for COGTA

- (a) Take Cognisance of the report and ensure the implementation of the remedial action.

The Speaker of Council

- (b) Within **sixty (60) calendar days** from the date of this report, in terms of paragraph 15 of the Code of Conduct for Councillors in terms of Schedule 7 of the Local Government: Municipal Structures Act, 1998, as amended, take appropriate action against Mr Mokotso for the breaching the Code of Conduct for Councillors.

The Executive Mayor

- (c) Within **ninety (90) calendar days** from the date of this report, in terms of section 56(3)(f) of the Municipal Structures Act, 1998, table the report before the Municipal Council for deliberation and obtain approval to pursue a judicial review, as provided for in section 158(1)(h) of the Labour Relations Act, 1995 to address the irregular appointment of Ms Sepheka as the Director: Community Services.

The Municipal Manager

- (d) Within **sixty (60) calendar days** from the date of this report, in line with Regulation 12(4)(a) of the Appointment Regulations and as the Chairperson of the Selection Panel for the appointment of senior managers directly accountable to the Municipal Manager, ensure that future appointments are made in full compliance with section 56 of the Municipal Systems Act, 2000 as amended¹ and the Appointment Regulations

¹ Municipal Systems Amendment Act 3 of 2022, amended the Municipal Systems Act, 2000.

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 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, for such persons to note the outcome of the investigation and to implement the remedial action, where applicable, including:
- 1.2.1 Mr TZ Mokoena, the Member of the Executive Council (MEC) responsible for Cooperate Governance and Traditional Affairs in the Free State Province;
 - 1.2.2 Ms M Melato, the Executive Mayor of the Municipality;
 - 1.2.3 Mr M Dlamini, the Speaker of the Municipality;
 - 1.2.4 Mr M Mofokeng, the Municipal Manager;
 - 1.2.5 Mr F Mothamaha, the Chairperson of the selection panel;
 - 1.2.6 Ms T Lebenya, the selection panel member;
 - 1.2.7 Mr L Khiba, the selection panel member;
 - 1.2.8 Ms M Mofokeng, the selection panel member;
 - 1.2.9 Mr WH Ungerer, the former Acting Municipal Manager;
 - 1.2.10 Ms MC Sepheka, the Director: Community Services; and
 - 1.2.11 The Complainant.
- 1.3. The report relates to an investigation into the alleged irregular appointment of Ms MC Sepheka (Ms Sepheka) to the position of Director: Community Services by the functionaries of the Maluti-A-Phofung Local Municipality (the Municipality) and the Municipal Council.

2. THE COMPLAINT

- 2.1. The investigation originates from a complaint submitted by an anonymous complainant (the Complainant) to the Free State Provincial office of the Public Protector, on 10 October 2022.
- 2.2. The Complainant alleged, *inter alia*, that:
- 2.2.1 During February 2022, the Municipality advertised numerous vacant positions for senior managers directly accountable to the Municipal Manager (also known as Section 56 Managers), including the position of Director: Community Services;
- 2.2.2 The positions were filled around July 2022 and the Municipality appointed Ms MC Sepheka to the position of Director: Community Services, while she did not meet the minimum requirements for the position;
- 2.2.3 One of the requirements for appointment as per the advertisement, was that potential candidates should undergo a Competency Based Assessment as required by law and regulations within local government;
- 2.2.4 Ms Sepheka obtained a score of “*Basic*” in the Competency Based Assessment, which means that she fell short of the minimum requirements stipulated in the relevant regulations and legislation within local government; and
- 2.2.5 The Municipality failed to “*show caution*” by providing sound, sufficient and reasonable grounds why Ms Sepheka was appointed, whereas other candidates who obtained “*competent*” on the Competency Based Assessment, were not considered.

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) provides 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 the 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 conduct an investigation as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a)(i) 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 Maluti-A-Phofung Local Municipality and its Council irregularly appointed Ms Sepheka to the position of Director: Community Services, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of 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(1) 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 the format and procedures to be followed in conducting any investigation with due regard to the circumstances of each case.

5.1.3 The investigation process included exchange of correspondence with the Municipality and Council. Meetings were also held with functionaries of the Municipality and, documents obtained during the course of the investigation were analysed and evaluated, including consideration and application of the relevant law and prescripts.

5.2. Approach to the investigation

5.2.1 The approach to the investigation included the exchange of documents between the Public Protector and the Municipality, 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:

(a) What happened?

(b) What should have happened?

(c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration, abuse of power, improper conduct or resulted in prejudice?

(d) In the event of improper conduct or maladministration, what would it take to remedy the wrong and 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 and Council irregularly appointed Ms Sepheka.

5.2.4 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the functionaries of the Municipality and the Council in the appointment of Ms Sepheka.

5.3 The Investigation Process

5.3.1 The investigation process commenced with correspondence sent by the Public Protector to Mr S Makhubu (Mr Makhubu), the former Acting Municipal Manager on 16 November 2022 wherein he was informed of the investigation, as well as the information required from him.

5.4 Key sources of information

5.4.1 Documents

5.4.1.1 Council resolution on filling of Section 56 Managers positions, dated 10 February 2022;

5.4.1.2 Newspaper advertisement for Section 56 Managers including Director: Community Services, dated 06 March 2022;

5.4.1.3 Minutes of a Council meeting for the appointment of the Selection panel, dated 31 March 2022;

5.4.1.4 List of all candidates who applied for the position Director: Community Services (undated);

5.4.1.5 Minutes of the Selection panel, dated 05 May 2022;

5.4.1.6 Curriculum Vitae of shortlisted candidates for the position of Director: Community Services;

5.4.1.7 Score sheets of the Interview panel members for the position of Director: Community Services, dated 09 June 2022;

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- 5.4.1.8 Competency Based Assessment Reports for candidates interviewed, dated 28 April 2022, 28 June 2022 and 06 July 2022, respectively;
- 5.4.1.9 Copy of Document titled “*Report by the Municipal Manager on the filling of the vacant Section 56 manager positions in the Corporate Services, Local Economic Development, Community Services and Public Safety Directorate*” (unsigned and undated);
- 5.4.1.10 Report by the Executive Mayor on the filling of the Director position in the Community Services Directorate signed Mr G Mokotso and undated;
- 5.4.1.11 Council Resolution relating to the appointment of Ms Sepheka, dated 18 August 2022;
- 5.4.1.12 Appointment letter of Ms Sepheka, dated 24 August 2022;
- 5.4.1.13 Letter from Mr G Mokotso, the former Executive Mayor to the MEC COGTA, informing the MEC regarding the appointment of Ms Sepheka, dated 30 August 2022;
- 5.4.1.14 Directives issued by Mr Dukwana titled “*Non-appointment of Section 56 Managers who scored Basic in the Competency Based Assessment*” dated 21 September and 19 October 2022 respectively; and
- 5.4.1.15 Complaint form from Anonymous, dated 10 October 2022.
- 5.4.2 **Correspondence**
- 5.4.2.1 Allegations letter from the Public Protector to Mr Makhubu, dated 16 November 2022;

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- 5.4.2.2 Response from Mr Makhubu, the former Acting Municipal Manager to the Public Protector, dated 18 January 2023;
 - 5.4.2.3 Letter from the Public Protector to Mr Dlamini, the Speaker of Council, dated 28 February 2024;
 - 5.4.2.4 Responses from Mr Dlamini to Public Protector, dated 07 March 2024 and 20 March 2024, respectively;
 - 5.4.2.5 Email enquiry from the Public Protector to Ms M Sedibane (Ms Sedibane), the Human Capital Manager, Industrial Psychometrist (COGTA Accounts Manager of Gijima) on 23 April 2024;
 - 5.4.2.6 Email responses received from Ms Sedibane to the Public Protector, on 23 April 2024;
 - 5.4.2.7 Further email received from Ms Sedibane to Public Protector on 11 October 2024;
 - 5.4.2.8 Response letter from Mr Ungerer to the Investigation Team, dated 27 September 2024;
 - 5.4.2.9 Response letter from Mr Khiba to the Investigation Team, received on 09 October 2024;
 - 5.4.2.10 Response letter from Mr Mokotso to the Investigation Team, received on 11 October 2024;
 - 5.4.2.11 Response letter from Ms Mofokeng to the Investigation Team, received on 12 October 2024; and

5.4.2.12 Response letter from Mr Mothamaha and Ms Lebenya to the Investigation, received on 16 October 2024.

5.4.3 **Meetings and Interviews held**

5.4.3.1 Meeting held between the Investigation Team and Mr M Sefantsi, the former Acting Municipal Manager, and Mr W Mahlangu, the Manager in the Office of Municipal Manager, on 23 May 2024.

5.4.3.2 Interview held by the Investigation Team with Ms Lebenya on 02 October 2024;

5.4.3.3 Interview held by the Investigation Team with Mr Mothamaha on 02 October 2024;

5.4.3.4 Interview held by the Investigation Team with Ms Mofokeng on 07 October 2024;

5.4.3.5 Interview held by the Investigation Team with Mr Khiba on 07 October 2024; and

5.4.3.6 Interview held by the Investigation Team with Mr Mokotso on 11 October 2024.

5.4.4 **Inspection Conducted**

5.4.4.1 Inspection conducted at the Municipal offices by the Investigation Team of the recruitment file with documents relating to the recruitment processes followed in the filling of the position Director: Community Services, on 11 June 2024.

5.4.5 **Legislation and Policies**

5.4.5.1 Constitution of the Republic of South Africa, 1996;

5.4.5.2 Labour Relations Act, 1995;

5.4.5.3 Public Protector Act, 1994;

5.4.5.4 The Local Government: Municipal Systems Act, 2000;

5.4.6 **Regulations**

5.4.6.1 Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers, dated 17 January 2014, issued in terms of the Municipal Systems Act, 2000.

5.4.7 **Case Law**

5.4.7.1 *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* (CCT76/17) [2017] ZACC 47; 2018 (3) BCLR 259 (CC); 2018 (2) SA 571 (CC) (29 December 2017);

5.4.7.2 *Dilotsotlhe v Mahikeng Local Municipality and others* (UM 130/2020) [2021] ZANWHC (25 October 2021); and

5.4.7.3 *KwaZulu-Natal Department of Transport v Hoosen and Others* 2016 37 ILJ 156 (LC).

5.4.7.4 *Public Protector and Others v President of the Republic of South Africa and Others* (CCT 62/20) [2021] ZACC 19.

5.4.8 **Notices issued in terms of section 7(9)(a) of the Public Protector Act**

5.4.8.1 Section 7(9)(a) of the Public Protector Act enjoins the Public Protector, during the course of an investigation, to afford any person being implicated in a matter under investigation and where such implication may be to the detriment and/or interest of that person or that an adverse finding and/or remedial action pertaining to that person may result, an opportunity to respond in connection thereto.

