

**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**



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**INVESTIGATION INTO THE ALLEGED IRREGULAR APPOINTMENT OF MS NONCEBA
MBILINI BY THE MERAFOG CITY LOCAL MUNICIPALITY TO THE POSITION OF A
MANAGER: HUMAN CAPITAL WITHOUT HER MEETING THE MINIMUM REQUIREMENTS
FOR THE POST**

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LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS/ ABBREVIATIONS	DESCRIPTIONS
Constitution	Constitution of the Republic of South Africa, 1996
CEO	Chief Executive Officer
CV	Curriculum Vitae
Cllr.	Councillor
DBE	Department of Basic Education
HR	Human Resources
ID	Identity Document
LRA	Labour Relations Act, 1995
MFMA	Local Government: Municipal Finance Management Act, 2003
MSA	Local Government: Municipal Structures Act, 1998
MSA	Local Government: Municipal Systems Act, 2000
Municipality	Merafong City Local Municipality
NSC	National Senior Certificate
NLRD	National Learners' Records Database
NQF	National Qualifications Framework
NQF Act	National Qualifications Framework Act, 2008
Public Protector	Public Protector of the Republic of South Africa
Public Protector Act	Public Protector Act, 1994
SAQA	South African Qualifications Authority
SC	Senior Certificate
SUPRA	Above
UMALUSI	Council for Quality Assurance in General and Further Education and Training
UNISA	University of South Africa

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 relates to an investigation into the alleged irregular appointment of Ms Nonceba Mbilini (Ms Mbilini) by the Merafong City Local Municipality (the Municipality), to the position of a Manager: Human Capital without her meeting the minimum requirements for the post.
- (iii) The investigation originates from a complaint lodged with the Office of the Public Protector by an anonymous Complainant (the Complainant) on 22 October 2020.
- (iv) In the main, the Complainant alleged that:
 - (a) During the course of 2011, Ms Mbilini was appointed to the position of Training Officer by the Municipality, without her being in possession of a grade 12 certificate;
 - (b) A grade 12 certificate was required by the Municipality's Human Resources (HR) Department, prior to her appointment letter being issued. However, the Office of the Municipal Manager proceeded to issue an appointment letter to Ms Mbilini, without her submitting the certificate;
 - (c) The appointment of Ms Mbilini during 2011 as the Training Officer on job level 6 was irregular because she did not possess a grade 12 certificate as required;
 - (d) Furthermore, on 05 October 2020, Ms Mbilini was appointed to the position of Manager: Human Capital, even though she does not hold a grade 12 certificate;
 - (e) The Municipality did not comply with its Recruitment and Employment Practice Policy in the appointment of Ms Mbilini in that a person without a grade 12 certificate

cannot be shortlisted, interviewed and appointed to the position of Manager: Human Capital;

- (f) The advertisement for the position of Manager: Human Capital required a relevant Bachelor's Degree or equivalent qualification at National Qualifications Framework (NQF) level 7. NQF level 7, in accordance with the South African Qualifications Authority (SAQA), is an Advanced Diploma, which is equivalent to a Bachelor's Degree; and
 - (g) In accordance with the information submitted and captured by the HR Department, Ms Mbilini, who was shortlisted, interviewed and subsequently appointed to the position of Manager: Human Capital, has a National Diploma in Administrative Management at NQF level 6.
- (v) Based on the analysis of the complaint, the following issue was considered and investigated:
- (a) Whether the functionaries of the Municipality irregularly appointed Ms Mbilini to the position of Manager: Human Capital without her meeting the minimum requirements for the position, and if so, whether such conduct was improper as contemplated in section 182(1)(a) of the Constitution and amounted to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994.
- (vi) The complaint relating to the appointment of Ms Mbilini as a Training Officer in 2011 was not investigated by the Public Protector, as this complaint was not lodged within two years of the date of occurrence and no special circumstances could be established to warrant such investigation as required by section 6(9) of the Public Protector Act, read with Rule 10(1) of the Rules of the Public Protector and Matters Incidental thereto, 2018, as amended (the Public Protector Rules).
- (vii) 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.

- (viii) On 13 June 2023, Notices in terms of section 7(9)(a) of the Public Protector Act (section 7(9) Notices) were delivered to Mr Dumisani Mabuza (Mr Mabuza), the Municipal Manager, Mr Lesedi Mere (Mr Mere), Councillor (Cllr.) Nozuko Best (Cllr. Best), Cllr. Elvis Mphitikezi (Cllr. Mphitikezi) and Ms Nonceba Mbilini (Ms Mbilini), to afford them an opportunity to respond on the likely adverse findings and proposed remedial action. Section 7(9)(a) of the Public Protector Act, provides that persons implicated in an investigation by the Public Protector, are to be afforded an opportunity to make representations regarding same.
- (ix) A response from Ms Mbilini was received on 28 June 2023. The response and information/evidence submitted in response to the section 7(9) Notice were duly considered by the Public Protector.
- (x) A response noting the intended findings and remedial actions was received from Mr Mabuza, through a letter, dated 27 June 2023.
- (xi) There were no responses to the section 7(9) notice from either Cllr. Best or Cllr. Mphitikezi.
- (xii) 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 Municipality irregularly appointed Ms Mbilini to the position of Manager: Human Capital without her meeting the minimum requirements for the position, and if so, whether such conduct was improper as envisaged in section 182(1)(a) of the Constitution and amounted to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act**
- (aa) The allegation that the functionaries of the Municipality irregularly appointed Ms Mbilini to the position of Manager: Human Capital, is **substantiated**.
- (bb) Ms Mbilini was shortlisted, interviewed and appointed by the Municipality despite not having a matric certificate and the relevant Bachelor's Degree or equivalent tertiary qualification at NQF level 7, at the time she applied for the position of Manager: Human Capital.

