

**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**

*“Allegations of improper conduct and maladministration relating to the leasing of communal land
by the Kareeberg Local Municipality (Municipality) in the Northern Cape Province”*

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT
AND MALADMINISTRATION RELATING TO THE LEASING OF MUNICIPAL COMMUNAL
LAND BY THE KAREEBERG LOCAL MUNICIPALITY IN 2019**

INDEX

Executive Summary	3
1. INTRODUCTION	7
2. THE COMPLAINT	8
3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR	8
4. THE INVESTIGATION	12
5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS	16
6. FINDINGS	22
7. REMEDIAL ACTION	23
8. MONITORING	24

Executive Summary

- (i) This is a report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, (the Constitution) and section 8(1) of the Public Protector Act 23 of 1994 (the Public Protector Act).
- (ii) The report communicates the findings and appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, following an investigation into allegations of improper conduct and maladministration relating to the leasing of communal land by the Kareeberg Local Municipality (Municipality) in the Northern Cape Province.
- (iii) The complaint was lodged by Mr Esau Hoorn, a Councillor of the Municipality (Complainant) on 30 August 2019 at the Upington Regional Office of the Public Protector South Africa (PPSA).
- (iv) In the main, the Complainant alleged that:
 - (a) The Municipality owns about fourteen (14) camps on communal land which are put out on tender every five (5) years to prospective small farmers.
 - (b) According to Municipality's Communal Land Policy, retired public service officials, current public service officials or any official in the service of the Municipality do not qualify to farm on the commune. However, the Municipality ignored the provisions of the Policy by awarding tenders to retired public service officials.
 - (c) Mr J Warries was a retired public servant and did not qualify to farm on the communal land with regard to the Communal Land Policy of the Municipality.
- (v) In essence, the Complainant alleged that the Municipality entered into five (5) year lease agreements with retired public service officials in contravention of

the Communal Land Policy of the Municipality and that the conduct of the Municipality was improper and constitutes maladministration.

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

(a) Whether the leasing of Municipal communal land to current public or retired public servants and people without valid Animal Identification Marks Certificates by the Kareeberg Local Municipality was not in accordance with the relevant laws and prescripts regulating the leasing of municipal communal land at the Municipality; and if so, whether the conduct of the Municipality was improper and constitutes maladministration.

(vii) The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act. It included correspondence with the Municipality, an analysis of the relevant documents and information obtained during the investigation and consideration and application of the relevant laws and prescripts.

(viii) Having considered the evidence and information obtained during the investigation, the Public Protector makes the following findings:

(a) Regarding whether the leasing of Municipal communal land to current or retired public servants and people without valid Animal Identification Marks Certificates by the Kareeberg Local Municipality was not in accordance with the relevant laws and prescripts regulating the leasing of municipal communal land at the Municipality; and if so, whether the conduct of the Municipality was improper and constitutes maladministration:

(aa) The allegation that the leasing of Municipal communal land to current or retired civil servants and people without valid animal identification marks by the Kareeberg Local Municipality was not in accordance with the relevant laws and

prescripts regulating the leasing of municipal communal land at the Municipality, is substantiated.

- (bb) The Municipality entered into lease agreements in respect of communal land with Mr Dawid Warries and Mr Willem Vissie in contravention of section 63 of the Local Government: Municipal Finance Management Act, 2003 (MFMA) and Clause 4.4.8 of the Communal Land Policy in that Mr D Warries was a retired public servant while Mr J Warries is a current public servant.
- (cc) The Municipality entered into lease agreements with Mr M Beest, Ms Vissie and Ms M Olivier in contravention of Clause 3.2.7 of the Communal Land Policy as at 1 June 2019 as they did not have Animal Identification Marks registered with the National Department of Agriculture, Land Reform and Rural Development.
- (dd) The allegation that the conduct of the municipality was improper and constitutes maladministration, is also substantiated.
- (ee) The Municipality's conduct accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.
- (ix) The appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution is the following:

(a) The Acting Municipal Manager of the Municipality to:

- (aa) To obtain legal advice on whether the lease agreements entered into by the Municipality in violation of the Communal Land Policy can be cancelled and if so, the impact thereof, and if not, the appropriate legal remedy available to the Municipality to address the impropriety, and to act accordingly, **within sixty (60) working days** from the date of the report.