5.4.8.2 The section 7(9)(a) notice dated 11 December 2024, was delivered to Ms Melato, Mr Dlamini, Mr Mofokeng, Mr Mothamaha, Ms Lebenya, Mr Khiba, Mr Mokoena, Mr Ungerer, Mrs Mofokeng and Ms Sepheka to provide them with an opportunity to respond to the likely adverse findings and proposed remedial action.

5.4.8.3 The responses and information/evidence submitted in response to the section 7(9) notice were duly considered by the Public Protector. Responses were received from the following parties only:

- (a) Mr Mothamaha, on 18 December 2024;
- (b) Mr Khiba, on 20 December 2024;
- (c) Mr Ungerer, on 23 December 2024;
- (d) Mr Mokotso and Mrs Mofokeng, on 07 January 2025;
- (e) Ms Lebenya, on 08 January 2025;
- (f) Mr Dlamini, on 09 January 2025;
- (g) Mr Mofokeng, on 26 March 2025; and
- (h) No responses were received from Ms Melato, and Ms Sepheka.

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 Maluti-A-Phofung Local Municipality and its Council irregularly appointed Ms Sepheka to the position of Director: Community Services, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act

Common Cause

6.1.1 The Municipality advertised various Section 56 managerial positions including the position of Director: Community Services in the Business Times National Newspaper on 06 March 2022, with the closing date for submission of applications indicated as 25 March 2022.

6.1.2 Ms Sepheka's appointment to the position of the Director: Community Services was approved as per the Council Resolution, dated 18 August 2022.

6.1.3 The appointment letter dated 24 August 2022, signed by the then Acting Municipal Manager, Mr Ungerer confirmed that on 18 August 2022, Council appointed Ms Sepheka as the Director: Community Services.

Issue in dispute

6.1.4 The issue for the Public Protector's determination is whether the appointment of Ms Sepheka by the Municipality and its Council was in accordance with the processes and approved procedures governing the appointment of senior managers in line with the provisions of section 56 of the MSA and Regulations.

The Complainant's version

- 6.1.5 The Complainant contended that the appointment of Ms Sepheka to the position of Director: Community Services was irregular, as she had obtained a score of “*Basic*” during the Competency Based Assessment.
- 6.1.6 The Complainant further alleged that this was not in line with the applicable regulations as the functionaries of the Municipality failed to “*show caution*” by providing sound, sufficient and reasonable grounds why Ms Sepheka was appointed, whereas other candidates who obtained “*competent*” on the Competency Based Assessment, were not considered.

The Municipality's version

- 6.1.7 On 16 November 2022, the Public Protector raised the allegations with Mr S Makhubo (Mr Makhubo), the former Acting Municipal Manager, and requested documentation relating to the recruitment process followed in the appointment of Ms Sepheka.
- 6.1.8 On 18 January 2023, Mr Makhubo responded to the allegations stating that the information that he provided to the Public Protector is in his capacity as Acting Municipal Manager, and it was received from the relevant municipal officials who are the custodians of the documents.
- 6.1.9 Mr Makhubo submitted the following documents regarding the allegations:

Council resolution, dated 10 February 2022

- 6.1.10 According to the minutes of the Council meeting held on 10 February 2022, on item 13.2.29, Council resolved, *inter alia* to:
- 6.1.10.1 Approve the filling of the vacant Section 56 managers positions, including the position of Director: Community Services;
- 6.1.10.2 Authorise the Accounting Officer to advertise the said positions within the prescripts of the law in a national newspaper; and
- 6.1.10.3 Appoint a panel for each position to conduct the selection process and make recommendations for the appointment of a candidate to the Council.

Advertisement of the position: Director: Community Services, dated 06 March 2022

- 6.1.11 According to the advertisement, the requirements for the position of Director: Community Services were:

“A bachelor’s degree in social science/public administration/ law or equivalent.

A minimum of 5 years’ experience at middle management level. A proven successful institutional transformation within public or private sector in management in administration.

Knowledge and Attributes

The candidate is required to demonstrate a good knowledge and understanding of relevant policies and legislations. A good knowledge and understanding of institutional governance system and performance management. Understanding of Council operation and delegations of power as well as management in health services, cemetery, sports, arts and culture, parks and recreation...

Competencies

The incumbent must also meet the following competencies as per notice 21 published in Government Gazette no 37245, dated 17 January 2014: Strategic direction and leadership, people management, programme and project management, financial management, change leadership, Government leadership, Morale competence, planning and organising.” (sic)

Minutes of the Council Meeting, 31 March 2022

6.1.12 According to the minutes of the Council meeting held on 31 March 2022, at item 13.2.5, the Council resolved as follows:

“

1. ...;
2. *The Council appoints selection panels to conduct the selection process and to make recommendations for appointment of candidates in the following vacant positions:*

- (a) *Director Cooperate Services;*
- (b) *Director: **Community Services**; (own emphasis added)*
- (c) *Director LED, Tourism, SMME’s and Agriculture; and*
- (d) *Director for Public Safety, Transport and Protection Services.*

3. *In line with provisions of clause 12(4) of the regulation, Council appoints the following members of the selection panel:*

- (a) Mr FP Mothamaha, (MAP² Municipal Manager);*
- (b) Ms T Lebenya, (TMD³ Municipal Manager);*
- (c) Representative from CoGTA⁴;*
- (d) MMC and/or Councillor from relevant Department's Portfolio Committee;*
- (e) MMC for Corporate Service must form part of all panels,*
- (f) Councillor J Rantsane must form part of the process for political oversight."*

Long list for the position Director: Community Services (undated)

6.1.13 Nineteen (19) applications were received from interested candidates for the position Director: Community Services.

Minutes of the Selection Panel, dated 05 May 2022

6.1.14 On 05 May 2022, the Selection Panel held a meeting to conduct shortlisting.

6.1.15 The Selection Panel deliberated on each candidate for all vacant positions and their respective qualifications and experience. After the deliberations, for the position of Director: Community Services, the panel resolved to shortlist four (04) candidates with the following qualifications and experience as per their Curriculum Vitae's (CVs).

² MAP- Maluti-A-Phufong Local Municipality.

³ Thabo Mofutsanyana District Municipality.

⁴ Cooperate Governance and Traditional Affairs.

No	Name and Surname	Qualifications	Experience
1	Candidate A	<p>Bachelors in public administration from the University of Pretoria issued in 2017</p> <p>Certificate: Municipal Financial Management NQF level 6 issued 23 October 2013 by LG SETA</p> <p>Post Graduate Certificate: Leadership in Municipal Governance (04 months Course) completed December 2017 issued by University of Witwatersrand</p> <p>Certificate in Public Management from Regenesys School of Public Management⁵</p> <p>Diploma: Examiners for Drivers Licence from Boekenhoutskloof Traffic College ⁶</p> <p>Diploma in Auctioneering ⁷</p>	<p>Executive Director Community Service - Emalahleni Local Municipality from September 2014 to January 2021.</p> <p>Acting Director Public Safety Emalahleni Local Municipality from October 2012 to September 2014</p> <p>Head of Department Licensing Emalahleni Local Municipality from August 2005 to October 2012</p> <p>Chief Licencing Officer Emalahleni Local Municipality from January 2003 to August 2005</p> <p>Senior Testing Officer Emalahleni Local Municipality from May 2002 to January 2003</p> <p>Testing Officer Emalahleni Local Municipality from September 1997 to May 2002</p>

⁵ Qualification listed on CV, but not attached to the CV of Candidate A, submitted by the Municipality.

⁶ Qualification listed on CV, but not attached to the CV of Candidate A, submitted by the Municipality.

⁷ Qualification listed on CV, but not attached to the CV of Candidate A, submitted by the Municipality.

		<p>Certificate of record Management National Archive of South Africa⁸</p> <p>Certificate in Basic Ambulance Course: Transvaal Ambulance Training College</p> <p>Grade 12, Lekoko High School⁹</p>	<p>Fire Fighter and Ambulance Driver Emalahleni Local Municipality from January 1990 to September 1997</p>
2	Ms Sepheka	<p>Bachelor's degree in social sciences from the University of the Free State issued in 1993</p> <p>Certificate of Recognition: Introduction to Project Management attended during 2000/2001</p> <p>Certificate of Recognition MS Project Course attended during 2000/2001</p> <p>Certificate of Recognition: New Development Framework Course attended during 2000/2001</p>	<p>Centre Director: Ekurhuleni from April 2021 to present (2022)</p> <p>Director Community Service Dihlabeng Local Municipality April 2012 to March 2017</p> <p>Acting Director Cooperate Service: Maluti A Phofung Local Municipality December 2012 to October 2013</p> <p>Acting Municipal Manager, Maluti A Phofung Local Municipality May 2014 to July 2014</p> <p>Director Community Service Moghaka Local Municipality March 2002 to March 2012</p>

⁸ Qualification listed on CV, but not attached to the CV of Candidate A. submitted by the Municipality.

⁹ Qualification listed on CV, but not attached to the CV of Candidate A. submitted by the Municipality.

		<p>Certificate of Completion, one day Course on Finance for Non-Financial Managers issued on 7 June 2005</p> <p>Certificate of Continuing Professional Development activity with The Fire Engineering SA</p> <p>Certificate of attendance for three days: Specialised Waste Management Training for Municipal Officials in 2013</p> <p>Certificate of Long Service and excellent work in Community Service Director from SALGA issued 15 September 2015</p> <p>Certificate of attendance from South African Cemeteries Association for National Training Workshop in May 2016.</p>	<p>Manager Community Service Maluti A Phofung Local Municipality from May 1999 to March 2002</p> <p>Senior Social Worker: Maluti A Phofung Local Municipality from July 1996 to May 1999</p> <p>Social Worker: Maluti A Phofung Local Municipality from January 1993 to June 1996</p>
3	Candidate C	<p>Bachelor of Arts in Education from the University of the North issued in 1995</p> <p>Certificate: Executive Leadership in Municipal Development program from University of Pretoria 2008</p>	<p>Municipal Manager, Thaba Chweu Local Municipality September 2006 to May 2010</p> <p>Director Safety and Community Service, Thaba Chweu Local Municipality, May 2005 to September 2006</p>

		<p>Certificate: Forensic Investigative Auditing, Unisa 2015</p> <p>Certificate: Project Management, Wits University 2003</p> <p>Executive course in Infrastructure Planning and Partnership for Local Economic Development, Harvard University of Pretoria satellite 2004.</p>	<p>Acting Municipal Manager, Dipaleseng Local Municipality, March 2003 to April 2005</p> <p>Director Safety and Community Service, Dipaleseng Local Municipality, February 2002 to April 2005</p> <p>Educator, Beacon Secondary School March 1995 to January 2002.</p>
4	Candidate D	<p>Master of Social Work in Health Care from the University of Pretoria, 2016</p> <p>BA in Social Work University of the North, 1996</p> <p>Communication Facilitator Course, Centre for Soft Skills May 2007</p> <p>Municipal Management Development Programme, University of Pretoria, October 2013</p> <p>Change Leadership for Public Officials, University of Pretoria March to June 2013</p>	<p>Director Emergency Services, City of Tshwane Municipality from 2013 to date.</p> <p>Deputy Director Department of Emergency Services, City of Tshwane Municipality November 2011 to April 2013.</p> <p>Superintendent Department of Emergency Services City of Tshwane Municipality, September 2003 to October 2011</p> <p>RPS Sebela Private Practice 2015 to date</p>