- (cc) The shortlisting and subsequent appointment of Ms Mbilini by the functionaries of the Municipality was in contravention of the provisions of section 195(1)(a), (f), (g) and (h) of the Constitution, and paragraph 6.4 of the Recruitment & Employment Practice Policy of the Municipality.
- (dd) The conduct of the functionaries of the Municipality constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
- (xiii) The appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, are the following:

The Executive Mayor

- (aa) Within ninety (90) calendar days from the date of this report, in terms of section 56(3)(f) of the Municipal Structures Act (MSA), 1998, table the report before the Municipal Council for deliberation and obtain approval for the appropriate course of action to address the irregular appointment of Ms Mbilini as the Manager: Human Capital including pursuing a judicial review, as provided for in section 158(1)(h) of the LRA.

The Municipal Manager

- (bb) Within sixty (60) calendar days from the date of this report, ensure that all the Municipal officials who participate in recruitment and selection processes are trained on the Recruitment and Employment Policy of the Municipality as envisaged in section 10(1)(a) of the Public Administration Management Act, 2014, in order to ensure that future appointments are made in compliance with the Recruitment & Employment Policy.
- (cc) To ensure that proper screening and verification of the information contained in job applications is conducted by the Municipality with an authorised institution commissioned to conduct such exercise, including verification of qualifications through UMALUSI and SAQA, before the selection and recruitment process is finalised.

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 empowers 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:
- 1.2.1 Mr Mabuza, the Municipal Manager of Merafong City Local Municipality;
- 1.2.2 Cllr. Best, the Executive Mayor of Merafong City Local Municipality;
- 1.2.3 Cllr. Mphitikezi, the Speaker of the Merafong Council;
- 1.2.4 Ms Mbilini, the Manager: Human Capital at Merafong City Local Municipality; and
- 1.3 A copy of this report is also provided to the Complainant.
- 1.4 The report relates to an investigation into the alleged irregular appointment of Ms Nonceba Mbilini (Ms Mbilini) by the functionaries of the Merafong City Local Municipality (the Municipality).

2. THE COMPLAINT

- 2.1 The investigation originates from a complaint lodged with the Office of the Public Protector by an anonymous Complainant (the Complainant) on 22 October 2020.
- 2.2 In essence the Complainant alleged *inter alia*, that:
- 2.2.1 During the course of 2011, Ms Mbilini was appointed to the post of Training Officer by the Municipality, without her being in possession of a grade 12 certificate;

- 2.2.2 A grade 12 certificate was required by the Municipality's HR Department, prior to her appointment letter being issued. However, the Office of the Municipal Manager proceeded to issue an appointment letter to Ms Mbilini, without her submitting the grade 12 certificate;
- 2.2.3 The appointment of Ms Mbilini in 2011 as the Training Officer on job level 6 was irregular because she did not possess a grade 12 certificate as required;
- 2.2.4 Furthermore, on 05 October 2020, Ms Mbilini was appointed to the post of Manager: Human Capital, even though she does not hold a grade 12 certificate;
- 2.2.5 The Municipality did not comply with its Recruitment and Employment Practice Policy in the appointment of Ms Mbilini in that a person without a grade 12 certificate, cannot be shortlisted, interviewed and appointed to the post of Manager: Human Capital;
- 2.2.6 The advertisement for the post of Manager: Human Capital required a relevant Bachelor's Degree or equivalent qualification at National Qualifications Framework (NQF) level 7. NQF level 7 in accordance with the South African Qualifications Authority (SAQA), is an Advanced Diploma, which is equivalent to a Bachelor's Degree; and
- 2.2.7 In accordance with the information submitted and captured by the HR Department Ms Mbilini, who was shortlisted, interviewed and subsequently appointed to the post of Manager: Human Capital, has a National Diploma in Administrative Management at NQF level 6.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

- 3.1 The Public Protector is an independent constitutional institution established in terms of 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) directs that the Public Protector has the additional powers and functions prescribed by national legislation. The Public Protector’s powers are regulated and amplified by the Public Protector Act which state, amongst others, that the Public Protector has the powers to investigate and redress maladministration and related improprieties in the conduct of state affairs.

3.4 The Municipality is an organ of state in terms of section 239 of the Constitution and its conduct amounts to conduct in state affairs, as a result, the Public Protector is satisfied that the complaint falls within its competency to investigate as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a)(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 the Municipality irregularly appointed Ms Mbilini to the position of Manager: Human Capital without her meeting the minimum requirements for the position, and if so, whether such conduct was improper as envisaged in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

4.2 The issue relating to the appointment of Ms Mbilini as a Training Officer in 2011 was not investigated by the Public Protector, as this complaint was not lodged within two years of the date of occurrence and no special circumstances could be established to warrant such investigation as required by section 6(9) of the Public Protector Act, read

with Rule 10(1) of the Rules of the Public Protector and Matters Incidental thereto, 2018, as amended (the Public Protector Rules).

5. THE INVESTIGATION

5.1 Methodology

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

5.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to investigate with due regard to the circumstances of each case.

5.2 Approach to the Investigation

5.2.1 The approach to the investigation included the exchange of documents, analysis of the relevant documentation and 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 or other improper conduct?
- (d) In the event of a violation, what action should be taken?

5.2.3 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this case, the factual enquiry principally focused on whether the alleged conduct was inconsistent with the applicable prescripts.

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

5.2.5 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and maladministration.

5.3 **The Investigation Process**

5.3.1 The investigation process commenced with correspondence to the former Acting Municipal Manager, Ms Lerato Peu (Ms Peu) on 09 November 2020, wherein she was informed of the investigation as well as the information required from her.

5.3.2 The Public Protector has concluded the investigation and based on the information and evidence obtained during the course thereof, the Public Protector is now in a position to make findings and take appropriate remedial action to address the improper conduct and maladministration by the Municipality.

