



REPORT NO. 41

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INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION RELATING TO THE IRREGULAR APPOINTMENT OF MR APIWE KHALANKOMO AS SECTION HEAD: CORPORATE SERVICES BY THE FUNCTIONARIES OF UMSOBOMVU LOCAL MUNICIPALITY IN THE NORTHERN CAPE



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LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS AND ABBREVIATIONS	DESCRIPTIONS
COGHSTA	Department of Co-operative Governance, Human Settlements and Traditional Affairs
Constitution	The Constitution of the Republic of South Africa, 1996
CPMD	Certificate Programme in Management Development
CV	Curriculum Vitae
HoD	Head of Department
MEC	Member of Executive Council
NLRD	National Learners' Records Database
Public Protector	Public Protector South Africa
Public Protector Act	Public Protector Act, 1994
SAQA	South African Qualifications Authority



Executive Summary

- (i) This is a report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, (the Constitution), 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, 23 of 1994 (the Public Protector Act), which provides that the Public Protector may make known the findings, point of view or recommendation of any matter investigated by her.
- (ii) The report relates to an investigation into allegations of improper conduct and maladministration relating to the irregular appointment of Mr Apiwe Khalankomo (Mr Khalankomo) as Section Head: Corporate Services by the functionaries of Umsobomvu Local Municipality (the Municipality).
- (iii) The investigation originates from a complaint lodged by Mr Dumisani Tuis (Mr Tuis) at the Northern Cape Provincial Office of the Public Protector, in Kimberley on 07 February 2022.
- (iv) In the main, the Complainant alleged that:
 - (a) On 10 September 2021, the Municipality advertised the position of Section Head: Corporate Services with Notice NR:38/2021, with a closing date of 30 September 2021;
 - (b) The requirements for the post were as follows:
 - (aa) A three (03) year degree in Public/Business Administration; three (03) year Diploma or equivalent qualification;
 - (bb) Five (05) years of experience in municipal administration/environment; and



- (cc) Applicant must preferably be in possession of a valid driver's license.
- (c) On 09 December 2021, he received a telephone call from the Municipality to attend interviews on 14 December 2021;
- (d) On 14 December 2021, he attended interviews, however, on 15 December 2021, he received a letter from the Municipality, informing him that he was unsuccessful; and
- (e) The appointed candidate, Mr Khalankomo, did not have the requisite qualifications, a valid driver's license, and relevant work experience for the position as indicated in the advertisement.
- (v) Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:
 - (a) **Whether the functionaries of Umsobomvu Local Municipality irregularly appointed Mr Khalankomo as Section Head: Corporate Services without qualifying for the post, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.**
- (vi) The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act. It included correspondence with the functionaries of the Municipality, an analysis of the relevant documents and information obtained during the investigation, and consideration and application of the relevant laws and prescripts.
- (vii) On 09 December 2025, a notice in terms of section 7(9) of the Public Protector Act (the Notice) was issued to the Premier of the Northern Cape, the MEC, the



HoD, the Speaker, the Mayor, and the Municipal Manager to provide an opportunity for responses 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 allowed the opportunity to make representations regarding same.

(viii) 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 Umsobomvu Local Municipality irregularly appointed Mr Khalankomo as Section Head: Corporate Services without qualifying for the post, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

(aa) The allegation that the functionaries of the Umsobomvu Local Municipality irregularly appointed Mr Khalankomo as the Section Head: Corporate Services without following the prescribed recruitment process, is substantiated.

(bb) Mr Mpela, as the Accounting Officer, acted in violation of Paragraph 3.17 of the Recruitment, Selection and Appointment Policy when he instructed Mr Kapp to amend the requirements of the advertisement in contravention of the Job Description instead of re-advertising or embarking on headhunting when the Municipality was unable to attract suitable candidates when the position was advertised in 2019 and 2020.

(cc) Mr Kapp, Mr Mpela, and Mr Nkcithiso acted in contravention of the Policy when they shortlisted seven (07) candidates who did not meet the requirements set out in the advertisement for the position. Furthermore, they appointed Mr



Khalankomo without having the requisite qualifications, valid driver's license and relevant work experience for the position.