		Ethics Management February 2015	Emergency Care Practitioner, Department of Health, Emergency Medical Service Northwest May 2001 to June 2001 Cashier Part-time, Trade Centre November 1998 to April 2001 Tutor, Integrity College January 1993 to October 1997
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Ms Sepheka's Curriculum Vitae (CV)

6.1.16 The Public Protector Investigation Team (Investigation Team) was provided with copies of CVs of all shortlisted candidates including that of Ms Sepheka. Attached to Ms Sepheka's CV was the following:

6.1.16.1 Standard 10 Certificate issued by the Joint Matriculation Board, on 01 April 1988; and

6.1.16.2 Bachelor's degree: Social Sciences (Social Work) issued by the University of the Free State, on 18 March 1993.

6.1.16.3 Additional Certificates:

- (a) Training on Bid Committees (PALAMA);
- (b) Finance for Non-Finance Managers (CBM Training);
- (c) Cemetery Management (South African Cemetery Association);
- (d) New Development Framework (UFS);
- (e) MS Project (UFS);
- (f) Introduction to Project Management (UFS);

- (g) Community Development (Technicon SA);
- (h) Waste Characterisation (DEA);
- (i) Continuing Professional Development Fire Services (Institute of Fire Engineering); and
- (j) Specialised Waste Management (DEA).

6.1.16.4 Transcript of modules passed in Masters: Public Administration; and

6.1.16.5 Transcript of modules passed in Municipal Finance Management Programme by the University of Pretoria.

Competency-Based Assessment Reports

6.1.17 The outcome and copies of the Competency-Based Assessment of the interviewed candidates were submitted to the Public Protector and the reports indicated the following:

No	Candidate	Position assessed for	Date of Report	Competence assessment score	Service Provider
1	Candidate A	Director Community Service: Ephraim Mogale Local Municipality	28 April 2022	Basic	Assessment ToolBox
2	MC Sepheka	Director: Community Service: Maluti-A-Phofung Local Municipality	06 July 2022	Basic	Gijima
3	Candidate C	Director Public Safety Maluti-A-Phofung Local Municipality	28 June 2022	Competent	Gijima

6.1.18 The following was stated in paragraph 3 of the Competency-Based Assessment Report under the heading “*SCORING CRITERIA AND PROFICIENCY LEVELS*”:

SCORE	DESCRIPTOR
Basic*	Marginal/basic demonstration of competency; basic understanding of concepts and methodologies; response lacks details
Competent	Competent good demonstration of competency; advanced understanding of concepts and methodologies; responses are suitably integrated and detailed
Advanced	Elevated demonstration of competency; advanced understanding of concepts and methodologies; response as well as integrated and detailed
Superior	Outstanding and comprehensive demonstration of competency; superior understanding of concepts and methodologies; integrates concepts logically and in a meaningful manner.

6.1.19 The following was stated in paragraph 4 of the Competency-Based Assessment Report under the heading “*Results Summary*”:

“... ”

* *Please note an overall achievement score of basic falls short of the minimum requirements as stipulated in Notice 583 of Government Gazette 37245, 17 January 2014: Annexure B of Local Government: Municipal Systems Act 32 of 2000: Local Government: Regulations on appointment and conditions of employment of senior managers....”*

Report by the Municipal Manager on the filling of the vacant Section 56 manager positions in the Corporate Services, Local Economic Development, Community Services and Public Safety Directorate, undated

- 6.1.20 The undated and unsigned Report on filling of the vacant Section 56 manager positions indicated, *inter alia*, the following:
- 6.1.20.1 The purpose of the Report is to inform Council of the progress made regarding the pre-employment processes made in the recruitment of suitable applicants to fill in the vacant Director positions;
- 6.1.20.2 The vacant posts of managers directly accountable to the Municipal Manager were advertised, including the position of Director: Community Services and all interested applicants were invited to submit their CVs;
- 6.1.20.3 On 31 March 2022, Council resolved to appoint a Selection panel to conduct the selection process and to make recommendations for the appointment of candidates for the position of Director: Community Services and others;
- 6.1.20.4 Applicants who met the requirements were then shortlisted, and a pre-employment verification and validation process was followed in line with the relevant Municipal Staff Regulations;
- 6.1.20.5 On 09 and 10 June 2022, all shortlisted candidates were interviewed and the top three (03) candidates for each position were subjected to the Competency Based Assessment;
- 6.1.20.6 Having completed the process of interviews and Competency Based Assessment, the Selection Panel reconvened to make a final recommendation

to the Council regarding preferred candidates for the position of Director: Community Services and others;

- 6.1.20.7 Ms Sepheka was recommended to the Council as the preferred candidate for the position of Director: Community Services;
- 6.1.20.8 Candidate C was recommended to the Council as the preferred candidate for the position of Director: Public Safety; and
- 6.1.20.9 Legislated process must be followed in finalising the appointment and the report be submitted to the Member of the Executive Council (MEC) responsible for Corporative Governance and Traditional Affairs (COGTA) in the province.

Minutes of the Special Council Meeting held on 18 August 2022

- 6.1.21 According to the minutes of the Council meeting held on 18 August 2022, the Executive Mayor, Mr G Mokotso presented to Council the Reports on the filling of the vacant Section 56 manager positions for amongst others, the Director: Community Services and the Director: Public Safety.
- 6.1.22 The following was recorded under item 13.2.6 of the minutes regarding the position of Director: Public Safety *“Resolved: 1. The item was withdrawn and re-advertised”*.
- 6.1.23 Under item 13.2.8 of the minutes, the Council resolved as follows regarding the position of Director: Community Services:
 - a) The Report of the Selection Panel was noted;
 - b) To appoint Ms Sepheka as Director: Community Services;
 - c) All legislative processes must be followed in finalising the appointments;
 - d) A report be submitted to the MEC for CoGTA in the Province;

- e) The Municipal Manager must enter into employment contracts and performance agreements with successful candidates.

Appointment letter dated 24 August 2022, Ms Sepheka Director: Community Service

- 6.1.24 Mr Ungerer issued an appointment letter dated 24 August 2022 to Ms Sepheka indicating that during a special sitting of Council on 18 August 2022, Council resolved to appoint her as Director: Community Services of the Municipality for a period of five (05) years.

Report to the MEC COGTA for the appointment of Senior Managers for Corporate Services and Community Services, dated 30 August 2022

- 6.1.25 The report compiled by the Executive Mayor, Mr Mokotso (Mr Mokotso) to the then MEC COGTA, Mr M Dukwana (Mr Dukwana) indicated, *inter alia*, the following;

- 6.1.25.1 On 30 February 2022, the Municipal Council approved the filling of the positions which are on the approved structure of the Municipality. The vacancies have not been filled since 2015 which caused a great deal of challenges emanating from administration gaps.

- 6.1.25.2 The following documents were attached to the report:

- (a) Copy of the resolution approving the advertisement;
- (b) Copy of the advertisement;
- (c) Copy of the resolution approving the panel for interviews;
- (d) Time schedule for interviews for shortlisted candidates held on 09 and 10 June 2022;

- (e) Competency-Based Assessment for Mr S... and Ms Sepheka;
- (f) Resolution appointing the incumbents; and
- (g) Letter of Appointments for recommended applicants.

Directive issued by Mr M Dukwana, titled “Non-appointment of Section 56 managers who scored basic in the Competency-Based Assessment” dated 21 September 2022

6.1.26 The Directive dated 21 September 2022 to all Administrators, Executive Mayors and Mayors in the Free State Province, stated the following:

“

- 1) *The North-West High Court sitting in Mahikeng has ruled that Section 56 Managers who scored basic in the Competency-Based Assessment are unsuitable for appointment, as they have not met the requirements for appointment.*
- 2) *In the Dilotsotlhe vs Mahikeng Local Municipality and others UM 130/2020 (attached), the High Court cautioned that regulation 6.1 of Annexure A Local Government: Competency Framework for Senior Managers of the Local Government; Regulations of Appointment and conditions of employment of Senior Managers of 2014: which states that **“Individuals falling within the basic range are deemed unsuitable for the role senior manager, and caution should be applied in promoting and appointing such persons”** should not be used to circumvent the law and appoint people deemed unsuitable.*
- 3) *The High Court stated that **“the administrator must give sound, sufficient and reasonable grounds why the candidate who is assessed as basic should be employed or promoted”**. This is*

because once a candidate is assessed as basic in the Competency Assessment, "it means he/she has not lived up to the prescribed minimum requirements of the post of senior," and is therefore not suitable for appointment.

- 4) *Further, the Municipality has no power to overlook a candidate who has met all the requirements of the Senior's post in favour of the one who was assessed as basic in the Competency assessment.*
- 5) *In light of this judgment, you are therefore advised not to recommend any candidate for appointment that has scored basic in the Competency Assessment. In addition, please be informed that the MEC will not concur to any appointment where a candidate was assessed and found to be basic.*
- 6) *In Conclusion, you are all therefore requested to:*
 - i. *To table the contents of this letter in the Council for noting;*
 - ii. *For Council to rescind any and all appointments made with effect from 25 October 2021 to date, where candidates scored basic;*
 - iii. *For Council to resolve to advertise these posts where the appointments were rescinded.*
 - iv. *For the Mayors to submit details of the information outlined in paragraphs (ii) and (iii) above to the Office of the MEC, via the Office of the HOD, within 7 days of such Council sitting.*
- 7) *Please note that failure to act as requested will result in approaching the High Court for a Declaratory Order setting aside all appointments where candidates scored basic from the 25 October 2021, as invalid."*

Further Directive issued by M Dukwana titled “Non-appointment of Section 56 managers who scored basic in the Competency Based Assessment” dated 19 October 2022

6.1.27 On 19 October 2022, Mr Dukwana issued a further directive to all Executive Mayors/Mayors, Speakers and Municipal managers stating the following:

“ ...

My Office as the Member of the Executive Council responsible for Local Government in the Free State Province has been overwhelmed by the reaction of the Municipalities about the directive which was issued on 21/09/2022 with above mentioned subject.

It is on the strength of what is enumerated above that I give clarity and ultimately review of the directive to provide a proper guidance for Municipalities in the Free State to consider in the appointment processes.

