

**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  
temporary appointment of the Manager: Strategic Support and three Ward  
Committee Clerks by Tsantsabane Municipality in 2017”***

**REPORT NUMBER: 29 OF 2020/2021**

**ISBN NUMBER: ISBN 978-1-990942-95-2**

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT  
AND MALADMINISTRATION RELATING TO TEMPORARY APPOINTMENT OF THE  
MANAGER: STRATEGIC SUPPORT AND THREE WARD COMMITTEE CLERKS BY  
THE TSANTSABANE MUNICIPALITY IN 2017**

## INDEX

<b>Executive Summary</b>	<b>3</b>
<b>1. INTRODUCTION</b>	<b>7</b>
<b>2. THE COMPLAINT</b>	<b>8</b>
<b>3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR</b>	<b>8</b>
<b>4. THE INVESTIGATION</b>	<b>12</b>
<b>5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS</b>	<b>16</b>
<b>6. FINDINGS</b>	<b>23</b>
<b>7. REMEDIAL ACTION</b>	<b>24</b>
<b>8. MONITORING</b>	<b>25</b>

## Executive Summary

- (i) This is the 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 temporary appointment of the Manager: Strategic Support and three (3) Ward Committee Clerks by Tsantsabane Municipality in 2017.
- (iii) The complaint was lodged on 22 August 2017 by Mr Allister Davids (Complainant), a Member of the Municipal Council of the Municipality, with the Northern Cape Provincial Office of the Public Protector South Africa.
- (iv) In the main, the Complainant alleged that:
  - (a) The Municipality temporarily appointed Ms Patricia Wetbooi as Manager: Strategic Support and Ms Keitumetse Bosman, Ms Miena Oliphant and Mr George Tonyane as Ward Committee Clerks, without advertising the positions, in 2017.
  - (b) The filling of the positions was not approved by the Municipal Council.
  - (c) The positions were not on the approved staff establishment of the Municipality.

- (v) The essence of the complaint is that the temporary appointment of the Manager: Strategic Support and the three (3) Ward Committee Clerks was not in accordance with the relevant laws and prescripts regulating to the recruitment and selection of staff by the Municipality, that it was improper and constitutes maladministration.
- (vi) Based on the analysis of the complaint, the following issues were identified for the investigation:
- (a) Whether the temporary appointment of Ms Patricia Wetbooi as Manager: Strategic Support and Ms Keitumetse Bosman, Ms Miena Oliphant and Mr George Tonyane as Ward Committee Clerks by the Municipality with effect from 1 August 2017 was in accordance with the relevant laws and prescripts regulating the recruitment and selection of staff of the Municipality, and if not whether the conduct of the Municipality was improper, constitutes maladministration and resulted in irregular expenditure.
- (v) 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. The documents obtained during the investigation were analysed and the relevant laws and other prescripts applied.
- (vii) Having considered the evidence and information obtained during the investigation, I make the following findings:
- (a) Regarding whether the temporary appointment of Ms Patricia Wetbooi as Manager: Strategic Support and Ms Keitumetse Bosman, Ms Miena**

**Oliphant and Mr George Tonyane as Ward Committee Clerks by the Municipality with effect from 1 August 2017 was in accordance with the relevant laws and prescripts regulating the recruitment and selection of staff of the Municipality, and if not whether the conduct of the Municipality was improper, constitutes maladministration and resulted in irregular expenditure.**

- (aa) The allegation that the temporary appointment of Ms P Wetbooi as Manager: Strategic Support and Ms K Bosman, Ms M Oliphant and Mr G Tonyane as Ward Committee Clerks by the Municipality with effect from 1 August 2017 was not in accordance with the relevant laws and prescripts regulating the recruitment and selection of staff of the Municipality, is substantiated.
- (bb) The positions were not advertised and no recruitment and selection process was followed, as contemplated by the Policy.
- (cc) The allegation that the conduct of the Municipality was improper, constitutes maladministration and resulted in irregular expenditure, is also substantiated.
- (dd) The temporary appointments were made in violation of the Policy and were therefore not in accordance with the provisions of section 55(1) of the Municipal Systems Act. It resulted in irregular expenditure in respect of the remuneration paid by the Municipality to the appointees, as contemplated by the MFMA.
- (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.

(viii) **The appropriate remedial action that I am taking in terms of section 182(1)(c) of the Constitution is the following:**

**(a) The Speaker of the Council of the Municipality**

(aa) To take the appropriate steps in respect of disciplinary action against the Municipal Manager, Mr HG Mathobela, who was responsible for the irregular temporary appointment of Ms Patricia Wetbooi as Manager: Strategic Support and Ms Keitumetse Bosman, Ms Miena Oliphant and Mr G Tonyane as Ward Committee Clerks, in terms of section 67(1)(h) of the Municipal Systems Act, the Local Government: Disciplinary Regulations for Senior Managers and section 172(1) of the MFMA, within sixty (60) business days from the date of this report.