5.4 **Key sources of information**

5.4.1 **Documents and correspondence**

5.4.1.1 Complaint from Anonymous, dated 22 October 2020;

5.4.1.2 Allegations letter from the Public Protector to Ms Peu, dated 06 November 2020;

5.4.1.3 Email from the Public Protector to Ms Peu, dated 03 December 2020;

5.4.1.4 Letter from the Public Protector to Ms Peu, dated 22 January 2021;

5.4.1.5 Response Letter from Ms Peu to the Public Protector, dated 25 February 2021;

5.4.1.6 Curriculum Vitae (CV) of Ms Mbilini;

5.4.1.7 Replacement Certificate, National N3 Certificate (Business Studies: Secretarial), of Ms Mbilini;

5.4.1.8 National Diploma in Administrative Management (General) from the University of South Africa awarded to Ms Mbilini in 2018;

5.4.1.9 Copy of Ms Mbilini's Code C1 Driver's License;

5.4.1.10 Copy of Ms Mbilini's Identity Document (ID);

5.4.1.11 Advertisement for the post of Manager: Human Capital, dated 28 July 2020;

- 5.4.1.12 The minutes of the selection panel meeting held on 21 August 2020;
- 5.4.1.13 The result report from SAQA confirming the qualifications of all the candidates, dated 28 September 2020;
- 5.4.1.14 Copies of the invitations to the interviews for the shortlisted candidates;
- 5.4.1.15 Copy of the application schedule, indicating the candidate's qualifications and experience, as per reference number: ID/09/2020;
- 5.4.1.16 The Minutes of the selection meeting that took place on 01 October 2020;
- 5.4.1.17 The score sheet for the position of Manager: Human Capital;
- 5.4.1.18 Copy of Ms Mbilini's appointment letter in the post of Manager: Human Capital, dated 06 October 2020;
- 5.4.1.19 Copy of the Recruitment and & Employment Practice Policy of the Municipality, effective: 01 June 2010;
- 5.4.1.20 Letter from Public Protector to Dr Mafu Rakometsi (Dr Rakometsi), the Chief Executive Officer at Umalusi, dated 14 January 2022;
- 5.4.1.21 Response from Dr Rakometsi to the Public Protector, dated 28 January 2022;
- 5.4.1.22 Letter from Public Protector to Dr Julie Reddy (Dr Reddy), the Chief Executive Officer at SAQA, dated 13 March 2023;
- 5.4.1.23 Affidavit from Ms Phumzile Mtsweni (Ms Mtsweni), the Manager: Verifications at SAQA, dated 25 April 2023;
- 5.4.1.24 Affidavit from Ms Mtsweni, the Manager: Verifications at SAQA, dated 31 May 2023;
- 5.4.1.25 Email by Ms Maggie Kotoi (Ms Kotoi), the Administrative Officer to Municipal Manager, acknowledging receipt of Section 7(9) Notice, dated 13 June 2023;
- 5.4.1.26 Email by Ms Mbilini acknowledging receipt of the Section 7(9) Notice, dated 19 June 2023;
- 5.4.1.27 Email by Cllr. Best acknowledging receipt of the Section 7(9) Notice, dated 19 June 2023;
- 5.4.1.28 Letter from Mr Dumisani Mabuza, to the Public Protector, dated 27 June 2023;
- 5.4.1.29 Letter from Ms Mbilini to the Public Protector, dated 28 June 2023;
- 5.4.1.30 Email from the Public Protector to Ms Jansen Van Rensburg, Senior Manager – Authentication Services: SAQA, dated 10 July 2023;
- 5.4.1.31 Letter from Ms Nadia Starr, the CEO of SAQA to Public Protector, dated 17 July 2023;
and
- 5.4.1.32 Letter from the Public Protector to Mr Dumisani Mabuza, dated 11 September 2023.

5.4.2 Legislation and Policies

- 5.4.2.1 Constitution of the Republic of South Africa, 1996;
- 5.4.2.2 Labour Relations Act, 1995;
- 5.4.2.3 National Qualifications Framework Act, 2008
- 5.4.2.4 Public Protector Act, 1994;
- 5.4.2.5 The Local Government: Municipal Systems Act, 2000;
- 5.4.2.6 The Local Government: Municipal Finance Management Act , 2003;
- 5.4.2.7 Public Administration Management Act, 2014; and
- 5.4.2.8 The Recruitment & Employment Practice Policy of the Municipality, 2010.

5.4.3 Case Law

- 5.4.3.1 *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);
- 5.4.3.2 *Khumalo and Another v Member of the Executive Council for Education: Kwa-Zulu Natal* [2013] ZACC 49; 2014 (3) BCLR 333 (CC); (2014) 35 ILJ 613 (CC) (18 December 2013);
- 5.4.3.3 *Kwadukuza Municipality v Rajamoney and Others* (D880/10) [2013] ZALCD 17 (13 June 2013); and
- 5.4.3.4 *KwaZulu-Natal Department of Transport v Hoosen and Others* 2016 37 ILJ 156 (LC).

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

- 5.4.4.1 On 13 June 2023, the section 7(9) Notice was delivered to Mr Mere, the former Acting Municipal Manager of Merafong City Local Municipality, to provide him with an opportunity to respond to the likely adverse findings and proposed remedial action. Section 7(9) Notices were also served on Cllr. Best, Cllr. Mphitikezi, and Ms Mbilini.
- 5.4.4.2 Section 7(9)(a) of the Public Protector Act provides that persons implicated or affected in an investigation by the Public Protector, are to be afforded an opportunity to make representations regarding same.

- 5.4.4.3 A response noting the intended findings and remedial actions was received from Mr Mabuza, through a letter dated 27 June 2023.
- 5.4.4.4 A response from Ms Mbilini was received on 28 June 2023. The response and information/evidence submitted in response to the section 7(9) Notice were duly considered by the Public Protector.
- 5.4.4.5 There were no responses received from either Cllr. Best or Cllr. Mphitikezi in this regard.