I hereby review the following paragraphs in the Directive:

- 1.1 Paragraphs 1 to 7 of the Directive are hereby deleted/removed and replaced by the following provisions:*
- 2. That all senior managers who had been appointed and attained basic should continue with their contract until they expire;*
 - 2.1 That in the event a candidate has scored competent in the competency-based assessment and others scored basic, the former should be considered for appointment and not the latter, Municipal Council should not overlook the former over the latter.*
 - 2.2 However, in an event where all candidates have scored basic in the competency assessment, the Municipal Council may appoint a candidate amongst them that is eligible for appointment than the*

other candidates, however, there must be sufficient and justifiable grounds for such a discretion and/or such an appointment.

2.3 *The following are grounds to be considered by the latter though not exhaustive:*

- *Performance of the Candidate during the interviews;*
- *Qualification of the candidate;*
- *Experience and requisite skill of the candidate; and*
- *Any other justifiable and compelling reasons to appoint the candidate.*

2.3 *The above-mentioned appointment where a candidate has scored basic must be exercised with great circumspection by Municipal Council”.*

Additional information received from the Speaker of Council, dated 07 March 2024

- 6.1.28 On 28 February 2024, the Investigation Team forwarded correspondence to the Speaker of Council, Mr NW Dlamini (Mr Dlamini) requesting further information relating to the matter under investigation.
- 6.1.29 On 07 March 2024, the Investigation Team received a letter from Mr Dlamini stating that the contents contained in the response is to the best of his knowledge and any other information that may be outstanding will be readily availed upon request. Included in the email was an unsigned letter from the Acting Municipal Manager, Mr Amos Goliath (Mr Goliath) marked for the attention of the Speaker of the Municipality, dated 06 March 2024. The letter indicated that in line with the request received from the Public Protector, Mr

Goliath was submitting the response to information requested by Mr Dlamini as follows:

- 6.1.29.1 According to the records, the Municipality advertised numerous positions for Section 56 Managers including the position of Director: Community Services, which was filled on 18 August 2022;
- 6.1.29.2 Candidates were required to undergo a Competency Assessment in line with the Municipal Systems Act, 2000 and compliance with Local Government Regulations on Appointment and Conditions of Appointment of Senior Managers;
- 6.1.29.3 Ms Sepheka obtained an overall achievement level of “*Basic*” on the Competency-Based Assessment results from Gijima (Service Provider) and according to the Municipality’s records, Council deliberated on the matter and resolved to appoint Ms Sepheka;
- 6.1.29.4 According to the records of the Municipality three (03) candidates were shortlisted for the position of Director: Community Services, however, only two (02) candidates were assessed on Competency Based Assessment for the position of Director: Community Services;
- 6.1.29.5 Candidate C who was also shortlisted and interviewed applied for two (02) positions namely Director: Community Services and Director: Public Safety. Candidate C was only assessed for the position of Director: Public Safety and obtained a score of “*Competent*” for that position; and
- 6.1.29.6 Information relating to minutes of the reconvened meeting of the selection panel after receipt of the Competency Based Assessment is missing and cannot be located due to the change of personnel in the office.

Additional information received from Mr Dlamini, dated 20 March 2024

- 6.1.30 On 18 March 2024, the Investigation Team sent email correspondence to Mr Dlamini requesting a copy of the Recruitment Screening Report after noting that it was not attached to the response dated 06 March 2024.
- 6.1.31 On 20 March 2024, Mr Dlamini emailed a copy of a Recruitment Screening Report dated 12 December 2021 to the Investigation Team. The Investigation Team noted that this Recruitment Screening Report was issued prior to the advertisement dated 06 March 2022, for the position of Director: Community Services. Mr Dlamini did not submit the Recruitment Screening Report for the advertisement dated 06 March 2022, for the position of Director: Community Services.

Information received from GIJIMA

- 6.1.32 On 23 April 2024, an email enquiry was made by the Investigation Team with the Human Capital Manager, Industrial Psychometrist (COGTA Accounts Manager) of Gijima, Ms M Sedibane (Ms Sedibane), regarding the validity period of the Competency Based Assessment report.
- 6.1.33 Ms Sedibane responded on 23 April 2024 indicating that the Competency-Based Assessment Report is valid for twelve (12) months, from when the candidate is assessed up until the 12th month.

Meeting held between the Investigation Team and the functionaries of the Municipality, 23 May 2024

- 6.1.34 On 23 May 2024, the Investigation Team held a meeting with the Acting Municipal Manager, Mr M Sefantsi (Mr Sefantsi), the Manager in the Office of the Municipal Manager, Mr W Mahlangu (Mr Mahlangu) and the Paymaster,

Mr N Shale, to obtain outstanding documents regarding the matter under investigation.

- 6.1.35 During the meeting, it was agreed that Mr Mahlangu would obtain the file with the documents relating to the recruitment processes followed for the position of Director: Community Services (the Master File), which would be perused by the Investigation Team to obtain the outstanding documents.

Inspection by the Investigation Team of the Master File, 11 June 2024

- 6.1.36 On 11 June 2024, the Investigation Team visited the Municipality to obtain outstanding documents, including the Recruitment Screening Report, score sheets of all panel members and information relating to the minutes of the reconvened meeting of the Selection Panel after receipt of the Competency Based Assessment by the Municipality. The following documents were obtained:

Recruitment Screening Report by Letsete Behub Project, dated 29 May 2022

- 6.1.37 Letsete Behub conducted the following screening process for candidates shortlisted for the positions of Director: Public Safety, Transport and Protection Service; Director: Local Economic Development and Director: Community Services:

- (a) Verification of identity status;
- (b) Criminal record;
- (c) Qualifications; and
- (d) Previous disciplinary cases.

- 6.1.38 The report was submitted to the Municipality on 29 May 2022.

- 6.1.39 The Recruitment Screening Report for Candidate A, Ms Sepheka and Candidate C confirmed, *inter alia*, their qualifications and identity status.

Interview Score Sheets

- 6.1.40 The Investigation Team was unable to obtain the score sheets of all panel members from the Master File. Neither Mr Goliath nor Mr Dlamini were able to provide the Investigation Team with the score sheets by all Selection Panel members.

- 6.1.41 The following information was obtained from the Master File in respect of the score sheets:

Panel Member	Candidate scoring	Candidate scoring	Candidate scoring	Candidate scoring
	Candidate A	Ms Sepheka	Candidate C	Candidate D
Lebenya T	No Score sheet	18	12	Did Not Interview
Mothamaha F	No Score Sheet	23	15	Did Not Interview
Khiba	No Score sheet	22	16	Did Not Interview
Matshiliso	10	24	No Score sheet	Did Not Interview
Available Score	10	87	43	Did Not Interview

- 6.1.42 The Investigation Team was also unable to obtain information relating to the minutes of the reconvened meeting of the Selection Panel after receipt of the Competency Based Assessment Report by the Municipality from the Master File.

Interview held by the Investigation Team with Mr Mothamaha

- 6.1.42 On 26 September 2024, the Investigation Team sent a letter to Mr Mothamaha requesting an interview with him regarding the matter under investigation.

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- 6.1.43 On 02 October 2024, Investigation Team interviewed Mr Mothamaha, who submitted, *inter alia*, the following:
- 6.1.43.1 He was the Chairperson of the Selection Panel for the appointment of Section 56 Managers, including the positions Director: Community Services and Director Public Safety, which took place on 9 and 10 June 2022;
- 6.1.43.2 Four (4) candidates were shortlisted for the position Director: Community Services, and only three (3) candidates were interviewed. Ms Sepheka obtained the highest score during the interviews, followed by two (2) other candidates;
- 6.1.43.3 All shortlisted candidates were capable of being employed as a Senior Manager and were sent for the Competency Based Assessment, however, his involvement in the selection process ended after the interview process and prior to the process being finalised as he was arrested and prohibited from entering the Municipality's premises;
- 6.1.43.4 After the interviews and up until he was arrested, the Selection Panel never reconvened to discuss the outcomes of Competency Based Assessment Report and/or to make recommendations to Council;
- 6.1.43.5 He compiled a draft report regarding the outcomes of the interviews, but this report was neither signed nor finalised by him as the Chairperson of the selection panel;
- 6.1.43.6 The Council appoints the selection panel in terms of the Appointment Regulations and as far as he is aware, no new Chairperson was appointed by the Council after he was prevented from accessing the Municipal premises;

6.1.43.7 The candidate who applied for both positions of Director: Community Services and Director: Public Safety underwent the Competency Based Assessment for the position Public Safety, as the Competency Based Assessment is generic and applies to all Senior Managers, therefore, there was no need for a candidate to be assessed twice.

Further written response from Mr Mothamaha

6.1.44 On 16 October 2024, the Investigation Team received a written response from Mr Mothamaha stating *inter alia* as follows:

6.1.44.1 He is the former Municipal Manager of the Municipality and held the position until the end of July 2022;

6.1.44.2 In his capacity as Municipal Manager and Accounting Officer, he was responsible for overseeing the administrative functions of the Municipality, including the recruitment and appointment of Senior Managers, in accordance with the Municipal Staff Regulations and the relevant provisions of the Local Government: Municipal Systems Act, 2000, as amended;

6.1.44.3 During his tenure as Municipal Manager, the Municipality advertised the vacant position of Director: Community Services in accordance with its recruitment policies and applicable Municipal Staff Regulations and related legislative frameworks;

6.1.44.4 As the Municipal Manager, he was designated by law to serve as Chairperson of the selection panel, as outlined in the Municipal Staff Regulations and related frameworks;

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- 6.1.44.5 The recruitment processes were initiated to fill the position of Director: Community Services which involved the shortlisting of candidates; screening and verification of qualifications and credentials as well as interviews with the candidates;
- 6.1.44.6 After the advertisement of the vacant position, three candidates were shortlisted for further consideration based on their qualifications and experience;
- 6.1.44.7 The shortlisted candidates underwent screening, which involves verifying their qualifications, experience and compliance with the criteria outlined in the advertisement and the Municipal Staff Regulations;
- 6.1.44.8 Interviews were conducted by the selection panel, during which the candidates were evaluated and scored on their performance as well as suitability for the position;
- 6.1.44.9 After the interviews and completion of the scoring process, Ms Sepheka obtained the highest score amongst the interviewed candidates;
- 6.1.44.10 Despite the completion of the shortlisting, screening and interviews stages, the selection panel neither reconvened to conclude the recruitment process nor finalised the required report or made any formal recommendation for the appointment of a candidate for the position of Director: Community Services;
- 6.1.44.11 As a result, no final recommendation of the selection panel was made to the Executive Mayor for appointment of Ms Sepheka, or any candidate and the recruitment process was therefore not concluded.

6.1.44.12 To the best of his knowledge and belief, the recruitment process for the position of Director: Community Services was not finalised before his departure as Chairperson of the selection panel.

Interview held by the Investigation with Ms Takatso Lebenya, Selection Panel Member

6.1.45 On 01 October 2024, the Investigation Team telephonically contacted Ms Takatso Lebenya (Ms Lebenya), requesting an interview with her regarding the matter.