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT  
AND MALADMINISTRATION RELATING TO TEMPORARY APPOINTMENT OF THE  
MANAGER: STRATEGIC SUPPORT AND THREE WARD COMMITTEE CLERKS BY  
THE TSANTSABANE LOCAL MUNICIPALITY IN 2017**

**1. INTRODUCTION**

- 1.1 This is the 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 my investigation:
- 1.2.1 Mr Elroy Phete, the Speaker of the Council of the Tsantsabane Local Municipality (Municipality); and
- 1.2.2 Ms M Mashila, the Mayor of the Municipality.
- 1.2.3 Copies of the report are also provided to:
- 1.2.4 Mr Hamilton Mathobela, the Municipal Manager the Municipality; and
- 1.2.5 Mr Allister Davids who lodged the complaint.
- 1.3 The report relates to an investigation into allegations of improper conduct and maladministration relating to the temporary appointment of the Manager: Strategic Support and three (3) Ward Committee Clerks by the Municipality in 2017.

## **2. THE COMPLAINT**

2.1. The complaint was lodged on 22 August 2017 by Mr Allister Davids (the Complainant), a Member of the Council of the Municipality, with the Northern Cape Provincial Office of the Public Protector South Africa.

2.2. In the main, the Complainant alleged that:

2.2.1. The Municipality temporarily appointed Ms Patricia Wetbooi as Manager: Strategic Support and Ms Keitumetse Bosman, Ms Miena Oliphant and Mr George Tonyane as Ward Committee Clerks, without advertising the positions, in 2017.

2.2.2. The filling of the positions was not approved by the Municipal Council.

2.2.3. The positions were not on the approved staff establishment of the Municipality.

2.3. The essence of the complaint is that the temporary appointment of the Manager: Strategic Support and the three (3) Ward Committee Clerks was not in accordance with the relevant laws and prescripts regulating to the recruitment and selection of staff by the Municipality, that it 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) 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.<sup>1</sup> 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.”<sup>2</sup>*

3.6 In the above-mentioned matter, Mogoeng CJ, stated the following, when confirming the powers of the Public Protector:

---

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

<sup>2</sup> *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 The Public Protector 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 The Public Protector has the power to take remedial action, which include instructing the President to exercise powers entrusted on him under the Constitution if that is required to remedy the harm in question. (para 82);

3.7.3 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.

- 3.7.4 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings. (para 104);
- 3.7.5 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);
- 3.7.6 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
- 3.7.7 *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 power 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 temporary appointment of Ms Patricia Wetbooi as Manager: Strategic Support and Ms Keitumetse Bosman, Ms Miena Oliphant and Mr George Tonyane as Ward Committee Clerks by the Municipality, with effect from 1 August 2017 was in accordance with the relevant laws and prescripts regulating the recruitment and selection of staff of the Municipality; and if not whether the conduct of the Municipality was improper, constitutes maladministration and resulted in irregular expenditure.

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 Municipal Manager to prevent improper conduct, maladministration and the misappropriation of public funds.

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 issues were identified for investigation:**

4.3.1 Whether the temporary appointment of Ms Patricia Wetbooi as Manager: Strategic Support and Ms Keitumetse Bosman, Ms Miena Oliphant and Mr George Tonyane as Ward Committee Clerks by the Municipality with effect from 1 August 2017 was in accordance with the relevant laws and prescripts regulating the recruitment and selection of staff of the Municipality, and if not whether the conduct of the Municipality was improper, constitutes maladministration and resulted in irregular expenditure.

**4.4 The Key Sources of information**

**4.4.1 Documents**

4.4.1.1. Appointment letters addressed to Ms Patricia Wetbooi, Ms Keitumetse Bosman, Ms Miena Oliphant and Mr George Tonyane signed by the Municipal Manager on 31 July 2017.

- 4.4.1.2. Fixed-terms contracts of employment signed by the Municipal Manager and Ms Patricia Wetbooi, Ms Keitumetse Bosman, Ms Miena Oliphant and Mr George Tonyane, on 1 August 2017
- 4.4.1.3. Letters from the Acting Municipal Manager informing Ms Patricia Wetbooi, Ms Keitumetse Bosman, Ms Miena Oliphant and Mr George Tonyane of the expiry of their contracts of employment, dated 23 October 2017.
- 4.4.1.4. Internal Memorandum – Council Resolution on organogram dated 29 June 2017.
- 4.4.1.5. The Minutes of Council meeting dated 31 August 2017.
- 4.4.1.6. The Minutes of Special Council Resolution dated 6 September 2017.