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

6.1 Whether the functionaries of the Municipality irregularly appointed Ms Mbilini to the position of Manager: Human Capital without her meeting the minimum requirements for the position, and if so, whether such conduct was improper as envisaged in section 182(1)(a) of the Constitution and amounted to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act

Common cause

- 6.1.1 The Municipality advertised a vacant post of Manager: Human Capital, with a closing date of 13 August 2020.
- 6.1.2 The advertisement had the following requirements:
- (a) *“A relevant B degree or equivalent tertiary qualification at NQF level 7.*
 - (b) *Professional registration with SABPP and/or IMPS will be added advantage.*
 - (c) *Minimum experience of either – 5 years of which at least 2 years must be at middle management level and at least 3 years any role in a Human Capital Section; or 7 years at any role in a Human Capital Section.*
 - (d) *Valid Code 08 Driver’s License; and*

(e) *Computer Literacy.*”

6.1.3 On 06 October 2020, Ms Mbilini was appointed to the post by the Municipality.

Issue in dispute

6.1.4 The issue for the Public Protector’s determination is whether the functionaries of the Municipality irregularly appointed Ms Mbilini to the post of Manager: Human Capital without her meeting the minimum requirements for the post.

The Complainant’s version

6.1.5 The Complainant argued that Ms Mbilini was appointed to the position on 05 October 2020, even though she did not meet the minimum requirements.

6.1.6 The Complainant further stated that the recruitment and appointment process was not in line with the Recruitment and Employment Practice Policy of the Municipality.

Municipality’s version

6.1.7 On 09 November 2020, the Public Protector submitted an allegations letter to the then Acting Municipal Manager, Ms Peu, regarding the allegations raised by the Complainant. On 22 January 2021, the Public Protector sent a final reminder to Ms Peu, requesting her to respond to the complaint.

6.1.8 Through a letter, dated 25 February 2021, Ms Peu, stated *inter alia*, that:

6.1.8.1. Ms Mbilini was appointed as Manager: Human Capital on 06 October 2020. She was appointed to the post of Training Officer from 05 March 2012. She is in possession of a matric certificate. The requirements for the position of Manager: Human Capital were set out in the advertisement and required, *inter alia*, a relevant Bachelor’s Degree or equivalent qualification;

6.1.8.2. The appointment was made in an environment where Ms Mbilini emerged as the preferred candidate, based on her performance in the interview;

- 6.1.8.3. Furthermore, the selection and appointment process were made in terms of the Recruitment and Employment Practice Policy of the Municipality;
- 6.1.8.4. The panel consisted of Ms L Peu: Acting Municipal Manager, Cllr. N Best, Member of the Mayoral Committee for Corporate and Shared Services and Mr H Bredenkamp, Executive Director Corporate and Shared Services. Both the Labour Unions represented in the Municipality attended the entire process as observers;
- 6.1.8.5. Following the selection, SAQA was contacted to verify the qualifications of the candidates. The result report from SAQA confirmed the qualifications of all the candidates interviewed; and
- 6.1.8.6. This post is very important to ensure stability in the organisation and all efforts were made to ensure that the appointment process was free and fair and in terms of the prescripts to be followed by the Municipality.

Evidence obtained from the Municipality

- 6.1.9 Ms Mbilini applied for the position with a CV containing the following documents:
 - 6.1.9.1. Replacement Certificate, National N3 Certificate (Business Studies: Secretarial);
 - 6.1.9.2. National Diploma in Administrative Management (General) from University of South Africa awarded in 2018; and
 - 6.1.9.3. A Code C1 Driver's License.
- 6.1.10 In the CV submitted by Ms Mbilini, she indicated that her National Diploma was at NQF level 7, whilst her N3 Certificate was at NQF level 4.
- 6.1.11 On 01 October 2020 the Municipality interviewed five (05) shortlisted candidates which included Ms Mbilini.
- 6.1.12 The Municipality provided a SAQA Verification Report titled *Individual Verification Feedback from the National Learners' Records Database (NLRD)*, dated 28

September 2020 confirming that she obtained a National Diploma: Administrative Management from the University of South Africa (UNISA) in 2018.

Submission from the Council for Quality Assurance in General and Further Education and Training (Umalusi)

6.1.13 On 14 January 2022, the Investigation Team sent a letter to Dr Rakometsi, the Chief Executive Officer (CEO) of Umalusi, to request him to assist with the verification of the Replacement Certificate, National N3 Certificate belonging to Ms Mbilini.

6.1.14 On 28 January 2022, Dr Rakometsi, responded to the Public Protector and advised that:

6.1.14.1. The Senior Certificate is a qualification at Level 4 on the NQF which is awarded to a candidate who complies with the national policy requirements whereas the National N3 Certificate is a qualification at NQF Level 3. **Therefore, the National N3 Certificate is not equivalent to a Matric qualification** (own emphasis). Umalusi can further confirm that the National N3 Certificate awarded to Ms Mbilini is authentic and has been verified against their records.

Submission from the South African Qualifications Authority (SAQA)

6.1.15 On 13 March 2023, the Investigation Team sent a letter to Dr Reddy, the CEO of SAQA, to request her to assist with the verification of Ms Mbilini's qualification and the NQF level thereof.

6.1.16 On 25 April 2023, Ms Mtsweni, the Manager-Verifications: Authentication Services at SAQA, responded to the Public Protector and advised that:

6.1.16.1 SAQA checked for the Learner records on the NLRD, using the identity number and names provided. The certificate: Municipal Financial Management with the achievement status was found on the NLRD using the names and date of birth. The verification of the Senior Certificate record of Ms Mbilini is inconclusive. It is not possible to state conclusively whether Ms Mbilini actually has this qualification. The copy of the certificate is required to perform a full verification and conclude this verification.