6.1.46 On 02 October 2024, Investigation Team interviewed Ms Lebenya, who submitted, *inter alia*, the following:

6.1.46.1 She is the Municipal Manager of Thabo Mofutsanyana District Municipality, and she was a selection panel member for the appointment of Section 56 Managers at the Municipality, including the position of Director Community Services, which took place on 9 and 10 June 2022;

6.1.46.2 Her involvement in the selection process was until the interviews were held with the shortlisted candidates;

6.1.46.3 Four (4) candidates were shortlisted for the position Director: Community Services and only three (3) candidates attended the interviews. Ms Sepheka was scored as the number one candidate during the interviews followed by candidate C; and

6.1.46.4 After the interviews, she was never called to discuss the outcome of the Competency Based Assessment report, or to make recommendations to the Council regarding which candidate was to be appointed.

Interview with Mr Mokotso

- 6.1.47 On 26 September 2024, the Investigation Team sent a letter to Mr Mokotso requesting an interview with him regarding the matter.
- 6.1.48 During the interview held on 11 October 2024 with Mr Mokotso, he stated the following:
- 6.1.48.1 He was provided with a recruitment report by Mr Ungerer, the then Acting Municipal Manager to present to Council which recommended Ms Sepheka for appointment to the position of Director: Community Services; and
- 6.1.48.2 On 18 August 2022, he presented the report to Council, who resolved to appoint Ms Sepheka as the Director Community: Services.

Further written response from Mr Mokotso

- 6.1.49 On 11 October 2024, the Investigation Team received a written response from Mr Mokotso, stating, *inter alia*, that:
- 6.1.49.1 Council resolved that the Municipal Manager proceed with the process of filling the vacant Section 56 Manager positions;
- 6.1.49.2 On 22 March 2022, Council appointed the selection panel for the vacant Section 56 Manager positions, including the positions of Director: Community Services and Director: Public Safety;
- 6.1.49.3 The shortlisted candidates were interviewed on 9 and 10 June 2022 and the top three (3) candidates were sent for Competency Based Assessment;

- 6.1.49.4 Of the 03 candidates, one (1) candidate was assessed for the position Director: Public Safety and not for the position Director: Community Services, which implies that only two candidates were considered for the position of Director: Community Services;
- 6.1.49.5 Following the process of interviews and assessment, the selection panel reconvened to make a final recommendation to Council regarding the preferred candidate, which included the position of Director: Community Services;
- 6.1.49.6 The Council decided on the appointment of Ms Sepheka, on 18 August 2022, and the Acting Municipal Manager, Mr Ungerer, confirmed the appointment through an appointment letter dated 24 August 2022;
- 6.1.49.7 There is a letter dated 21 September 2022 from Mr Dukwana, titled “*Non-Appointment of Section 56 Managers who scored Basic in the Competency based Assessment*” and a further letter that gave proper guidance stating “*All Senior Managers who have been appointed and obtained ‘Basic’ should continue with their contracts until they expire*”; and
- 6.1.49.8 This follows a common practice where “*Basic*” results were obtained “and a more suitable candidate would be appointed, upskilling would follow”. (*sic*)

Interview held with Mr L Khiba

- 6.1.50 On 2 October 2024, the Investigation Team telephonically contacted Mr L Khiba (Mr Khiba), requesting an interview with him regarding the matter. During the interview held by the Investigation Team with Mr Khiba on 7 October 2024, he stated the following:

-
- 6.1.50.1 He was a selection panel member during interviews held on 9 and 10 June 2024 for the appointment of Section 56 Managers at the Municipality, including the position of Director: Community Services;
- 6.1.50.2 As a selection panel member, he assessed and scored all candidates who were interviewed based on their performance;
- 6.1.50.3 After the interviews, he never attended any further selection panel meeting to deliberate on the suitability of any candidate that would be recommended to Council for appointment; and
- 6.1.50.4 If a candidate is assessed on one of the Section 56 Manager positions, his/her assessment is still valid for other positions that he is recommended for and the candidate does not need to be assessed again.

Further written response from Mr Khiba

- 6.1.51 On 9 October 2024, the Investigation Team received a further written response from Mr Khiba stating *inter alia* the following:
- 6.1.51.1 He was part of the selection panel for Director positions at the Municipality and all shortlisted candidates for the position Director: Community Services and Director: Public Safety posts were interviewed on 9 to 10 June 2022;
- 6.1.51.2 He does not recall any of the candidates not being interviewed by him, and he confirms that Ms Sepheka obtained the highest score and was therefore recommended for the post Director: Community Services; and
- 6.1.51.3 No further meeting was held by the selection panel members after the interviews to decide on the outcome of the Competency Based Assessment.

The report that was sent to Council must have been developed by the Chairperson of the Selection Panel.

Interview with Ms M Mofokeng

- 6.1.52 On 2 October 2024, the Investigation Team telephonically contacted Ms M Mofokeng (Ms Mofokeng) requesting an interview with her regarding the matter.
- 6.1.53 On 7 October 2024, the Investigation Team interviewed Ms Mofokeng who stated *inter alia* the following:
- 6.1.53.1 She was a Member of the Mayoral Committee (MMC) for Community Services and as a result, she was appointed as a member of the selection panel that interviewed candidates for the position of Director: Community Services;
- 6.1.53.2 During the interviews for the position of Director: Community Services, four (4) candidates were shortlisted and only three (3) candidates attended the interviews;
- 6.1.53.3 According to her recollection, two (2) female candidates and one (1) male candidate were interviewed for the position of Director: Community Services, including Ms Sepheka;
- 6.1.53.4 The candidate who obtained the second highest score for the position of Director: Community Services was a male candidate whose name she could not recall; and
- 6.1.53.5 After the interview process, she did not receive any invitation to a meeting of the selection panel, to discuss the Competency Based Assessment report and

to make recommendations to Council on the suitability of the candidate to be appointed.

Further written response from Ms Mofokeng

- 6.1.53.6 Ms Mofokeng submitted an affidavit dated 12 October 2024, confirming *inter alia* that on 9 June 2022, she was part of the selection panel where three (3) candidates were interviewed. She further stated that Ms Sepheka obtained the highest score during the interview process and the candidate who scored the second highest was a male, whose name she could not recall.

Response from Mr Ungerer, dated 27 September 2024

- 6.1.54 In a written response dated 27 September 2024, Mr Ungerer stated, *inter alia*, the following:
- 6.1.54.1 Only Council appoints Section 56 Managers, accountable to the Municipal Manager;
- 6.1.54.2 As the Acting Municipal Manager, he implemented the Council resolution by signing Ms Sepheka's appointment letter;
- 6.1.54.3 He was neither consulted by Mr Mokotso, who signed the item presented to Council, nor by the Speaker of the Council, who included the item on the Council's agenda;
- 6.1.54.4 The officials who advised Mr Mokotso should explain why they allowed an item to be presented to Council where the candidate did not comply with basic requirements;

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- 6.1.54.5 Mr Mokotso should explain why he placed the item before Council, knowing that the candidate did not meet the requirements;
- 6.1.54.6 All Councillors should explain, why they resolved that the candidate who did not comply with the minimum requirements was appointed; and
- 6.1.54.7 These individuals or groups are responsible for the non-compliance.

Responses to the Notice issued in terms of section 7(9)(a) of the Public Protector Act, 1994

- 6.1.55 A Notice in terms of section 7(9)(a) of the Public Protector Act, 1994 dated 11 December 2024, was issued to Ms Melato, Mr Dlamini, Mr Mofokeng, Mr Mothamaha, Ms Lebenya, Mr Khiba, Mr Mokoena, Mr Ungerer, Mrs Mofokeng and Ms Sepheka to provide them with an opportunity to respond to the likely adverse findings and intended remedial action to be taken by the Public Protector.
- 6.1.56 The Public Protector received responses to the section 7(9)(a) notice from the following parties:

Response from Mr Mothamaha, the former Municipal Manager

- 6.1.56.1 In his response dated 18 December 2024, Mr. Mothamaha stated *inter alia* that he has reviewed and accepted the contents of the section 7(9)(a) notice.

Response from Mr Khiba, Member of the Selection Panel

- 6.1.56.2 On 20 December 2024, Mr Khiba responded to the section 7(9)(a) notice, stating *inter alia* that:

-
- (a) The selection panel did not reconvene after the receipt of the Competency Based Assessment Report to determine the suitability of the candidate to be recommended for appointment;
 - (b) In every post a candidate who is shortlisted undertakes the Competency Based Assessment, unless that candidate applied for the same kind of post at a different municipality, like in the case of the Director: Cooperate Services. The validity period of twelve (12) months then comes into effect, meaning the candidate will not be expected to undergo the Competency Based Assessment again, if the validity period has not expired; and
 - (c) He undertakes to support the MEC and the Municipality in the implementation of the remedial action to be taken by the Public Protector.

Response from Mr Ungerer, the former Acting Municipal Manager

6.1.56.3 On 23 December 2024, Mr Ungerer stated *inter alia* that:

- (a) As the then Acting Municipal Manager, he implemented the Council resolution by signing Ms Sepheka's appointment letter;
- (b) He was not consulted by Mr Mokotso, who signed the item and presented it to the Council. The statement made by Mr Mokotso in paragraph 6.1.49.1 of the section 7(9) notice is therefore false; and
- (c) He was the Acting Municipal Manager from 12 August 2022 to 23 September 2022, and during this period he did not present any report to the Committee, Council, Mr Mokotso or any other political office bearer.

Response from Mr Mokotso, the former Executive Mayor

6.1.56.4 On 7 January 2025, Mr Mokotso stated *inter alia* that:

- (a) Mr Ungerer stated that only Council appoints Section 56 Managers, accountable to the Municipal Manager, however, he deliberately ignored the following important facts:
 - (i) Section 56(a) of the Municipal Systems Act, 2000, indicates that a Municipal Council, after consultation with Municipal Manager, appoints a manager directly accountable to the Municipal Manager;
 - (ii) Section 57(2)(c) provides that the performance agreement referred to in subsection 1(b) must in the case of a manager directly accountable to the Municipal Manager be entered into with the Municipal Manager.
 - (iii) *“Mr Ungerer appear to blame officials, Mr Mokotso and all Councillors except himself. He appears as person deliberately exonerating himself in this matter without critical considering his appointment and responsibility as Municipal Manager. Mr Ungerer ignores the fact that he was legally appointed by Council as Acting Municipal Manager and assumes all responsibility of the Municipal Manager”. (sic)*
 - (iv) There was a Council resolution on Mr Ungerer’s appointment to act and which is a point he did not deny or refute in his written response.