#### **4.4.2 Legislation and other prescripts**

- 4.4.2.1 The Constitution of the Republic of South Africa, 1996.
- 4.4.2.2 The Public Protector Act No 23 of 1994.
- 4.4.2.3 The Local Government: Municipal Finance Management Act No 56 of 2003. (MFMA)
- 4.4.2.4 The Local Government: Municipal Systems Act no 32 of 2000. (Municipal Systems Act).
- 4.4.2.5 The Human Resources Policy of the Municipality (Policy).

#### **4.4.3 Notice issued in terms of section 7(9) of the Public Protector Act**

4.4.3.1 A Notice was issued in terms of section 7(9) of the Public Protector Act to Mr Hamilton Mathobela, the Municipal Manager, on 10 November 2020, affording him an opportunity to respond to the evidence obtained during the investigation. He did not reply.

### **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 temporary appointment of Ms Patricia Wetbooi as Manager: Strategic Support and Ms Keitumetse Bosman, Ms Miena Oliphant and Mr George Tonyane as Ward Committee Clerks by the Municipality with effect from 1 August 2017 was in accordance with the relevant laws and prescripts regulating the recruitment and selection of staff of the Municipality, and if not whether the conduct of the Municipality was improper, constitutes maladministration and resulted in irregular expenditure.**

#### *Common cause issues or undisputed facts*

5.1.1 It is not in dispute that the Municipality temporarily appointed Ms P Wetbooi as Manager: Support and Ms K Bosman, Ms M Oliphant and Mr G Tonyane as Ward Committee Clerks on three (3) months contracts and that the positions were not advertised.



Issues in dispute

- 5.1.2 In a meeting during the investigation held on 05 November 2018, Mr Mathobela, the Municipal Manager of the Municipality, conceded that the prescribed recruitment processes were not followed in the temporary appointment of the Manager: Strategic Support and three (3) Ward Committee Clerks in 2017. Mr Mathobela indicated that the positions were not advertised due to an urgent need to capacitate the Office of the Speaker.
- 5.1.3 Mr Mathobela further stated that three (3) former members of the Municipal Council of the Municipality, namely Ms Bosman, Ms Oliphant and Mr Tonyane, were identified for immediate appointment to the clerical positions, as they had experience in the running of the business of the Municipality.
- 5.1.4 In an Internal Memorandum that addressed by Mr Mathobela to Mr I C Nkadimang, the Director Corporate Services of the Municipality, dated 29 June 2017, he stated that the Municipality's 2017/2018 organogram made provision for "*contractual capacity for various departments within the Municipality*". Mr Mathobela requested the urgent filling of the positions, as follows:
- "Following the meeting between Accounting officer and Speaker (Cllr Phete) the effective co-ordination of Ward Committee and Support to ward Councillors was identified as area for urgent attention in view of regulatory provision in this regard. Therefore an urgent need for contractual capacity in line with 2017/18 has been requested by the Speaker"*.
- 5.1.5 Mr Mathobela informed Ms Oliphant, Ms Bosman and Mr Tonyane, in writing of their temporary appointment to the position of (Ward Committee) Clerk: Speaker's Office and Ms Wetbooi of her temporary appointment as Manager: Strategic Support, on 31 July 2017.

- 5.1.6 On 01 August 2017, Mr Mathobela entered into three month contracts of temporary employment with Ms Oliphant, Ms Bosman and Mr Tonyane, and Ms Wetbooi, on behalf of the Municipality.
- 5.1.7 Mr J Theys, a former Acting Municipal Manager of the Municipality, informed Ms Oliphant, Ms Bosman, Mr Tonyane and Ms Wetbooi in writing on 23 October 2017 that their employment contracts with the Municipality would expire at the end of October 2017.
- 5.1.8 On 17 August 2017, Mr Mathobela responded by email to enquiries made by the Complainant in connection with the appointments and stated *inter alia* that:
- “We confirm that in view of the immediate capacity and operational needs contractual appointments in the offices of the municipal manager (strategic support to co-ordinate internal audit, LED, IDP and communication matter) and the speaker (ward committee support) (sic)”.*
- 5.1.9 Mr Mathobela further stated that the positions concerned still had to be advertised and that there was a deviation from the Municipality’s policies regulating the recruitment and selection of staff, when the temporary appointments were made.
- 5.1.10 According to the Minutes of a Special Municipal Council Meeting held on 6 September 2017, the Complainant raised his concerns about, *inter alia*, the appointment of former members of the Municipal Council without due process being followed, that the Human Resources Policy of the Municipality does not provide for contractual appointments and that the staff establishment of the Municipality only included positions for two (2) Ward Committee Clerks, and not three (3).