- (bb) To take the appropriate steps in respect of disciplinary action against the Municipality's officials who contributed to the improper awarding of the lease agreements, in terms of the Disciplinary Policy of the Municipality and section 67(1)(h) of the Local Government: Municipal Systems Act, 2000, **within sixty (60) working days** from the date of the report of the Public Protector.
- (cc) Ensure that all the officials of the Municipality that are involved in the leasing of communal land are properly trained on the provisions and application of the Communal Land Policy, within sixty (60) working days from the date of the report of the Public Protector.
- (dd) Establish, within **one hundred and twenty (120) working days** from the date of the report, internal complaint mechanisms to ensure that service delivery complaints against process failures and internal control deficiencies are expeditiously resolved.
- (ee) Ensure that the Internal Audit Unit of the Municipality, on an annual basis, conducts audit to determine the adequacy and effectiveness of the municipality's system of internal controls to identify risks, ensure compliance and prevent irregularities as envisaged by section 165 of the MFMA.
- (ff) Ensure that the Audit Committee of the Municipality, in all its quarterly meetings, consider the internal audit, AGSA and other related investigation reports to ensure that the recommendations are implemented, as envisaged by section 166 of the MFMA; and
- (gg) Submit a report to the Council on the implementation of the remedial action taken in paragraphs (ix) (a) (aa) to (ff), within **sixty (60) working days** from the date of the report and provide the Public Protector with a copy thereof.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION RELATING TO THE LEASING OF MUNICIPAL COMMUNAL LAND BY THE KAREEBERG LOCAL MUNICIPALITY IN 2019

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 23 of 1994 (the Public Protector Act).
- 1.2. The report is submitted in terms of sections 8(1) and 8(3) of the Public Protector Act to the following persons to inform them of the outcome of the investigation and the remedial action taken:
 - 1.2.1 Dr Zamani Saul, the Premier of the Northern Cape Province;
 - 1.2.2 Mr B Vass, the Member of the Northern Cape MEC for Cooperative Governance, Human Settlements and Traditional Affairs (COGHSTA);
 - 1.2.3 Mr B S Lenkoe, the Head of the Northern Cape Department of COGHSTA;
 - 1.2.4 Ms Farah Malgas, the Speaker of the Kareeberg Local Municipality (Municipality);
 - 1.2.5 Mr Monray Maczali, the Mayor of the Municipality; and
 - 1.2.6 Mr Zolile Mjandana, the Acting Municipal Manager of the Municipality.
- 1.3 A copy of the report is also provided to Mr Esau Hoorn, who lodged the complaint.
- 1.4 The report relates to an investigation into allegations of improper conduct and maladministration relating to the leasing of communal land by the Kareeberg Local Municipality (Municipality) in the Northern Cape Province.

2. THE COMPLAINT

2.1. The complaint was lodged by Mr Esau Hoorn, a Councillor of the Municipality (Complainant) on 30 August 2019 at the Uppington Regional Office of the Public Protector South Africa (PPSA).

2.2. In the main, the Complainant alleged that:

2.2.1. The Municipality owns about fourteen (14) camps on communal land which were put out on tender every five (5) years to prospective small farmers.

2.2.2. According to Municipality's Communal Land Policy, retired public service officials, current public service officials or any official in the service of the Municipality do not qualify to farm on the commune. However, the Municipality ignored the provisions of the Policy by awarding tenders to retired public service officials.

2.2.3. Mr J Warries was a retired public servant and did not qualify to farm on the communal land having regard to the Communal Land Policy of the Municipality.

2.3. In essence, the Complainant alleged that the Municipality entered into five (5) year lease agreements with retired public service officials in contravention of the Communal Land Policy of the Municipality and that the conduct of the Municipality was improper and constitutes maladministration.

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 to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

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

"The Public Protector has the power as regulated by national legislation –

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

3.3 Section 182(2) of the Constitution directs that the Public Protector has additional powers and functions prescribed by national legislation.

3.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs and to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.5 In the matter of the *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.¹ The Constitutional Court further held that:

“When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.”²

3.6 The constitutional court further held that:

¹ [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].

² *Supra* at para [73].