-
- (v) Section 82(1) of the Municipal Structures Act, 1998 states that “A *Municipal Council must appoint a Municipal Manager as head of Administration and Accounting Officer for Municipality*” and “*When necessary, an Acting Municipal Manager*”;
 - (vi) Section 82(2) of the Municipal Structures Act, 1998, states that the person appointed as Municipal Manager must have the relevant skills and expertise to perform the duties associated with that post;
 - (vii) Sections 53(1) to (5) of Municipal Systems Act, 2000 deals with the way the roles and responsibilities of political structures, political office bearers and municipal manager are defined in accordance with the relevant provisions of the Municipal Structures Act, 1998 and other applicable legislation;
 - (viii) Section 55(1) deals with the roles and responsibilities of the municipal manager;
 - (ix) These provisions show that he and the Council were misled by the person who was trusted as the Accounting Officer. Mr Ungerer failed to do his job according to the prescripts of the law as required, acted in contravention of all the laws that guides his appointment. Mr Ungerer submitted an item with fundamental defects and concluded recommendations requesting the signature of the Executive Mayor;
 - (x) Mr Ungerer was supposed to have advised both the Executive Mayor and the Council; however, he failed to do so, in accordance with section 55(1) of Municipal Systems Act, 2000; and

- (xi) The points raised by him will assist the Public Protector to arrive at a different conclusion to the proposed findings and remedial action.

Response from Ms Mofokeng, Member of the Selection Panel

- 6.1.56.5 On 7 January 2025, Ms Mofokeng submitted *inter alia* that she was part of the selection panel that interviewed candidates for the position Director: Community Services, which was held on 9 June 2022, and had no further comments to make regarding the investigation.

Response from Ms Lebenya, Member of the Selection Panel

- 6.1.56.6 On 8 January 2025, Ms Lebenya submitted that she has no objection to the section 7(9)(a) notice presented to her.

Response from Mr Dlamini, Speaker of Council

- 6.1.56.7 On 9 January 2025, Mr Dlamini submitted that as the Speaker of Council, he takes note of the investigation into allegations of irregular appointment of Ms Sepheka to the position of Director for Community Services. He further stated that he had no additional information or comment to make.

Response from Mr Mofokeng, the Municipal Manager

- 6.1.56.8 On 26 March 2025, Mr Mofokeng stated *inter alia* that:
- (a) The matter was tabled at the Council meeting for noting, and Council itself decided to take the matter to the Labour Court for review despite his advice that the report is only interim;

- (b) If the Public Protector deems it appropriate, his office will facilitate the tabling of the final report before Council, which is informed by the fact that some Councillors would want to take the matter on review, and it was his advice that the affected party is the one who should take up the matter and not the Municipality; and
- (c) Ms Sepheka was informed that she may submit her inputs before the final report is issued, but she opted not to do so and indicated that she will decide on the next step to be taken by her.

Document submitted by Mr Mofokeng

6.1.56.9 Mr Mofokeng attached a copy of the draft minutes of the ordinary council meeting held on 25 February 2025, to his response. The minutes, dated 03 March 2025 indicate Council resolutions under item 13.2.19 as follows:

“

1. *Council takes note of the report and the remedial actions made by the Public Protector upon the conclusion of her investigations into the alleged irregular appointment of Mrs MC Sepheka to the position of Director for Community Services.*
2. *Council abides by the decision of the Public Protector.*
3. *Council will pursue a judicial review as provided for in terms of section 158(1)(h) of the Labour Relations Act, to address the irregular appointment of Mrs Sepheka as Director for Community Services; and*
4. *The Municipal Manager must reduce his opinion in writing and submit it to the Speaker within a period of 10 days from date of this resolution.”*

Applicable law

The Constitution of the Republic of South Africa, 1996

6.1.57 Section 195(1) of the Constitution provides that *“Public Administration must be governed by the democratic values and principles enshrined in the Constitution, including the following:*

- a) A high standard of professional ethics must be promoted and maintained;*
- ...*
- f) Public administration must be accountable*
- g) ...*
- h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.”*

6.1.58 Section 195(2)(a) provides that the above principles apply to administration in every sphere of government.

Local Government: Municipal Systems Act, 2000

6.1.59 Section 50(1) of the Local Government: Municipal Systems Act (MSA) provides that local public administration is governed by the democratic values and principles embodied in section 195(1) of the Constitution.

6.1.60 Section 56(a) of the MSA states that *“A municipal council, after consultation with the municipal manager, appoints a manager directly accountable to the municipal manager.”*

Regulations on Appointment and Conditions of Employment of Senior Managers, dated 17 January 2014, issued in terms of the Municipal Systems Act, 2000

- 6.1.61 Regulation 6(3) of the Appointment Regulations states that “*Selection must be competence-based to enhance the quality of appointment decision and ensure the effective performance by the Municipality of their functions*”.
- 6.1.62 Regulation 9(1) of the Appointment Regulations states that “*A person appointed as senior manager in terms of this regulations must have the competencies as set out in Annexure A*”.
- 6.1.63 Regulation 15(3) of the Appointment Regulations states that “*The selection panel must keep records of every panel member’s individual assessment of the interviewed candidates*”.
- 6.1.64 Regulation 16(1) of the Appointment Regulations provides that “*the candidates recommended for appointment to the post of senior manager must undergo a competency assessment*”.
- 6.1.65 Regulation 16(5) of the Appointment Regulations states that “*the selection panel must submit a report and recommendation on the selection process to the municipal council on the suitability of the candidate who complied with relevant competency requirements of the post as set out in Annexures A and B, in order of preference*”.

Local Government: Competency Framework for Senior Managers, Annexure “A”

6.1.66 According to Annexure A of the Appointment Regulations, core competencies are defined as *“competencies that cut across all levels of work in the Municipality and enhance contextualized leadership that guarantees service delivery impact. Leading competencies are defined as “competencies that are required to develop a clear institutional, strategic, initiate, and implement program to achieve sustainable service delivery performance results.”*

6.1.67 Paragraph 2.4 of Annexure A of the Appointment Regulations states that:

“There is no hierarchical connotation to the structure and all competencies are essential to the role of Senior Managers to influence high performance. All competencies must therefore be considered as measurable and critical in assessing the level of senior manager’s performance”.

6.1.68 The competencies in terms of the Competency Framework Structure in paragraph 2 of Annexure A of the Appointment Regulations are as follows:

Leading Competencies	
Strategic Direction and Leadership	<ul style="list-style-type: none"> • Impact and influence • Institutional performance management • Strategic planning and Management • Organisational awareness
People Management	<ul style="list-style-type: none"> • Human Capital planning and Development • Diversity Management • Employee Relation Management • Negotiation and Dispute Management

Programme and Project Management	<ul style="list-style-type: none"> • Program and Projection planning and implementation • Service Delivery Management • Program and Project Monitoring and Evaluation
Financial Management	<ul style="list-style-type: none"> • Budget Planning and Execution • Financial Strategy and Delivery • Financial Reporting and Monitoring
Change Management	<ul style="list-style-type: none"> • Change Vision and Strategy • Process Design and Improvement • Change Impact Monitoring and Evaluation
Governance Leadership	<ul style="list-style-type: none"> • Policy formation • Risk and Compliance Management • Cooperative Governance
Core Competencies	
Moral competence	
Planning and organising	
Analysis and Innovation	
Knowledge and Information Management	
Communication	
Results and Quality Focus	

6.1.69 Paragraph 6 of Annexure A of the Appointment Regulations provides that “*the achievement levels indicated in the table below serves as a benchmark for appointments, succession planning and development interventions*”.

6.1.70 Paragraph 6.1 of Annexure A of the Appointment Regulations provides further that “*individuals falling within the “basic” range are deemed unsuitable for the*

role of senior manager, and caution should be applied in promoting and appointing such person”.

Achievement level	Description
Basic	Applies basic concepts, methods and understanding of local government operations, but require supervision and development intervention.
Competent	Develops and applies more progressive concepts, methods and understanding. Plan and guides the work of others and executes progressive analysis.
Advanced	Develop and applies complex concepts, methods and understanding. Effectively directs and lead the group and execute in-depth analysis
Superior	Has a comprehensive understanding of local government operations, critical in shaping strategic direction and change, develops and applies comprehensive concepts and methods.

Code of Conduct for Councillors in terms of Schedule 7 of the Local Government: Municipal Structures Act, 1998, as amended

6.1.71 Paragraph 2 of the Code of Conduct for Councillors in terms of Local Government: Municipal Structures Act, 1998, as amended states that:

“A councillor must—

- 5. perform the functions of office in good faith, honestly and in a transparent manner; and*
- 6. at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.”*

6.1.72 Paragraph 15 of the Code of Conduct for Councillors states that:

“

(1) *If the speaker of a municipal council, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the speaker must—*

- (i) authorise an investigation of the facts and circumstances of the alleged breach;*
- (j) give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and*
- (k) report the matter to a meeting of the municipal council after paragraphs (a) and (b) have been complied with.*

Labour Relations Act, 1995

6.1.73 Section 158(1)(h) of the Labour Relations Act, 1995 states 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”*.

Case Law

Dilotsotlhe v Mahikeng Local Municipality and others¹⁰

6.1.74 In the Dilotsotlhe matter, the court had to determine whether an applicant who has been assessed and scored *“Basic”* in the Competency-Based Assessment is employable or not. It was held that:

¹⁰ *Dilotsotlhe v Mahikeng Local Municipality and others* (UM 130/2020) [2021] ZANWHC (25 October 2021).

“...The language used in item 6.1 of Annexure A of the regulations is clear, such a candidate is capable of being employed or promoted to a senior manager on one condition that the employer should exercise caution in employing or promoting such a candidate. This means that the administrator must give sound, sufficient and reasonable grounds why the candidate who is assessed as Basic should be employed or promoted. Item 6.1 in my view was never intended to empower the municipality to overlook the basic requirements for filling the post of a senior manager as set out in Annexures A and B, as well as regulations 9(1) and 16(5).

...

Once he is assessed as basic in the competency assessment, it means he has not lived up to the prescribed minimum requirements of the post of senior manager, and because of that, whoever wants to appoint him must exercise caution. That is why there is no need for caution where a candidate has satisfied all the requirements of the post.”¹¹

6.1.75 The Court further held that:

“...In my view, the municipality has no power to overlook a candidate who has met all the requirements of the senior manager’s post (including being successful in the competency assessment) in favour of the one who was assessed as basic in the competency assessment. It therefore follows that if candidate A scores Basic and his/her two opponents (B and C) are successful, candidate A automatically drops from the race at that stage even before reaching the finishing line in the racetrack. He/she cannot be considered for appointment because there are two best candidates above him/her.”¹²

¹¹ Dilotsotlhe case paragraph 16.

¹² Dilotsotlhe case paragraph 17.