- (dd) The conduct of the above-mentioned functionaries of the Municipality was in contravention of the Code of Conduct for Municipal Staff Members and Recruitment, Selection and Appointment Policy as they failed to perform their functions in good faith, diligently, honestly and in a transparent manner and loyally execute the policies of the Municipality.
- (ee) The conduct of Mr Mpela was in contravention of section 195 of the Constitution and section 55(1) of the Municipal Systems Act. His conduct was inconsistent with the democratic values and principles governing good public administration as enshrined in the Constitution.
- (ff) The conduct of the functionaries of the Municipality accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.
- (ix) The appropriate remedial action that the Public Protector takes in terms of section 182(1)(c) of the Constitution is the following:

The Premier of the Northern Cape

- (a) Take cognisance of the findings and remedial action and ensure that the MEC for COGHSTA tables this report by the Public Protector before the Provincial Legislature in line with section 133(3)(b) of the Constitution.
- (b) Within **ninety (30) calendar days** from the date of this report, submit to the Public Protector an implementation plan of the remedial action taken in Paragraph (a) above.



The Member of the Executive Council for Cooperative, Governance, Human Settlements, and Traditional Affairs

- (c) Take cognisance of the findings and remedial action and table this report by the Public Protector before the Provincial Legislature in line with section 133(3)(b) of the Constitution and monitor the implementation of the remedial action by the Municipal Manager.
- (d) Within **ninety (30) calendar days** from the date of this report, submit to the Public Protector an implementation plan of the remedial action taken in Paragraph (c) above.

The Head of the Department of COGHSTA

- (e) Take cognizance of the findings and remedial action contained in this report.

The Municipal Manager

- (f) Within **ninety (90) calendar days** from the date of receipt of this report to conduct refresher course training within the Municipality on salient legal prescripts related to Recruitment and Selection processes to ensure maximum effectiveness, build human resources capacity, quality, and to prevent recurrence of administrative lapses highlighted in this report as contemplated in section 68(1) of the Municipal Systems Act read with section 2(1)(a) of the Skills Development Act, 1998.
- (g) Within **thirty (30) calendar days** from the date of receipt of this report, admonish Mr Nkcithiso for his involvement in the shortlisting of candidates who did not meet the requirements stipulated in both the advert and Job Description in terms of the disciplinary procedures of the Municipality as envisaged in section 67(1)(h) of the Municipal Systems Act.



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- (h) Within **thirty (30) calendar days** from the date of receipt of this report provide Council with an implementation plan on how the remedial action taken in Paragraphs (f) to (g) above will be implemented, and provide the Public Protector with a copy thereof, in line with section 55(1)(j) of the Municipal Systems Act.



1. INTRODUCTION

- 1.1. This is a report of the Public Protector, issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act 23 of 1994 (the Public Protector Act).
- 1.2. The report is submitted in terms of sections 8(1) and 8(3) of the Public Protector Act to the following persons, to inform them of the outcome of the investigation and the remedial action taken:
 - 1.2.1. Dr Zamani Saul, the Premier of the Northern Cape Province.
 - 1.2.2. Mr Bentley Vass, the Member of the Northern Cape Provincial Executive Committee responsible for Cooperative Governance, Human Settlements and Traditional Affairs (COGHSTA), Transport/Safety.
 - 1.2.3. Mr Bafedile Lenkoe, the Head of the Northern Cape Department of COGHSTA.
 - 1.2.4. Ms Nandipha Stafa, the Speaker.
 - 1.2.5. Mr Mzwandile Toto, the Mayor.
 - 1.2.6. Mr Themsile Msengana, the Municipal Manager.
 - 1.2.7. Mr Dumisani Tuis, the Complainant.
- 1.3. The report relates to an investigation into allegations of improper conduct and maladministration relating to the irregular appointment of Mr Apiwe Khalankomo (Mr Khalankomo) as Section Head: Corporate Services by the functionaries of Umsobomvu Local Municipality (the Municipality).