6.1.17 The Investigation Team sent a copy of Ms Mbilini’s replacement certificate, National Diploma: Administrative Management and ID copy to Ms Mtsweni, to fully verify Ms Mbilini’s qualifications.

6.1.18 On 01 June 2023, Ms Annemarie Jansen Van Rensburg (Ms Jansen Van Rensburg), the Senior Manager – Authentication Services at SAQA, provided the Affidavit of Ms Mtsweni, which stated that:

6.1.18.1 SAQA submitted the request for verification to the certification bodies (Information Partners), UNISA and Umalusi.

6.1.18.2 The following record/s with their achievement status were found at the Information Partner:

Qualification	Institution	Year	Achievement status
National Diploma: Administrative Management (General)	UNISA	2018	Achieved
National N3 Certificate (Business Secretarial) Studies:	Umalusi	1997	Achieved

Independently sourced information

6.1.19 The Investigation Team conducted an internet search on SAQA’s website¹ which indicated that the NQF level for the National Diploma: Administrative Management is at level 6 as opposed to level 7, as represented in Ms Mbilini’s CV. The process that was followed to confirm the NQF level was using the SAQA ID: 62369, to search for the qualification on the SAQA website.

¹ Available on <https://allqs.saqa.org.za> accessed 09 June 2023.

Response to the section 7(9) Notice from Ms Mbilini

- 6.1.20 On 13 June 2022, the Investigation Team delivered the section 7(9) Notice to Ms Mbilini, for her to respond.
- 6.1.21 On 28 June 2023, Ms Mbilini, responded to the Public Protector and stated that:
- 6.1.21.1 Paragraph 3 of the section 7(9) Notice purports that a National N3 Certificate is not equivalent to a Matric qualification. A National N3 certificate is at NQF level 4 and equivalent to a grade 12 Senior Certificate, thus enjoys the same benefits as many other grade 12 qualifications. Therefore, anything to suggest to the contrary is factually incorrect;
- 6.1.21.2 She submitted the National N3 Certificate (Business Studies: Secretarial) as part of her application and not a Senior Certificate, which was not a requirement in the job advert for the HR Manager position. The request for verification of Senior Certificate at SAQA and subsequent verification of same is unfounded;
- 6.1.21.3 She has never achieved the Certificate: Municipal Financial Management, as the section 7(9) Notice purports that this was found under her names and ID number, as such these raises concerns on the report;
- 6.1.21.4 She also conducted an internet search on the SAQA website on 14 November 2018 and found that Diplomas were NQF level 7 and higher certificates were at NQF level 6;
- 6.1.21.5 The Public Protector section 7(9) Notice omitted to deliberate on the equivalence of the stated minimum requirements in the advert. Furthermore, the investigation on the NQF levels with SAQA did not verify whether the equivalence of a qualification is based on the weight of the credits that a qualification bears or what makes a qualification to be equivalent to a particular NQF band;
- 6.1.21.6 She customised her CV in line with the updated and published NQF level bands and the equivalence thereof. Furthermore, she had no reason to doubt SAQA updated information as a custodian of the NQF;

- 6.1.21.7 SAQA did not state in the affidavit deposited of by Ms Mtsweni, that the National Diploma was not graded at NQF level 7. Neither was it averred by SAQA through Ms Mtsweni's affidavit that for purposes of the investigation NQF levels were accessible through the internet search, the investigation was bound to obtain the affidavit from SAQA to the effect that a National Diploma was indeed graded at NQF level 6 as opposed to NQF level 7 which was on the SAQA website on 18 November 2018 and deliberate on the equivalent part of the qualification which she based her application on;
- 6.1.21.8 She admitted that she submitted her refined CV in response to the advert for the post she holds in the Municipality, she recorded that her National Diploma was at NQF level 7 and that she customised her CV, in particular the NQF level based on the updated SAQA information which was displayed on its website. As *supra* stated, a Higher Certificate was graded at NQF level 6;
- 6.1.21.9 The minimum requirements for the Manager posts in the Municipality has always been at level 6 or equivalent. Only in 2020, without a job evaluation exercise, Regulation or Council resolution, the post was advertised at NQF level 7. Nevertheless, based on SAQA updated NQF levels, she met the requirement, hence she acted in good faith and gladly submitted her CV and competed for the post. There was nothing misleading with her application as it was based on what SAQA had published on their website which she believed is the same information used by the panel to shortlist and interview more than one candidate that were in possession of Diplomas equivalent to NQF level 7 based on the weight of the credits of the Diplomas;
- 6.1.21.10 The complaint received by the Public Protector was anonymous and allegations of irregular appointment were made, it is therefore expected that if the office of the Public Protector in its investigation would have extended the scope to check past and present levels of management positions, it would have found that the Municipality changed qualifications for the HR position. The Municipality should have also been investigated with regard to inconsistencies in their adverts and would have sought clarity on whether a council resolution was obtained to effect minimum requirements changes for Manager positions except for positions at the Finance Department that are gazetted to be at NQF level 7;

- 6.1.21.11 The conclusion of the report was merely premised on the information the investigation obtained through the internet search and not through a sworn affidavit from SAQA. SAQA only verified and confirmed the National N3 Certificate and National Diploma with its partners (Umalusi and University of South Africa, respectively) and made no mention of the NQF level and credits of the qualifications to conclude on the equivalence of her qualifications;
- 6.1.21.12 The Public Protector finding of the irregular appointment based on the internet search than authentic information submitted in the form of an affidavit by SAQA, is regrettable; and
- 6.1.21.13 Considering the material irregularities in the report, she strongly believed that the investigation team did not conduct a thorough investigation and arrived at a misdirected conclusion and finding.