“It will be a totally different picture for instance if all three candidates are assessed Basic in the competency assessment. It is here where the employer (municipal council) should exercise caution when it considers appointing one of them...”¹³

- 6.1.76 In this instance, the Court ordered that the decision of the Council regarding the appointment of the incumbent was unlawful, and the contract entered into between the parties was also unlawful.¹⁴
- 6.1.77 In the case of *Kwazulu Natal Department of Transport V Hoosen and Others*¹⁵, the court held that the promotion of a candidate who did not meet the requirements of the advertised post amounted to an unfair labour practice. The court pointed out that the employee’s *“promotion was irregular by not meeting the minimum criterion for the position”*.

***Public Protector and Others v President of the Republic of South Africa and Others*¹⁶**

The Constitutional Court held that *“It cannot be gainsaid that the Public Protector’s investigation may implicate the rights in the Bill of Rights. Consequently, the Public Protector Act in terms of which those investigations are undertaken must be interpreted in a manner, where reasonably possible, that promotes the objects of the Bill of Rights. Section 7(9) declares that if it appears to the Public Protector at any time during the course of an*

¹³ Dilotsotlhe case paragraph 18.

¹⁴ Dilotsotlhe case paragraph 22.

¹⁵ 2016 37 ILI 156 (LC), paragraph 23

¹⁶ [2021] ZACC [19] - at para 125-128

¹⁷ Democratic Alliance v Speaker, National Assembly [2016] ZACC 8; 2016 (3) SA 487 (CC); 2016 (5) BCLR 577 (CC) at para 19 and Cool Ideas 1186 CC v Hubbard [2014] ZACC 16; 2014 (4) SA 474 (CC); 2014 (8) BCLR 869 (CC) at para 28.

investigation that an adverse finding or a detrimental implication may result, the Public Protector must afford the affected person a hearing. Implicit in the language of section 7(9) is that where it appears that a particular remedial action adverse to the affected person may be taken, the Public Protector should afford that person an opportunity to make representations on the contemplated remedial action. If the section were to be read otherwise, the procedural fairness it guarantees would be seriously undermined. There is no reason in principle or logic that fairness envisaged in the provision should be restricted to findings or implication by evidence. The bigger risk to the affected person's rights is posed by the remedial action. And section 7(9) should not be given a meaning that is antithetical to the rule of law.

For all these reasons, I conclude that when the Public Protector contemplates taking remedial action against the subject of an investigation, that subject is entitled to an opportunity to make representations on the envisaged remedial action. For a proper opportunity to be given, the Public Protector must sufficiently describe the remedial action in question to enable the affected person to make meaningful representations”.

Analysis

- 6.1.78 The evidence before the Public Protector indicates that in March 2022, the Municipality advertised various Section 56 Manager positions, including that of Director: Community Services. The evidence further reveals that four (4) applicants, namely Candidate A, C, D and Ms Sepheka were shortlisted for interviews. However, only three (3) candidates attended the interviews, except Candidate D.
- 6.1.79 In terms of Regulation 16(1) of the Appointment Regulations, the candidates recommended for appointment to the post of senior manager must undertake

a competency assessment. Furthermore, Regulation 16(5) of the Appointment Regulations states that “the *selection panel must submit a report and recommendation on the selection process to the municipal council on the suitability of the candidate who complied with relevant competency requirements of the post as set out in Annexures A and B, in order of preference*”.

- 6.1.80 The evidence revealed that Candidate A had previously undertaken a Competency Based Assessment and the report obtained in April 2022 was still valid. In terms of the Competency Based Assessment Report, Candidate A obtained an overall achievement level of “*Basic*”. Ms Sedibanethe Human Capital Manager, Industrial Psychometrist (COGTA Accounts Manager) of Gijima confirmed that the twelve months validity period of the Competency Based Assessment Report.
- 6.1.81 In addition, according to the evidence, on 22 June 2022, Ms Sepheka underwent a Competency Based assessment which was administered by Gijima. The Competency-Based Assessment Report dated 6 July 2022, indicates that she obtained an overall achievement level of “*Basic*”. The Report further states that an overall achievement score of “*Basic*” falls short of the minimum requirements as stipulated in the Government Gazette, Annexure B of the Local Government Systems Act, 2000 and the Local Government Appointment Regulations.
- 6.1.82 It is also evident from the Competency Based Assessment Report that Candidate C who had also applied and was interviewed for both positions of Director: Community Services and Director: Public Safety, was only assessed for the latter position. The Competency Based Assessment Report only contains his performance for the position of Director: Public Safety and indicates that he obtained an overall achievement level of “*Competent*”.

- 6.1.83 Therefore, based on this evidence, it can be inferred that Candidate C did not undertake a competency-based assessment for the position of Director: Community Services and was not considered for appointment to this post. This is contrary to the Report by the Executive Mayor to Council which states that the top three candidates for each post were subjected to the competency-based assessment.
- 6.1.84 The evidence obtained by the Public Protector, namely the unsigned Report by the Municipal Manager and the Report of the Executive Mayor recorded that having completed the process of interviews and Competency Based Assessment, the selection panel reconvened to make a final recommendation to Council regarding the preferred candidates for the position of Director: Community Services.
- 6.1.85 According to the minutes of the Council meeting held on 18 August 2022, the Executive Mayor, Mr G Mokotso, presented to Council the Reports on the filling of the vacant Section 56 manager positions and recommended, amongst others, the appointment of Ms Sepheka as Director: Community Services. In terms of the minutes, Council resolved to appoint Ms Sepheka as Director: Community Services for a period of five (05) years. Ms Sepheka was appointed as Director: Community Services, as per the appointment letter dated 24 August 2022, signed by Mr Ungerer, the former Acting Municipal Manager.
- 6.1.86 Paragraph 6.1 of Annexure A of the Appointment Regulations provides that individuals falling within the “*Basic*” range are deemed unsuitable for the role of senior manager, and caution should be applied in promoting and appointing such persons.
- 6.1.87 It, therefore, follows that since Candidate A and Ms Sepheka achieved an overall level of “*Basic*” in their respective Competency Based Assessments for

the position of Director Community Services, they should, as a general principle, have been deemed unsuitable for appointment to the role of senior manager or caution should have been exercised as stipulated in Paragraph 6.1 of Annexure A of the Appointment. Accordingly, the selection panel ought to have recorded its deliberations and should have provided Council with a motivation or reasons for recommending Ms Sepheka for appointment to the position of Director: Community Services when she had scored “Basic” in the Competency Based Assessment.

- 6.1.88 On 11 June 2024, the Investigation Team visited the Municipality to obtain outstanding documents, including the Recruitment Screening Report, score sheets of all panel members and information relating to the minutes of the reconvened meeting of the selection panel after receipt of the Competence-Based Assessment. However, the Municipality could not provide the minutes and stated that it was missing.
- 6.1.89 The information obtained from Mr Mothahama during the interview with the Investigation Team indicates that after the interview process and prior to the receipt of the Competency Based Assessment, he was prevented from accessing the Municipality’s premises due to other related issues. He stated that as the Chairperson of the selection panel, he was not able to reconvene the selection panel to deliberate on the outcomes of the Competency Based Report and he did not submit a signed report to Council with recommendations for a suitable candidate for the position. He submitted that he compiled a draft report regarding the outcomes of the interviews, however, he neither signed nor finalised the report as the Chairperson of the selection panel.
- 6.1.90 The information obtained by the Investigation Team from the other selection panel members, also confirmed that the selection panel did not reconvene after the interview process to deliberate on the outcome of the Competency Based

Assessment report. There is also no evidence before the Public Protector indicating that a new Chairperson of the selection panel was appointed by Council or that alternative measures were put in place to finalise the recruitment process for this post.

- 6.1.91 The Municipality was unable to provide the Public Protector with the minutes of either the reconvened meeting to ascertain the special circumstances that the selection panel considered or a signed report of the selection panel recommending the appointment of Ms Sepheka. This is contrary to Regulation 15(3) of the Appointment Regulations which requires the selection panel to keep records of every panel member's individual assessment of the interviewed candidates. In the absence of these records and in light of the Municipality's failure to provide a substantive response supported by evidence, there is no proof that the selection panel reconvened after receipt of the Competency Based Assessment Report to make any recommendation to Council on the suitability of Ms Sepheka.
- 6.1.92 This is contrary to Regulation Regulation 16(5) of the Appointment Regulations which requires the selection panel to submit a report and recommendation to Council on the suitability of the candidate (own emphasis). In this instance, Mr Mokotso presented his report to Council which was based on a draft report that was not signed by Mr Mothamaha as the Chairperson of the selection panel. Mr Mokotso's conduct misled Council on the true circumstances of the appointment process and was therefore contrary to paragraph 2 of the Code of Conduct for Councillors.
- 6.1.93 In the Dilotsotlhe case, the court held that the language used in item 6.1 of Annexure A of the regulations is clear, that a candidate who scored "*basic*" is capable of being employed or promoted to senior manager on one condition that the employer should exercise caution in employing or promoting such a

candidate which means that the administrator must give sound, sufficient and reasonable grounds why the candidate who is assessed as “*Basic*” should be employed or promoted. (own emphasis)

- 6.1.94 The court further held that once he is assessed as basic in the competency assessment, it means he has not lived up to the prescribed minimum requirements of the post of senior manager, and because of that, whoever *wants to appoint him must exercise caution*. (own emphasis)
- 6.1.95 The Court also held that if all three candidates are assessed “*Basic*” in the competency assessment, it is here where the employer (municipal council) should exercise caution when it considers appointing one of them. The court declared the contract of employment unlawful and set it aside.
- 6.1.96 In this instance, both Ms Sepheka and Candidate A achieved an overall score of “*Basic*” in their respective competency-based assessments. Therefore, in line with Paragraph 6.1 of the Annexure A of the Regulations and the court judgment, the Selection Panel should have exercised caution and provided sound, sufficient and reasonable grounds for recommending Ms Sepheka to Council for employment or promotion.
- 6.1.97 Paragraph 2.4 of Annexure A of the Appointment Regulations states, *inter alia*, that there is no hierarchical connotation to the structure and all competencies are essential to the role of Senior Managers to influence high performance. All competencies must therefore be considered as measurable and critical in assessing the level of a senior manager’s performance.
- 6.1.98 The Public Protector notes that Ms Sepheka obtained a high score during the interview, however, in the absence of the complete record of every selection panel member’s individual score sheets; the minutes of the reconvened

meeting of the selection panel; and the signed report of the selection panel giving sound, sufficient and reasonable grounds why Ms Sepheka was recommended for appointment after receipt of the Competency Based Assessment Report, which scored her as “*Basic*”, there is no evidence before the Public Protector to show that the Selection Panel made a recommendation on Ms Sepheka’s suitability for the post.