- 3.6.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65);
- 3.6.2 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (paragraph 67);
- 3.6.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints, as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68);
- 3.6.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (paragraph 69);
- 3.6.5 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (paragraph 70);
- 3.6.6 The Public Protector's power to take remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (paragraph 71);
- 3.6.7 Implicit in the words "take action" is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And "action" presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in the words suggests that she has to leave the exercise of the power to

take remedial action to other institutions or that it is the power that is by its nature of no consequence (paragraph 71(a));

3.6.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d)); and

3.6.9 “Appropriate” means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (paragraph 71(e)).

3.7 In the matter of the *President of the Republic of South Africa v Office of the Public Protector and Others, Case No 91139/2016 (13 December 2017)*, the Court held as follows when confirming the powers of the Public Protector:

3.7.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the Constitution (para 71);

3.7.2 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers (paragraphs 100 and 101):

- a) Conduct an investigation;
- b) Report on that conduct; and
- c) To take remedial action.

3.7.3 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings. (para 104);

- 3.7.4 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court. (Para 105);
- 3.7.5 The fact that there are no firm findings on the wrong doing, does not prohibit the Public Protector from taking remedial action. The Public Protector's observations constitute *prima facie* findings that point to serious misconduct (paragraphs 107 and 108); and
- 3.7.6 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (paragraph 112 of the judgment).
- 3.8 The Municipality is an organ of state and its conduct amounts to conduct in state affairs, and as a result, the matter falls within the jurisdiction of the Public Protector.
- 3.9 The Public Protector's powers and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties.

4. THE INVESTIGATION

4.1 Methodology

- 4.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.
- 4.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.2 Approach to the investigation

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

4.2.1.1 What happened?

4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to improper conduct or maladministration?

4.2.1.4 In the event of improper conduct or maladministration, what would it take to remedy the wrong and what action should be taken?

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether the leasing of Municipal communal land to public or retired public servants and people without valid Animal Identification Marks Certificates by the Kareeberg Local Municipality was not in accordance with the relevant laws and prescripts regulating the leasing of municipal communal land at the Municipality; and if so, whether the conduct of the Municipality was improper and constitutes maladministration.

4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Municipality to prevent improper conduct, maladministration and prejudice.

4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and/or maladministration where possible and appropriate.

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

4.3.1 Whether the leasing of Municipal communal land to public or retired public servants and people without valid Animal Identification Marks Certificates by the Kareeberg Local Municipality was not in accordance with the relevant laws and prescripts regulating the leasing of municipal communal land at the Municipality; and if so, whether the conduct of the Municipality was improper and constitutes maladministration:

4.4 The Key Sources of information

4.4.1 Documents and correspondence

4.4.1.1. A copy of an e-mail from Mr T Sibhono, the Chief Director: Corporate Services of the Northern Cape Department of Agriculture, Land Reform and Rural Development dated 26 May 2021.

4.4.1.2 A copy of the allegations letter sent to Mr Moggamat Faried Manuel, the Municipal Manager dated 8 May 2020.

4.4.1.3 A copy of the letter from Mr W De Bruin, the then Acting Municipal Manager of the Municipality dated 5 June 2020.

4.4.2. Meetings held

4.4.2.1. Meeting held on 1 February 2022 with Mr Zolile Mjandana, the Acting Municipal Manager of the Municipality.

4.4.3. Legislation and other prescripts

4.4.3.1. *The Constitution of the Republic of South Africa, 1996.*

4.4.3.2. *The Public Protector Act No 23 of 1994.*

4.4.3.3. *The Local Government: Municipal Finance Management Act 56 of 2003.* (MFMA)

4.4.3.4. *The Local Government: Municipal Systems Act No 32 of 2000.* (Municipal Systems Act).

4.4.3.5. *The Municipality's Communal Land Policy, 2016.*

4.4.4. Notices issued in terms of section 7(9) of the Public Protector Act

4.4.4.1. A Notice was issued in terms of section 7(9) of the Public Protector Act to Mr Zolile Mjandana, the Acting Municipal Manager of the Municipality, on 22 December 2021, affording him an opportunity to respond to the evidence obtained during the investigation. He responded to the section 7(9) Notice in a meeting held on 1 February 2022 by indicating that the Municipality would study the report and sought a legal opinion on the report. He further undertook to respond in writing on 11 February 2022. In a response to the Section 7(9) Notice in a letter dated 14 February 2022, Mr Mjandana stated that:

(a) The Municipality would cancel the contracts of Mr J Warries, Mr Beest, Ms R Vissie and Ms O Olivier.