Documents received from Ms Mbilini

- 6.1.22 Along with the response to the section 7(9) Notice, Ms Mbilini also provided the following documents for consideration:
- (a) SAQA printout which stated Diplomas are at NQF level 7;
 - (b) A copy of the advert for the position of Manager: Local Economic Development;
 - (c) A copy of the advert for the position of Manager: Electrical Engineering;
 - (d) A copy of the advert for the position of Manager: Water and Sanitation;
 - (e) A copy of the advert for the position of Manager: Human Capital;
 - (f) A copy of the advert for the position of Manager: Marketing and Communication;
 - (g) A copy of the advert for the position of Manager: Project Management Unit;
 - (h) A copy of the advert for the position of Manager: Public Safety and Security;

- (i) A copy of the advert for the position of Manager: Sports, Recreation, Arts, Culture, Heritage and Libraries; and
- (j) A copy of the advert for the position of Manager: Spatial Planning and Environment Management.

6.1.23 The documents submitted by Ms Mbilini, were considered, however, they do not rebut the evidence in possession of the Public Protector.

Response to the section 7(9) Notice by the Municipal Manager, Mr Mabuza

6.1.24 On 13 June 2023, a section 7(9) Notice was delivered to Mr Mere. The Public Protector received a response, dated 27 June 2023, from Mr Mabuza, wherein he stated *inter alia* the following:

6.1.25 The Municipality confirms that the contents of this report are viewed in a very serious light and with a measure of grave concern. As a result, all reasonable efforts shall be disbursed towards the speedy determination of the matter;

6.1.26 On this basis and in the interim, the Municipality has taken immediate steps within this short period of time towards the speedy resolution of this matter as set forth herein below:

6.1.26.1 The Municipality has solicited the services of a reputable firm of attorneys that specialises in labour law to provide an opinion on the position of the law in respect of irregular appointments, as well as the trajectory that the Municipality can embark upon to resolve all challenges arising from such appointments. In this instance, the possibility of reversing the said appointment within the framework of fair labour practice will also be opined upon to guide the Municipality accordingly;

6.1.26.2 While the Municipality has taken stock of the fact that most of the officials who participated in the interviewing and shortlisting process that culminated in the appointment of Ms Mbilini are no longer with the institution of the Municipality and one has since passed away, the Municipality recognises the need to continue to invest time and resources in the training of its personnel on the issues of corporate governance; archiving and backing-up of institutional memory documents; and the implementation

of the policy positions and various pieces of legislation on recruitment and appointments to prevent any incidences of irregular appointments and fruitless and wasteful expenditure concomitant to same; and

6.1.26.3 Against the foregoing, the Municipality will keep the office of the Public Protector apprised on further developments in this matter and guarantees that same shall be put to finality without any further delay.

Additional information requested from SAQA.

6.1.27 Subsequent to Ms Mbilini's response to the section 7(9) Notice, on 10 July 2023, the Investigation Team requested SAQA to confirm whether or not the Diplomas were at NQF level 7 as at 14 November 2018 and the current NQF level for Diplomas. Furthermore, SAQA was requested to advise if the National N3 Certificate is at NQF level 3 or NQF level 4, and whether the National N3 Certificate is equivalent to the grade 12 Senior Certificate.

6.1.28 Ms Nadia Starr (Ms Starr), the CEO of SAQA, provided a response, dated 17 July 2023, which stated that:

6.1.28.1 The **three-year Diploma is registered at level 6 of the NQF**. As such, the Diploma: Administrative Management: General (SAQA ID #62369) offered by UNISA on 10 September 2018 is registered at NQF level 6.

6.1.28.2 The National Certificate: N3 Business Studies: Secretarial (SAQA ID #67457) issued by Umalusi in December 1997 is registered at NQF level 3.

6.1.28.3 The Department of Basic Education (DBE) has set requirements for issuing a National Senior Certificate (NSC) on completion of a National Certificate: N3.

6.1.28.4 Note that the NSC (SAQA ID #49647) and Senior Certificate (SC) (SAQA ID #15947) are registered at level 04 on the NQF.

Meeting with the Municipal Manager, Mr Mabuza

6.1.29 On 11 September 2023, the Investigation Team held a meeting with Mr Mabuza, to inform him that the Public Protector will include further remedial action to the final

report, directing the Municipality to conduct verification on qualifications of job applicants. Mr Mabuza, raised no objection to the proposed remedial action. Mr Mabuza further undertook that the report would be tabled before Council by the Executive Mayor. A letter confirming the discussion was issued to Mr Mabuza, on the same date.

Applicable law

The Constitution of the Republic of South Africa, 1996 (the Constitution)

6.1.30 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 principles:*

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

(b) ...

(c) ...

(d) ...

(e) ...

(f) Public administration must be accountable.

(g) Transparency must be fostered by providing the public with timely, accessible and accurate information.

(h) Good human resource management and career development practices, to maximise human potential, must be cultivated.”

Local Government: Municipal Structures Act, 1998 (MSA)

6.1.31 In relation to Executive Mayors, section 56(3) (f) of the MSA states that:

“... ”

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

(a) ...

(b) ...

(c)...

(d)...

(e)...

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

Local Government: Municipal Finance Management Act, 2003 (MFMA)

6.1.32 The fiduciary responsibilities of accounting officers are outlined in section 61(1) of the MFMA:

“The accounting officer of a municipality must-

(a) ...

(b) disclose to the municipal council and the mayor all material facts which are available to the accounting officer or reasonably discoverable and which in any way might influence the decisions or actions of the council or the mayor...”

Public Administration Management Act, 2014

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

The Recruitment & Employment Practice Policy of the Municipality, 01 June 2010

6.1.34 Paragraph 6.4 of the Recruitment & Employment Practice Policy, provides that *“the appointment of an applicant may take place only in accordance with the requirements of the post concerned and the merit of the applicant.”*

National Qualifications Framework Act, 2008 (NQF Act)

6.1.35 Section 13(1) of the NQF Act, provides that the role of SAQA is to advance the objectives of the NQF, oversee the implementation of the NQF and ensure the achievement of its objectives, with respect to records of education and training, maintain a national learners’ records database comprising registers of national

qualifications, part-qualifications, learner achievements, recognised professional bodies, professional designations and associated information.