- 6.1.99 Furthermore, if Council accepted Mr Mokotso’s report, without being made aware that his recommendation was based on a draft report of the selection panel and that no recommendation was actually made for the position, it also had to comply with Regulation 9(1) read with Paragraph 6.1 of Annexure A, in exercising caution when it was faced with a candidate who scored “*Basic*” by providing “*sound, sufficient and reasonable grounds*”¹⁷ why it approved the appointment of Ms Sepheka. The minutes of the Council meeting dated 18 August 2022, did not reflect any deliberations on the sound, sufficient and reasonable grounds considered in the appointment of Ms Sepheka.
- 6.1.100 Mr Dukwana issued two directives, dated 21 September 2022 and 19 October 2022 respectively, to all Administrators, Executive Mayors and Mayors in the Free State Province regarding the non-appointment of Section 56 Managers who scored “*Basic*” in the Competency Based Assessment.
- 6.1.101 The initial directive dated 21 September 2022 stated, *inter alia*, that in line with the Dilotsotlhe case, Council is to rescind any and all appointments made with effect from 25 October 2021 to date, where candidates scored “*Basic*”. The directive further stated that failure to act as requested “*will result in approaching the High Court for a Declaratory Order setting aside all*

¹⁷ Dilotsotlhe case paragraph 16

appointments where candidates scored basic from the 25 October 2021, as invalid”.

- 6.1.102 The second directive dated 19 October 2022, however, withdrew the initial directive and states, *inter alia*, that “*All senior managers who had been appointed and attained basic should continue with their contract until they expire*”. However, this decision will not cure the defects in the appointment of Ms Sepheka.
- 6.1.103 The Public Protector notes the responses to the section 7(9)(a) notice from Mr Mothamaha, Mr Khiba, Mr Ungerer, Mr Mokotso, Ms Mofokeng, Ms Lebenya, Mr Dlamini and Mr Mofokeng.
- 6.1.104 The Public Protector notes with concern that the recommendation to Council for the appointment of Ms Sepheka was also procedurally flawed. Evidence before the Public Protector indicates that the recommendation to Council and subsequent appointment of Ms Sepheka was made without the recruitment process being finalised as required, in that, the Interview Panel did not reconvene to deliberate on the outcome of the Competency Assessment and its effect on the potential candidates the appointment the recommendation was submitted to Council for approval.
- 6.1.105 This was confirmed by Mr Mothamaha who submitted during the interview with the Investigation Team that the panel did not reconvene to finalise the process. In addition, he submitted that although he compiled a draft report regarding the outcomes of the interviews, but this report was neither signed nor finalised by him as the Chairperson of the selection panel.
- 6.1.106 According to the information before the Public Protector, Mr Mokotso failed to confirm the veracity of the unsigned report allegedly presented to him by Mr

Ungerer, which stated that *“Having completed the process of interviews and Competency Based Assessment, the Selection Panel reconvened to make a final recommendation to the Council regarding preferred candidates for the position of Director: Community Services and others”*, as there were no minutes of the reconvened meeting to support the contents of the unsigned report. Mr Mokotso also failed to take into account that the unsigned report made no mention of the special circumstances taken into account to appoint Ms Sepheka as she had scored *“Basic”* in the Competency Based Assessment.

- 6.1.107 Moreover, Mr Ungerer who was the Acting Municipal Manager at the time, refuted in his response to the section 7(9) Notice the statement made by Mr Mokotso that he provided him with the recruitment report. He contended that during the period that he was appointed as the Acting Municipal Manager, he did not present any report to the Committee, Council, Mr Mokotso or any other political office bearer but rather only implemented the Council resolution by signing Ms Sepheka’s appointment letter. Even if Mr Ungerer had submitted such a report to Mr Mokotso, he accepted the unsigned report and presented it to Council.
- 6.1.108 In her response to the section 7(9) notice, Ms Mofokeng who was part of the selection panel stated that she had no further comments to make regarding the investigation. Similarly, Ms Lebenya who was also a member of the selection panel submitted that she has no objection to the section 7(9)(a) notice presented to her.
- 6.1.109 Mr Dlamini submitted in his response to the section 7(9) notice, that as the Speaker of Council, he takes note of the investigation into allegations of irregular appointment of Ms Sepheka to the position of Director for Community

Services. He further stated that he had no additional information or comment to make.

- 6.1.110 In his response to the section 7(9) notice on 26 March 2025, Mr Mofokeng stated that the matter was tabled at the Council meeting for noting, and Council itself decided to take the matter to the Labour Court for review despite his advice that the report is only interim. He further stated that If the Public Protector deems it appropriate, his office will facilitate the tabling of the final report before Council, which is informed by the fact that some Councillors would want to take the matter on review, and it was his advice that the affected party is the one who should take up the matter and not the Municipality; and Ms Sepheka was informed that she may submit her inputs before the final report is issued, but she opted not to do so and indicated that she will decide on the next step to be taken by her.
- 6.1.111 Whilst the Public Protector notes Mr Mofokeng response, however, the minutes of the Council meeting held on 25 February 2025, indicate that Council resolved to abide by the decision of the Public Protector and pursue a judicial review in terms of section 158(1)(h) of the Labour Relations Act, 1995 to address the irregular appointment of Ms Sepheka as the Director: Community Services.
- 6.1.112 In line with the Court's judgment in *Public Protector and Others v President of the Republic of South Africa and Others*, that when the Public Protector contemplates taking remedial action against the subject of an investigation, that subject is entitled to an opportunity to make representations on the envisaged remedial action, the Public Protector issued Ms Sepheka with a section 7(9)(a) notice dated 11 December 2024.

- 6.1.113 The objective of issuing the section 7(9)(a) notice was to afford Ms Sepheka a proper opportunity to make meaningful representations to the remedial action as the affected person. Ms Sepheka did not exercise the opportunity granted to her to make representations to the likely adverse findings and remedial action.
- 6.1.114 The Public Protector notes the submission in Mr Mofokeng's response that Ms Sepheka was informed that she may submit her inputs before the final report is issued, but she opted not to do so and indicated that she will decide on the next step to be taken by her.

Conclusion

- 6.1.115 Based on the evidence and information obtained, the Public Protector concludes that the selection panel and Council did not comply with Regulation 9(1) read with Paragraph 6.1 of Annexure A when Ms Sepheka was recommended and approved for appointment. Candidate A and Ms Sepheka did not meet the minimum requirements for the post as they had scored "*Basic*" in the Competency Based Assessment.
- 6.1.116 The selection panel and Council had to exercise caution and record sound, sufficient and reasonable grounds for recommending and approving the appointment of Ms Sepheka. There is no evidence before the Public Protector indicating any deliberations and recommendation of the selection panel, and Council's deliberation on the appointment, contrary to the applicable regulations and precedent set by the court in the Dilotsotlhe case.
- 6.1.117 The conduct of Mr Mokotso and its Council in appointing Ms Sepheka to the position of Director: Community Services, was not in line with Regulations 9(1), 16(5) was not in line with Regulations 9(1), 16(5) of the Appointment

Regulations, paragraph 2 of the Code of Conduct for Councillors and the basic values and principles of section 195 of the Constitution.

7. FINDINGS

Having regard to the evidence, the regulatory framework determining the standards that the functionaries of the Municipality and its Council should have complied with and the impact thereof on good administration, the Public Protector makes the following adverse findings:

7.1 **Whether the functionaries of Maluti-A-Phofung Local Municipality and its Council irregularly appointed Ms Sepheka to the position of Director: Community Services, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act**

7.1.1 The allegation that the functionaries of the Municipality and its Council irregularly appointed Ms Sepheka to the position of Director: Community Services, **is substantiated.**

7.1.2 Candidate A and Ms Sepheka did not meet the requirements of Regulation 9(1) of the Appointment Regulations as they both obtained a score of “Basic” in the Competency-Based Assessment and were therefore deemed unsuitable for the role of senior manager.

7.1.3 The selection panel did not reconvene to make a recommendation to Council on the appointment of Ms Sepheka to the position of Director: Community Services. Mr Mokotso presented his report to Council that was based on a draft report which was not signed by Mr Mothamaha, which misled Council on the true circumstances of the appointment process.

- 7.1.4 Council resolved to appoint Ms Sepheka despite her not meeting the relevant competency requirements for the post as set out in Annexure A of the Appointment Regulations without exercising caution and recording the reasons for approving such an appointment.
- 7.1.5 The recommendation by Mr Mokotso and subsequent appointment of Ms Sepheka by Council was in contravention of the provisions of section 195(1) (a), (f), (g) and (h) of the Constitution, Regulations 9(1), 16(5) of the Appointment Regulations and paragraph 2 of the Code of Conduct for Councillors.
- 7.1.6 The conduct of Mr Mokotso and Council 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 report upon the conclusion of an investigation where adverse findings are made.
- 8.2 In ***Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others***, the Constitutional Court per Mogoeng, CJ held that the remedial action taken by the Public Protector has a binding effect.
- 8.3 Having regard to the evidence, the regulatory framework determining the standard the Municipality should have complied with, the Public Protector

takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Member of the Executive Council for COGTA

- 8.3.1 Take Cognisance of the report and ensure the implementation of the remedial action.

The Speaker of Council

- 8.3.2 Within **sixty (60) calendar days** from the date of this report, in terms of paragraph 15 of the Code of Conduct for Councillors in terms of Schedule 7 of the Local Government: Municipal Structures Act, 1998, as amended, take appropriate action against Mr Mokotso for the breaching the Code of Conduct for Councillors.

The Executive Mayor

- 8.3.3 Within ninety **(90) calendar days** from the date of this report, in terms of section 56(3)(f) of the Municipal Structures Act, 1998, table the report before the Municipal Council for deliberation and obtain approval to pursue a judicial review, as provided for in section 158(1)(h) of the Labour Relations Act, 1995 to address the irregular appointment of Ms Sepheka as the Director: Community Services.


The Municipal Manager

- 8.3.4 Within **sixty (60) calendar days** from the date of this report, in line with Regulation 12(4)(a) of the Appointment Regulations and as the Chairperson of the Selection Panel for the appointment of senior managers directly

accountable to the Municipal Manager, ensure that future appointments are made in full compliance with section 56 of the Municipal Systems Act, 2000 as amended¹⁸ and the Appointment Regulations.

9. MONITORING

- 9.1 The Executive Mayor, Municipal Manager and the Speaker of Council, to submit an action plan to the Public Protector within **thirty (30) calendar days** from the date of this report on the implementation of the remedial action referred to in paragraph 8 above.
- 9.2 The submission of the implementation plan and the implementation of the remedial action shall, in the absence of a court order, be complied with within the period prescribed in this report to avoid being in contempt of the Public Protector.
- 9.3 In line with the Constitutional Court Judgement in the matter of *Economic Freedom Fighters*, and to ensure the effectiveness of the Public Protector, the remedial action prescribed in this Report is legally binding on the Municipality unless there is an Interim Interdict or Court Order directing otherwise.



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

Assisted by: Adv E de Waal
Senior Manager: PII Inland

¹⁸ Municipal Systems Amendment Act 3 of 2022, amended the Municipal Systems Act, 2000.