5.1.11 The Municipality's Organogram for 2017/2018 dated 31 May 2017, included the positions of Manager: Strategic Services in the Office of the Municipal Manager and two (2) Ward Committee Clerks in the Office of the Speaker.

Application of the relevant law

5.1.12 Section 55(1) of the Local Government: Municipal Systems Act, 2000 (Municipal Systems Act) provides that as the head of the administration of a municipality, the municipal manager is, subject to the policy considerations of the municipal council, responsible and accountable for, *inter alia*, the appointment of staff, other than managers directly accountable to the municipal manager.

5.1.13 A Code of Conduct for Municipal Staff Members is provided for in Schedule 2 to the Municipal Systems Act.

5.1.14 Item 2 of the Code provides that a staff member of a municipality must at all times-

(a) *“loyally execute the lawful policies of the municipal council;*

(b) *perform the functions of office in good faith, diligently, honestly and in a transparent manner;*

(c) *act in such a way that the spirit and objects of section 50 are promoted;*

(d) *act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and*

(e) *act impartially and treat all people, including other staff members, equally without favour or prejudice”* \_

- 5.1.15 Breaches of the Code must, by virtue of item 14 of the Code, be dealt with in terms of the disciplinary procedures of the Municipality, as envisaged in section 67(1)(h) of the Municipal Systems Act.
- 10.1.3 The Minister of Cooperative Governance and Traditional Affairs made the Local Government: Disciplinary Regulations for Senior Managers (Regulations), published in the Government Gazette on 21 April 2011, in terms of section 120 of the Municipal Systems Act. In terms of Regulation 1, reference to “*senior manager*” in the Regulations also means a municipal manager referred to in section 82(1) of the Municipal Structures Act.
- 5.1.1 Regulation 4 provides that if a senior manager is alleged to have committed misconduct, the municipal council must institute disciplinary proceedings in accordance the disciplinary code, as set out in the Regulations. The discipline must be effected in terms of, *inter alia*, the Code of Conduct for municipal staff members as contained in Schedule 2 of the Municipal Systems Act.
- 5.1.2 Section 1 of the Local Government: Municipal Finance Management Act, 2003 (MFMA) defines irregular expenditure, *inter alia* as expenditure incurred by a Municipality in contravention of, or that is not in accordance with a requirement of the MFMA or the Municipal Systems Act, and which has not been condoned.
- 5.1.3 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.
- 5.1.4 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 wasteful expenditure and other losses are prevented.

- 5.1.5 In terms of section 172(1) of the MFMA, the accounting officer of a municipality commits an act of financial misconduct if that accounting officer deliberately or negligently, *inter alia*, makes or permits, or instructs another official of the municipality to make an irregular or fruitless and wasteful expenditure.
- 5.1.6 Paragraph 4.1.1 of the Human Resources Policy of the Municipality (Policy), provides that when a position on the establishment of the Municipality becomes vacant, the Head of the relevant Department must submit a report to the Municipal Manager for the filling of the vacancy. The filling of the vacancy has to be approved by the Municipal Manager.
- 5.1.7 In terms of paragraph 4.1.2 of the Policy, vacancies of permanent elementary positions have to be advertised internally. Vacancies of entry and middle level occupations have to be advertised internally and in local newspapers and that of senior management and professional occupations, internally and in provincial and national newspapers.
- 5.1.8 Applications for a vacant position have to be considered and a shortlist be compiled of not more than 10 (ten) of the most suitable candidates, by the Head of the relevant Department, in terms of paragraph 4.2.2 of the Policy.
- 5.1.9 Paragraph 4.2.5 provides that the Human Resource Manager, the relevant Head of the Department and one other senior employee of the Municipality constitutes a panel to interview the shortlisted candidates. The scoring by the panel of the candidates during the interviews and the preferred candidate are submitted to the Municipal Manager for approval of the appointment.

- 5.1.10 In terms of paragraph 4.3 of the Policy, only candidates that comply with the minimum requirements of the post may be appointed.
- 5.1.11 Paragraph 4.3 provides that the Municipal Council, Municipal Manager or Head of the relevant Department may lower or waive the minimum requirements of a post in regard to academic qualifications or experience in respect of a candidate, if he/she is otherwise suitably qualified for the job in terms of formal qualifications, previous studies, relevant experience and ability to develop the capacity to do the job within a reasonable time.
- 5.1.12 Paragraph 4.3.3 provides for temporary appointment in a permanent position. The Head of a Department may, with the approval of the Municipal Manager and in consultation with the managers responsible for human resources and finance, temporarily appoint a person that is not an employee of the Municipality in a permanent post if the post is vacant and will probably be vacant for some time or the current incumbent of the post is absent or will be absent for a long time.