Labour Relations Act, 1995 (LRA)

6.1.36 Section 158(1)(h) of the Labour Relations Act, provides as follows:

“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

Kwadukuza Municipality v Rajamoney and Others

6.1.37 In the matter of *Kwadukuza Municipality v Rajamoney and Others*², the court set out the following:

“For the requirements of an advertised post to be met therefore, cognisance must be taken of the objective of the policy to ensure that the candidate who best meets the selection criteria is appointed. The short listing of a candidate who least meets the set selection criteria will ordinarily fly on the clear face of the objective of the policy. Such short listing would then be arbitrary as contrary to the selection criteria. The applicant set out requirements to be met for the contested post. The fairness of the selection process lay in the screening of all candidates against the set requirements in a similar approach. It has to be borne in mind that there would be people who desired to apply for the contested post but did not submit their applications merely because they did not meet the set requirements. It would also be unfair to set all candidates who met all requirements against any candidates who lack any of the requirements.”

KwaZulu-Natal Department of Transport v Hoosen and Others

6.1.38 In the case of *KwaZulu-Natal Department of Transport v Hoosen and Others*³, where the facts were very similar to the present case, the court held that the promotion of a

² D880/10) [2013] ZALCD 17 (13 June 2013), paragraph 15.

³ 2016 37 ILJ 156 (LC), paragraph 23.

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 want of his meeting the minimum criterion for the position.*"

Khumalo and Another v Member of the Executive Council for Education

6.1.39 It was found in *Khumalo and Another v Member of the Executive Council for Education: Kwa-Zulu Natal [2013] ZACC 49; 2014 (3) BCLR 333 (CC); (2014) 35 ILJ 613 (CC) (18 December 2013)* (the Khumalo case), that appointments made irregularly are not automatically *null and void* because the appointed candidate has labour rights. It was further held in this case that only a court can grant a "*just and equitable*" order in terms of section 172(1)(b) of the Constitution, when considering the consequences of declaring a decision unlawful. Until a court pronounces on the validity of the act (the appointment), the act exists in fact and has legal effect in terms of which its legal consequences will continue to exist. This would mean that the appointment or promotion, irrespective of the irregularities, would remain valid until and unless a court of law declares the action unlawful.

Analysis

6.1.40 Ms Mbilini disputed the assertion in the section 7(9) Notice that a National N3 Certificate is not equivalent to an NQF level 4. She further stated that the National N3 Certificate (Business Studies: Secretarial) was part of her application and that a Senior Certificate, was not a requirement in the job advert for the HR Manager post. The request for verification of Senior Certificate at SAQA and subsequent verification of same is unfounded.

6.1.41 The Complainant alleged that Ms Mbilini was appointed to the post of Manager: Human Capital without a Senior Certificate. It was on that basis that the verification was conducted to ascertain whether the National N3 Certificate (Business Studies: Secretarial) is equivalent to a Senior Certificate.

6.1.42 According to the response received by the Public Protector on 19 July 2023, SAQA confirmed that the National Certificate: N3 Business Studies: Secretarial (SAQA ID #67457) issued by Umalusi in December 1997 is registered at NQF level 3.

- 6.1.43 Ms Mbilini also stated that she has never achieved the certificate: Municipal Financial Management, as the section 7(9) Notice purports that this was found under her names and ID number, as such this raises concerns on the report. However, the information that Ms Mbilini obtained the Certificate: Municipal Financial Management was received from SAQA on 25 April 2023.
- 6.1.44 Further contentions raised by Ms Mbilini disputing the content of the section 7(9) Notice included *inter alia* that her internet search on the SAQA website on 14 November 2018 revealed that her Diploma was at NQF level 7; on the strength of this information she customized her CV in line with these published NQF level bands and the equivalence thereof. In its submission to the Public Protector, SAQA did not expressly state that the National Diploma was not graded at NQF level 7; and the Public Protector omitted to deliberate on the equivalence of the stated minimum requirements in the advert. In this regard, however, it is reiterated by the Public Protector that SAQA has conclusively advised in its response to the Public Protector that the Diploma: Administrative Management: General (SAQA ID #62369) offered by UNISA on **10 September 2018**, is registered at **NQF level 6** (own emphasis).
- 6.1.45 The Public Protector has noted the submission made by Ms Mbilini that the minimum requirements for the Management posts in the Municipality have always been at NQF level 6, that they were changed in 2020 without due process, furthermore that the scope of the Public Protector's investigation should have been extended to investigate past and present posts. In the circumstances, the scope of the Public Protector was limited to the complaint received, relating to Ms Mbilini's alleged irregular appointment. It must be impressed that the allegations raised regarding past and present management posts cannot legitimize Ms Mbilini's own appointment, as she did not meet the minimum requirements, however, Ms Mbilini is at liberty to lodge a complaint regarding these allegations for the Public Protector's consideration.
- 6.1.46 Ms Mbilini also stated that the conclusion of the report was merely premised on the information that the Investigation Team obtained through the internet search and not through an affidavit from SAQA. It must be noted that in terms of section 7(1)(b)(i) of the Public Protector Act, the format and procedure to be followed in conducting any investigation shall be determined by the Public Protector, with due regard to the