2. THE COMPLAINT

- 2.1. The investigation originates from a complaint lodged by Mr Dumisani Tuis (Mr Tuis) at the Northern Cape Provincial Office of the Public Protector, in Kimberley on 07 February 2022.
- 2.2. In the main, the Complainant alleged that:
- 2.2.1. On 10 September 2021, the Municipality advertised the position of Section Head: Corporate Services with Notice NR:38/2021, with a closing date of 30 September 2021;
- 2.2.2. The requirements for the post were as follows:
- 2.2.2.1. A three (03) year degree in Public/Business Administration; three (03) year Diploma or equivalent qualification;
- 2.2.2.2. Five (05) years of experience in municipal administration/environment; and
- 2.2.2.3. Applicant must preferably be in possession of a valid driver's license.
- 2.2.3. On 09 December 2021, he received a telephone call from the Municipality to attend interviews on 14 December 2021;
- 2.2.4. On 14 December 2021, he attended interviews, however, on 15 December 2021, he received a letter from the Municipality, informing him that he was unsuccessful; and
- 2.2.5. The appointed candidate, Mr Khalankomo, did not have the requisite qualifications, a valid driver's license, and relevant work experience for the position as indicated in the advertisement.



3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1. The Public Protector is an independent constitutional institution 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) of the Constitution directs that the Public Protector has the additional powers and functions prescribed by national legislation. The Public Protector’s powers are regulated and amplified by the Public Protector Act which states, among 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 Umsobomvu Local Municipality is an organ of state as envisaged in 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 conduct an investigation as envisaged in section 182(1)(a) of the Constitution read with section 6(4) of the Public Protector Act.



Furthermore, the jurisdiction of the Public Protector was not disputed in this regard.

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 Umsobomvu Local Municipality irregularly appointed Mr Khalankomo as Section Head: Corporate Services without qualifying for the post, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

5. **THE INVESTIGATION**

5.1. **Methodology**

5.1.1. The investigation is conducted in terms of section 182(1)(a) of the Constitution read with sections 6 and 7 of the Public Protector Act.

5.1.2. Section 7(1)(b) of the Public Protector Act confers on the Public Protector the sole discretion to determine the format and procedure to be followed in conducting any investigation 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 a consideration and application of the relevant laws, regulatory framework and prescripts.



5.2.2. The investigation was approached using an enquiry process that seeks to determine:

5.2.2.1. What happened?

5.2.2.2. What should have happened?

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

5.2.2.4. In the event of a violation, what action should be taken?

5.2.2. 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. Evidence is evaluated, and a determination is made on what happened based on a balance of probabilities. In this case, the factual enquiry principally focused on whether the functionaries of Umsobomvu Local Municipality irregularly appointed Mr Khalankomo as Section Head: Corporate Services without qualifying for the post.

5.2.3. The enquiry regarding what should have happened focuses on the law or rules that regulate the standard that should have been met by the Umsobomvu Local Municipality in the execution of their duties relating to the subject of the complaint.

5.3. **The Key Sources of Information**

5.3.1. **Documents and correspondence**

5.3.1.1. Job Description Form: Section Head: Corporate Services dated 10 July 2018.



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- 5.3.1.2. Advertisement on Municipal Website dated 14 February 2019: Section Head: Corporate Services.
 - 5.3.1.3. Advertisement on Municipal Website dated 14 March 2019: Section Head: Corporate Services.
 - 5.3.1.4. Advertisement on Municipal Website dated 30 October 2020: Section Head: Corporate Services.
 - 5.3.1.5. Advertisement on Municipal Website dated 10 September 2021: Section Head: Corporate Services.
 - 5.3.1.6. Minutes of the Shortlisting Panel meeting: Section Head: Corporate Services dated 08 December 2021.
 - 5.3.1.7. Mr Khalankomo's Appointment Letter: Section Head: Corporate Services dated 15 December 2021.
 - 5.3.1.8. Memorandum: Interview Results: Section Head: Corporate Services and Financial Intern from Mr. Birtus Kapp to Mr. Amos Mpela dated 15 December 2021.
 - 5.3.1.9. Mr Khalankomo's Employment Contract: Section Head: Corporate Services dated 01 January 2022.
 - 5.3.1.10. Complaint email to the Public Protector dated 07 February 2022.
 - 5.3.1.11. Notice in terms of Rule 23(1) dated 24 March 2022, issued to Mr Amos Mphela, the erstwhile Municipal Manager, raising the allegations and request for information.