(b) Mr D Warries passed away and the lease agreement is now held by his wife.

(c) The Accounting Officer that approved the leases left the Municipality in February 2019.

(d) A workshop would be arranged for the officials in the supply chain unit to be taken through the policy.

(e) A report would be submitted to the next council meeting.

4.4.4.2. Letters were also sent to Dr Zamani Saul, the Premier of the Northern Cape, Mr BS Lenkoe, the Head of Department of COGHSTA, Mr B Vaas, the MEC of COGHSTA affording them an opportunity to respond to the contents of the section 7(9) Notice in as far as it affects or impacts them, on 22 December 2021. No responses were received.

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

5.1. Regarding whether the leasing of Municipal communal land to current public or retired public servants and people without valid Animal Identification Marks Certificates by the Kareeberg Local Municipality was not in accordance with the relevant laws and prescripts regulating the leasing of municipal communal land at the Municipality; and if so, whether the conduct of the Municipality was improper and constitutes maladministration:

Common cause or undisputed facts

5.1.1. It is common cause that on 5 April 2019 the Municipality sent out quotation requests for the leasing of fourteen (14) camps (communal land) in Carnarvon for a period of five (5) years.

5.1.2. According to a Supply Chain Management document, dated 17 April 2019 obtained during the investigation, the Municipality received 12 (twelve) quotations and subsequently approved all of them as successful bidders.

Issues in dispute

- 5.1.3. The Complainant contended that in 2019 the Municipality entered into five (5) year lease agreements with emerging farmers in contravention of the Communal Land Policy of the Municipality.
- 5.1.4. The Complainant further averred that Mr J Warriess, to whom a lease was granted by the Municipality is a retired public servant and did not qualify to farm on the communal land.
- 5.1.5. In a written response to the allegations during the investigation, dated 5 June 2020, Mr W De Bruin, the Acting Municipal Manager of the Municipality, stated that Mr J Warriess applied to lease communal land from the Municipality because he was retiring within the five (5) year period of the lease.
- 5.1.6. According to an e-mail dated 26 May 2021 obtained during the investigation, Mr T Sibhono, the Chief Director: Corporate Services of the Northern Cape Department of Agriculture, Land Reform and Rural Development stated that Mr Dawid Warriess and Mr Willem Vissie retired from the Department on 31 March 2014 and 30 November 2020 respectively. Both were awarded leases of communal land by the Municipality.
- 5.1.7. During the course of the investigation it was established that there were other contraventions of the Communal Land Policy of the Municipality in that Mr M Beest, Ms M Olivier and Ms Regina Vissie who were granted leases did not have Certificates of Registration/ Animal Identification Marks (CoR/AIM) as required by the Policy, in order to qualify for the lease of communal land.
- 5.1.8. In a letter dated 5 June 2020 from Mr W De Bruin, the then Acting Municipal Manager of the Municipality, addressed to the Public Protector South Africa (PPSA) Investigation Team, Mr De Bruin stated that Ms Regina Vissie applied for the lease of communal land using the Animal Identification Mark Certificate of her husband, Mr Willem Vissie because they were staying in one household.

- 5.1.9. According to the tender documents for the leasing of the municipal camps (communal land) received from the Municipality, dated 4 April 2019, Mr Malgas did not submit a Certificate of Registration/Animal Identification Mark (CoR/AIM) or identification number, but was granted a lease.
- 5.1.10 In terms of Mr Beest's bid documents for the leasing of the municipal camps that were received from the Municipality, dated 8 April 2019, he did not submit a Certificate of Registration/Animal Identification Mark (CoR/AIM) or identification number.
- 5.1.11 According to the bid documents for the leasing of the municipal camps received from the Municipality dated 12 April 2019, Ms M Olivier did not submit a Certificate of Registration/Animal Identification Mark (CoR/AIM) or identification number.
- 5.1.12 In response to the allegations for the leasing of the municipal camps to Mr R Malgas, Mr M Beest and Ms M Olivier, Mr W de Bruin, the then Acting Municipal Manager stated in a letter dated 5 June 2020 that:
- 5.1.12.1. First time applicants normally do not have Animal Identification Mark Certificates; and
- 5.1.12.2. Their application for Animal Identification Certificates normally start when the tender process begins.
- 5.1.13. Ms S Chilo, the Animal Identification Officer at the National Department of Agriculture, Land Reform and Rural Development, stated in emails to the PPSA Investigation team, dated 1 June 2021 and 8 June 2021 respectively, that:
- 5.1.13.1. Mr M Beest applied for Animal Identification Mark Certificate on 21 May 2019, however he did not make the full payment and the Animal Identification Mark was never issued to him;
- 5.1.13.2. Ms M Olivier did not have a registered Animal Identification Mark; and

5.1.13.3. Mr R Malgas applied for an Animal Identification Mark on 13 September 1999 and has a registered Animal Identification Mark Certificate.