- circumstances of each case, furthermore, **SAQA has through a formal letter to the Public Protector dated 17 July 2023, confirmed the status of Ms Mbilini's qualifications** (own emphasis).
- 6.1.47 Evidence at the Public Protector's disposal has established that when Ms Mbilini submitted her CV for the vacant position, she recorded that her National Diploma: Administrative Management was at NQF level 7.
- 6.1.48 She was subsequently appointed despite her qualification not meeting the minimum requirements as per the advertisement. There was no indication from the advertisement that the minimum requirements for the post could be relaxed and this included the qualifications required. Paragraph 6.4 of the Recruitment & Employment Practice Policy requires the Municipality to appoint persons who meet the minimum requirements for the post, which did not occur in this respect.
- 6.1.49 The conduct of the Municipal functionaries, in appointing Ms Mbilini despite her not having met the minimum requirements for the post was not in line with the basic values and principles governing public administration as envisaged in section 195(1) of the Constitution. Such conduct did not adhere to the high standard of professional ethics required in one executing their duties and it did not promote good human resource management practices.
- 6.1.50 The appointment of Ms Mbilini without the relevant qualifications, was not in line with the Recruitment and Selection Policy which provides *inter alia* that the employment of employees should be non-discriminatory and should afford applicants equal opportunity to compete for vacant positions. It is further stated in paragraph 4 that the Policy shall apply to all appointments made by the Municipality to ensure a **fair and equitable** employment process (own emphasis).
- 6.1.51 The need to adhere to proper recruitment practices has been echoed by the courts, particularly in the case of *KwaZulu-Natal Department of Transport v Hoosen and Others 2016 37 ILJ 156 (LC)* wherein the Labour Court discouraged the shortlisting of candidates who least meet the requirements and selection criteria. Any deviation from the advertised requirements of the position, would be tantamount to an unfair labour practice.

- 6.1.52 Similar sentiments were echoed by the court in *Kwadukuza Municipality v Rajamoney and Others* and *Khumalo and Another v Member of the Executive Council for Education*. Accordingly, it was incumbent on the functionaries of the Municipality, during the recruitment process, to ensure that the requirements and selection criteria for the post were met.
- 6.1.53 In this respect, even though Ms Mbilini emerged as the preferred candidate during the interviews, the process was nevertheless not fair and equitable as she was shortlisted, interviewed and appointed despite not having the minimum qualification required for the post.
- 6.1.54 The Public Protector notes and welcomes the response of Mr Mabuza to the section 7(9) Notice, wherein it was indicated *inter alia* that the Municipality recognised the need to continue to invest time and resources in the training of its personnel on the issues of corporate governance; archiving and backing-up of institutional memory documents, and the implementation of the policy positions and various pieces of legislation on recruitment and appointments to prevent any incidences of irregular appointments, fruitless and wasteful expenditure concomitant to same.
- 6.1.55 Furthermore, the Municipality has also provided an undertaking that it will obtain a legal opinion from a reputable firm of attorneys specialising in Labour law, in respect of the irregular appointment, as well as the trajectory that the Municipality can embark on to resolve the challenges, with feedback to be provided to the Public Protector.

Conclusion

- 6.1.56 The Public Protector therefore concludes that the appointment of Ms Mbilini to the position of Manager: Human Capital was not in line with paragraph 6.4 of the Municipality's Recruitment and Employment Practice Policy and the principles governing public administration.
- 6.1.57 Based on the evidence and information obtained during the investigation, the Public Protector draws a conclusion that the National Certificate: N3 Business Studies:

Secretarial issued by Umalusi in December 1997, is registered at NQF level 3 and not level 4 as alleged by Ms Mbilini.

6.1.58 Furthermore, that the Diploma: Administrative Management: General offered by UNISA on 10 September 2018 is registered at NQF level 6 and not level 7 as alleged by Ms Mbilini.

7. FINDINGS

Having regard to the evidence, the regulatory framework determining the standard that the Municipality should have complied with, the Public Protector makes the following adverse findings against the Municipality:

7.1 Whether the functionaries of the Municipality irregularly appointed Ms Mbilini to the position of Manager: Human Capital without her meeting the minimum requirements for the position, and if so, whether such conduct was improper as envisaged in section 182(1)(a) of the Constitution and amounted 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 irregularly appointed Ms Mbilini to the position of Manager: Human Capital, is **substantiated**.

7.1.2 Ms Mbilini was shortlisted, interviewed and appointed by the Municipality despite not having a relevant Bachelor's or equivalent tertiary qualification at NQF level 7, at the time she applied for the position of Manager: Human Capital.

7.1.3 The shortlisting and subsequent appointment of Ms Mbilini by the Municipality was in contravention of the provisions of section 195(1) (a),(f),(g) and (h) of the Constitution, and paragraph 6.4 of the Recruitment & Employment Practice Policy of the Municipality.

7.1.4 The conduct of the Municipality 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 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.

8.3 The senior officials who participated in the appointment process (Acting Municipal Manager and the Executive Director: Corporate Services) are no longer in the employ of the Municipality.

8.4 The appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, are the following:

The Executive Mayor

8.4.1 Within **ninety (90) calendar days** from the date of this report, in terms of section 56(3)(f) of the Municipal Structures Act (MSA), 1998, table the report before the Municipal Council for deliberation and obtain approval for the appropriate course of action to address the irregular appointment of Ms Mbilini as the Manager: Human Capital including pursuing a judicial review, as provided for in section 158(1)(h) of the LRA.

The Municipal Manager

8.4.2 Within **sixty (60) calendar days** from the date of this report, ensure that all the Municipal officials who participate in recruitment and selection processes are trained on the Recruitment & Employment Policy of the Municipality as envisaged in section 10(1)(a) of the Public Administration Management Act, 2014, in order to ensure that

future appointments are made in compliance with the Recruitment & Employment Policy.

- 8.4.3 Ensure that proper screening and verification of the information contained in job applications, is conducted by the Municipality with an authorised institution commissioned to conduct such exercise, including verification of qualifications through UMALUSI and SAQA, before the selection and recruitment process is finalised

9. MONITORING

- 9.1 The Municipal Manager 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 in order to ensure the effectiveness of the Office 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
ACTING PUBLIC PROTECTOR OF
THE REPUBLIC OF SOUTH AFRICA
DATE: 29 SEPTEMBER 2023

Assisted by: Mr VX Dlamini

Acting Executive Manager: Investigations Branch