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- 5.3.1.12. Response Letter to the request for information from Mr. Amos Mpela to the Investigation Team dated 19 April 2022.
 - 5.3.1.13. Minutes of the Virtual Meeting between the Investigation Team and Mr Kapp dated 04 August 2022, where the Investigation Team raised the complaint with Mr Kapp.
 - 5.3.1.14. Minutes of the Virtual Meeting between the Investigation Team and Mr. Simphiwe Nkcithiso and Mr. Themisile Msengana, the Municipal Manager, dated 14 August 2024, where the Investigation Team raised the allegations and requested further information.
 - 5.3.1.15. Affidavit from SAQA to the Investigation Team dated 21 July 2025 where SAQA verified Mr Khalankomo's qualifications.
 - 5.3.1.16. Mr. Khalankomo's Curriculum Vitae outlining his qualifications and work experience.
 - 5.3.1.17. Mr. Tuis' Curriculum Vitae outlining his qualifications and work experience.
 - 5.3.1.18. Mr. Fatyela's Curriculum Vitae outlining his qualifications and work experience.
 - 5.3.1.19. Mr. Sors' Curriculum Vitae outlining his qualifications and work experience.
 - 5.3.1.20. Mr. Gigaba's Curriculum Vitae outlining his qualifications and work experience.
 - 5.3.1.21. Mr. Tutuse's Curriculum Vitae outlining his qualifications and work experience.
 - 5.3.1.22. Mr. Mike's Curriculum Vitae outlining his qualifications and work experience.
 - 5.3.1.23. Mr. Mohapi's Curriculum Vitae outlining his qualifications and work experience.



5.3.1.24. Mr. Simpson's Curriculum Vitae outlining his qualifications and work experience.

5.4. **Legislation and other prescripts**

5.4.1. The Constitution of the Republic of South Africa, 1996.

5.4.2. The Local Government: Municipal System Act, 2000.

5.4.3. The Recruitment, Selection, and Appointment Policy of the Municipality.

5.5. **Case Law**

5.5.1. *Khumalo and Another v Member of the Executive Council for Education*¹, *Kwazulu-Natal 2014 (5) SA-579 (CC)*.

5.5.2. *Hunter v Financial Sector Conduct Authority and Others*² 2018 ZACC 31.

5.5.3. *Notyawa v Makana Municipality and Others [2019] ZACC 43*.

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

5.6.1. On 09 December 2025, Notices in terms of section 7(9)(a) of the Public Protector Act were served on the following persons:

5.6.1.1. Dr Zamani Saul, the Premier of the Northern Cape Province.

¹ (CCT 10/13) [2013] ZACC 49, at par 61 and 62

² 2018 ZACC 31



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- 5.6.1.2. Mr Bentley Vass, the Member of the Northern Cape Provincial Executive Committee responsible for Cooperative Governance, Human Settlements and Traditional Affairs (COGHSTA), Transport/Safety.
- 5.6.1.3. Mr Bafedile Lenkoe, the Head of the Northern Cape Department of COGHSTA.
- 5.6.2. Ms Nandipha Stafa, the Speaker.
- 5.6.3. Mr Mzwandile Toto, the Mayor.
- 5.6.4. Mr Themsile Msengana, the Municipal Manager.

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

6.1. **Whether the functionaries of Umsobomvu Local Municipality irregularly appointed Mr Khalankomo as Section Head: Corporate without qualifying for the post, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act**

Common cause

- 6.1.1. The Municipality advertised the post of Section Head: Corporate Services, on 14 February 2019, 14 March 2019, and 30 October 2020, respectively, however, no appointments were made.
- 6.1.2. On 10 September 2021, the Municipality re-advertised the same post on its website, with a closing date of 30 September 2021.