Application of relevant law

5.1.14. In terms of section 60(1)(a) of the MFMA, the municipal manager of a municipality is the accounting officer for the purpose of this Act, and, as accounting officer must exercise the functions and powers assigned to an accounting officer in terms of the Act.

5.1.15. Section 62(1)(d) of the MFMA provides that the accounting officer of the municipality is responsible for managing the financial administration of the municipality and must for this purpose take all reasonable steps to ensure that unauthorised, irregular and fruitless and wasteful expenditure and other losses are prevented.

5.1.16. Section 63 of the MFMA provides that:

- (1) The accounting officer of a municipality is responsible for the management of-
 - (a) the assets of the municipality, including the safeguarding and the maintenance of those assets; and
 - (b) the liabilities of the municipality.

- (2) The accounting officer must for the purposes of subsection (1) take all reasonable steps to ensure-
 - (a) that the municipality has and maintains a management, accounting and information system that accounts for the assets and liabilities of the municipality;

- (b) that the municipality's assets and liabilities are valued in accordance with standards of generally recognised accounting practice; and
- (c) that the municipality has and maintains a system of internal control of assets and liabilities, including an asset and liabilities register, as may be prescribed.

- 5.1.17. According to paragraph 4.4.8 of the Municipality's Communal Land Policy, no public servant or former public servant or municipal official that receives a pension may become lessees of the communal land, which is an asset of the Municipality.
- 5.1.18. Mr Dawid Warries and Mr J Warries therefore did not qualify to enter into lease agreements with the Municipality on the communal land, because Mr Dawid Warries was a former public servant employed by the Department of Agriculture and Mr J Warries is currently employed at the Northern Cape Department of Agriculture, Land Reform and Rural Development.
- 5.1.19. Paragraph 3.2.7 of the Communal Land Policy stipulates that applicants must be able to provide proof of a livestock registration/Branding Mark/Tattoo Mark Certificate within one (1) month after the application for grazing rights are approved.
- 5.1.20. Mr M Beest, Ms R Vissie and Ms M Olivier did not qualify to enter into lease agreements with the Municipality for the communal land because they did not have Animal Identification Mark certificates for their livestock within one (1) month after the application for grazing rights were approved.
- 5.1.21. Ms Vissie used the Animal Identification Mark/Certificate of her husband, Mr Willem Vissie who retired from the Department of Agriculture on 30 November 2020.

- 5.1.22. A Code of Conduct for Municipal staff members is provided for in Schedule 2 of the Municipal Systems Act.
- 5.1.23. Item 2 of the Code provides that a staff member of a municipality must at all times-
- 5.1.23.1. Loyally execute the lawful policies of the municipal council;
 - 5.1.23.2. Perform the functions of office in good faith, diligently, honestly and in a transparent manner;
 - 5.1.23.3. Act in such a way that the spirit and objects of section 50 are promoted;
 - 5.1.23.4. Act in the best interests of the Municipality and in such a way that the credibility and integrity of the Municipality are not compromised; and
 - 5.1.23.5. Act impartially and treat all people, including other staff members, equally without favour or prejudice.
- 5.1.24. Breaches of the Code must, by virtue of Item 14, be dealt with in terms of the disciplinary procedures of the municipality.

Conclusion

- 5.1.25. The Municipality failed to take all reasonable steps, as envisaged in section 63(2)(a) and (b) of the MFMA, to ensure it has and maintains a system of internal control of municipality's assets by failing to verify that applicants that entered into lease agreements with the Municipality for the communal land met all requirements set out in the request for quotations by the Municipality and the provisions of the Communal Land Policy. This resulted in the leasing of communal land to applicants that did not qualify in terms of the requirements.