### Conclusion

- 5.1.13 The temporary appointment by the Municipality of Ms Patricia Wetbooi as Manager: Strategic Support and Ms Keitumetse Bosman, Ms Miena Oliphant and Mr George Tonyane as Ward Committee Clerks was not in accordance with the Policy.
- 5.1.14 The approved permanent staff establishment of the Municipality included only two (2) positions of Ward Committee Clerks in the Office of the Speaker, but three (3) were appointed.
- 5.1.15 The positions were not advertised and no recruitment and selection process was followed, as required by the Policy.

- 5.1.16 No evidence was found that the positions would have remained vacant for some time, to have justified temporary appointments, in terms of the Policy.
- 5.1.17 Neither the Policy not the Municipal Systems Act provides for any deviation from the prescribed recruitment and selection process of staff of the Municipality.
- 5.1.18 The temporary appointment by the Municipality of Ms Patricia Wetbooi as Manager: Strategic Support and Ms Keitumetse Bosman, Ms Miena Oliphant and Mr George Tonyane as Ward Committee Clerks was not in accordance with section 55(1) of the Municipal Systems Act as it did not comply with the policy considerations of the Municipal Council i.e. the provisions of the Policy regulating the recruitment and selection of staff.
- 5.1.19 The conduct of the Municipality was accordingly improper, constitutes maladministration and resulted in irregular expenditure, as contemplated by the MFMA.

## 6 FINDINGS

- 6.1 **Regarding whether the temporary appointment of Ms Patricia Wetbooi as Manager: Strategic Support and Ms Keitumetse Bosman, Ms Miena Oliphant and Mr George Tonyane as Ward Committee Clerks by the Municipality with effect from 1 August 2017 was in accordance with the relevant laws and prescripts regulating the recruitment and selection of staff of the Municipality, and if not whether the conduct of the Municipality was improper, constitutes maladministration and resulted in irregular expenditure.**
- 6.1.1 The allegation that the temporary appointment of Ms P Wetbooi as Manager: Strategic Support and Ms K Bosman, Ms M Oliphant and Mr G Tonyane as Ward Committee Clerks by the Municipality with effect from 1 August 2017 was not in

accordance with the relevant laws and prescripts regulating the recruitment and selection of staff of the Municipality, is substantiated.

- 6.1.2 The positions were not advertised and no recruitment and selection process was followed, as contemplated by the Policy.
- 6.1.3 The allegation that the conduct of the Municipality was improper, constitutes maladministration and resulted in irregular expenditure, is also substantiated.
- 6.1.4 The temporary appointments were made in violation of the Policy and were therefore not in accordance with the provisions of section 55(1) of the Municipal Systems Act. It resulted in irregular expenditure in respect of the remuneration paid by the Municipality to the appointees, as contemplated by the MFMA.
- 6.1.5 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 As the temporary appointments were made on 1 August 2017 and the contracts of appointment expired in October 2017, it would not be prudent to initiate a judicial review in respect thereof at this time.
- 7.2 The appropriate remedial action in terms of section 182(1)(c) of the Constitution is the following:



### 7.1.1 The Speaker of the Council of the Municipality

7.1.1.1 To take the appropriate steps in respect of disciplinary action against the Municipal Manager, Mr HG Mathobela, who was responsible for the irregular temporary appointment of Ms Patricia Wetbooi as Manager: Strategic Support and Ms Keitumetse Bosman, Ms Miena Oliphant and Mr G Tonyane as Ward Committee Clerks, in terms of section 67(1)(h) of the Municipal Systems Act, the Local Government: Disciplinary Regulations for Senior Managers and section 172(1) of the MFMA, within sixty (60) business days from the date of my report.

## 8 MONITORING

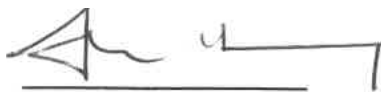
8.1.1 The Speaker of the Tsantsabane Municipality to submit an action plan to me within 30 business days from the date of receiving this report on implementation of the remedial action referred to in paragraph 7.1.1 above.

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



**ADV KHOLEKA GCALEKA**  
**THE ACTING PUBLIC PROTECTOR OF**  
**THE REPUBLIC OF SOUTH AFRICA**

DATE: 01 / 02 /2021



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