6.1.3. On 08 December 2021, the Municipality shortlisted nine (09) candidates, including the Complainant, and the interviews were held on 14 December 2021.

6.1.4. Mr Khalankomo was appointed by the Municipality as Section Head: Corporate Services, with effect from 01 January 2022.

Issue in dispute

6.1.5. The issue for the Public Protector's determination is whether the appointment of Mr Khalankomo by the functionaries of the municipality to the post of Section Head: Corporate Services was in accordance with the laws and prescripts regulating the appointment of municipal staff.

The Complainant's version

6.1.6. The Complainant contended that the appointment of Mr Khalankomo was irregular as he did not have the requisite qualifications; valid driver's license and relevant experience for the position of Section Head: Corporate Services as indicated in the advertisement.

Response from Mr Amos China Mpela, the erstwhile Municipal Manager

6.1.7. On 24 March 2022, a notice in terms of *Rule 23(1) of the Public Protector*, as amended, was sent by the Public Protector Investigation Team (Investigation Team) to Mr Amos China Mpela (Mr Mpela), the erstwhile Municipal Manager, requesting his response to the allegations and information in respect of the complaint.

6.1.8. On 19 April 2022, Mr Mpela did not provide an explanation as requested, but furnished the Investigation Team with the following documents:



Advertisement of the position

- 6.1.8.1. A copy of the advertisement dated 10 September 2021, titled: “*Advertisement: Personnel Vacancy, Position: Section Head: Corporate Services*”, advertised on the municipal website with a closing date of 30 September 2021. The requirements for the position were a three (03) year Degree in Public/Business Administration, three (03) year Diploma or an equivalent qualification and a CPMD would be an added advantage, five (05) years’ experience in municipal administration/environment and possession of a valid Driver’s License.
- 6.1.8.2. In terms of the said advertisement, the key functions of the position included, *inter alia*, managing the Corporate Services Section, assisting the Senior Manager in the development, review and publication of Council policies, By-laws and procedures, ensuring that Conditions of Service, Collective Agreements, Laws and Ordinances, By-laws and Regulations are kept up to date, advise Departments on the interpretation and execution thereof and to provide advice and guidance to subordinates with regard to policies.

Job Description - Section Head: Corporate Services

- 6.1.8.3. A copy of a document titled: “*Job Description, Umsobomvu Local Municipality Position Title Section Head: Corporate Services*”, dated 10 July 2018, which indicates that the essential requirements for the position are a Bachelor’s Degree in Public Administration and three (03) to four (04) years’ experience and a Driver’s License Code B was listed as one of the special conditions attached to the position.



Screening Matrix

6.1.8.4. An undated and unsigned document titled: “*Umsobomvu Municipality Section Head: Corporate Services*” which states that the Municipality received a total of sixteen (16) applications in respect of the position as follows:

Initials & Surname	Qualifications	Experience	Comments
D Tuis	Grade 12 Performance Management System Training Certificate Programme in Fleet Management Certificate Supply Management Certificate Report Writing Skills Course Certificate Advance Management Development National Diploma – Public Management B Tech – Public Management	Court Manager at the Department of Justice from 2006 to date Section Head: Corporate Service at COGHSTA 2003-2006 Administrative Officer – Corporate Services at COGHSTA 1998-2003	Driver's License Code B
A Khalankomo	Grade 12 Bachelor of Fine Arts (Hons) Post Graduate Diploma in Archives and Records Management (Hons)	Registry Clerk Assistant – In-Service Training 2015-2017 Librarian Assistant – year to year contract Acting Librarian 2017 to date	Learner Driver's License
Candidate C	Grade 12 Certificate Advanced Administrative Skills Principal of payroll Training: How to use CCMA and Law Workshop Received Job Evaluation Training SALGA	Controller at A H Security 1986-1989 Union Official at Dichawu Trade Union 1992-2004 CLO/PLO at Barnies Construction 2008-2009 HR Clerk at Umsobomvu Municipality 2009 to date	Driver's License Code C1 Job Evaluation Certificate not annexed due to some wrong in scripts
Candidate D	Grade 12 B.A. Human Resources Management B.A. Honours (Administration) Received Basic Digital Skills Training	Student Rep at University of Fort Hare 2014-2015 Intern at SASSA 2016-2017 HR Officer at the Department of Roads and Public Works 2018 to date	Driver's License Code C1
Candidate E	Grade 12 B.A. Degree Diploma in Labour Law Paralegal Certificate	Senior Admin Clerk at Ciskei Government 1989-1994 Sales Rep at Old Mutual 1994-1995 Deputy Director at EC Provincial Government 1997-2008 Independent Correctional Visitor at the Judicial Inspectorate of Correctional Centre 2010-2011	Driver's License Code EC1