5.1.26. The conduct of the Municipality was accordingly improper, and constitutes maladministration.

6. FINDINGS

6.1. Regarding whether the leasing of Municipal communal land to current public or retired public servants and people without valid Animal Identification Marks Certificates by the Kareeberg Local Municipality was not in accordance with the relevant laws and prescripts regulating the leasing of municipal communal land at the Municipality and if so, whether the conduct of the Municipality was improper and constitutes maladministration:

6.1.1. The allegation that the leasing of Municipal communal land to current public or retired public servants and people without valid Animal Identification Marks Certificates by the Kareeberg Local Municipality was not in accordance with the relevant laws and prescripts regulating the leasing of municipal communal land at the Municipality and if so, whether the conduct of the Municipality was improper and constitutes maladministration, is substantiated.

6.1.2. The Municipality entered into lease agreements in respect of communal land with Mr Dawid Warries and Mr Willem Vissie in contravention of Clause 4.4.8 of the Communal Land Policy in that Mr D Warries was a retired public servant while Mr J Warries was a public servant.

6.1.3. The Municipality entered into lease agreements with Mr M Beest, Ms Vissie and Ms M Olivier in contravention of Clause 3.2.7 of the Communal Land Policy as at 1 June 2019, as they did not have Animal Identification Marks registered with the National Department of Agriculture, Land Reform and Rural Development.

- 6.1.4. The Municipality failed to take all reasonable steps to ensure that there was compliance with the Municipality's system of internal control relating to the disposal of municipality's assets.
- 6.1.5. The allegation that the conduct of the municipality was improper and constitutes maladministration, is also substantiated.
- 6.1.6. The Municipality's conduct accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

7. REMEDIAL ACTION

7.1. The appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution is the following:

7.1.1. The Acting Municipal Manager of the Municipality to:

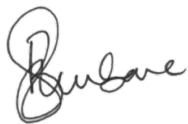
- 7.1.1.1. To obtain legal advice on whether the lease agreements entered into by the Municipality in violation of the Communal Land Policy can be cancelled and if so, the impact thereof, and if not, the appropriate legal remedy available to the Municipality to address the impropriety, and to act accordingly, within **sixty (60) working days** from the date of the report.
- 7.1.1.2. To take the appropriate steps in respect of disciplinary action, within the employ of the Municipality, who contributed to the improper awarding of the lease agreements, in terms of the Disciplinary Policy of the Municipality and section 67(1)(h) of the Local Government: Municipal Systems Act, 2000, within **sixty (60) working days** from the date of the report of the Public Protector.
- 7.1.1.3. Ensure that all the officials of the Municipality that are involved in the leasing of communal land are properly trained on the provisions and application of the

Communal Land Policy, within **sixty (60) working days** from the date of the report of the Public Protector.

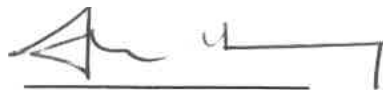
- 7.1.1.4. Establish, within hundred and twenty (120) working days from the date of the report, internal complaint mechanisms to ensure that service delivery complaints against process failures and internal control deficiencies are expeditiously resolved.
- 7.1.1.5. Ensure that the Internal Audit Unit of the Municipality, on an annual basis, conducts audit to determine the adequacy and effectiveness of the municipality's system of internal controls to identify risks, ensure compliance and prevent irregularities as envisaged by section 165 of the MFMA.
- 7.1.1.6. Ensure that the Audit Committee of the municipality, in all its quarterly meetings, consider the internal audit, AGSA and other related investigation reports to ensure that the recommendations are implemented, as envisaged by section 166 of the MFMA; and
- 7.1.1.7. Submit a report to the Council on the implementation of the remedial action taken in paragraphs 7.1.1.1. to 7.1.1.6, within **sixty (60) working days** from the date of the report and provide the Public Protector with a copy thereof.

8. MONITORING

- 8.1 The Municipal Manager of the Municipality to submit an action plan to the Public Protector within **thirty (30) working days** from the date of this report on the implementation of the remedial action referred to in paragraph 7.1 above.
- 8.2 The submission of the implementation plan and the implementation of the remedial action shall, in the absence of a court order, be complied with within the period prescribed in this report to avoid being in contempt of the Public Protector.



ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE REPUBLIC OF SOUTH AFRICA
DATE: 27 / 02 /2022



Assisted by: Mr M Khanya, Provincial Representative:
Northern Cape
PII Coastal, Public Protector South Africa