		Water and Sanitation Coordinator at Chris Hani District Municipality 2014 to date	
Candidate F	Grade 12 Computer Practice – N4 Community Development Workers Certificate Successfully completed Presentation, Facilitation and Report Writing Training NQF Level 5 Successfully completed Citizen Based Monitoring Survey CCMA Certificate- Education, Training and Development	Petrol Attendant/ Cashier at Caltex 1998-2003 Salesperson at Pep Store 2005 May-July Data Collector at Merimetsi Construction 2005 August-December CDW Internship at Community Development Worker 2007-2006 COGHSTA 2007 to date	Driver's License Code B CV is not attached as the applicant suggested in the application form
Candidate G	Grade 12 B. Tech in Business Administration National Diploma in Management	Trainee Service Advisor at MAN Truck and Bus 2007-2008 Supplier Technical Assistance at Ford Motor Corporation SA 2012 May-November Finance Intern at Umsobomvu Municipality 2014-2016 Senior Clerk: Asset Management at Umsobomvu Municipality 2016 to date	Driver's License Code 08
Candidate H	Grade 12 National Diploma in Administrative Management NQF Level 6 Total Quality Management Certificate NQF Level 6 Project Management Certificate SABS Internal Auditing Certificate Diploma in Business Management Diploma in Personnel Training and Management Diploma in Personnel Computing NTC Carpentry and Joinery Certificate Leadership and Management Course Certificate Internal Audit QMS Training Course Certificate Assessor Course Certificate NDPE (360- FET Band) HIV/AIDS Awareness Program Course Certificate	Quality Management Officer at Lovedale Public FET College 2007-2014 Area Manager at IEC 2011-2016 Assistance Project Coordinator at Lovedale Public FET College 2006-2019 Administrative Assistant at Lovedale Public FET College 2006-2007 Skills Facilitator at Lovedale Public FET College 2005-2006 Lecturer at Lovedale Public FET College 2000-2005 Trade Training/ Instructor/ Officer at Intsika Yesizwe Youth Training Centre 1995-2000 Assistant General Manager at Timber Craft Manufacturer 1994-1995	Driver's license Code 08
Candidate I	Grade 12 Certificate Life Skills Computer Practice	Admin Support Officer at Manne Dipico Hospital	Driver's License Code B



	<p>Certificate Human Resources Management N4-5 Occupational Health and Safety Certificate Certificate: Project Management Certificate: Financial Management Short Course: Supply Chain Management Certificate: Monitoring and Evaluation Certificate: Emerging Management Development Program Bachelor of Public Administration Bachelor of Public Administration Honours</p>	<p>Administrative Officer at Department of Health 2012-2017 Administrative Officer at Department of Health 2011-2012 Administrative Clerk at Department of Health 2008-2011</p>	
Candidate J	<p>Senior Certificate Basic Digital Skills Training Certificate National Diploma in Public Management B. Tech in Public Management</p>	<p>Finance and SCM Intern at the Department of Correctional Services currently Supply Chain at Umsobomvu Municipality 2015 Holidays Administrative Assistant at Court of Justice 2013-2014 School Holidays</p>	None
Candidate K	<p>Grade 12 Bachelor of Administration Received Basic Digital Training Position Graduate Diploma Archives and Records Management</p>	<p>Human Resource Intern at Umsobomvu Municipality 2019 to date Assistant Presiding Officer at IEC 06-08 May 2019 Intern at SALGA June-December 2018</p>	Learner Driver's license
Candidate L	<p>Grade 12 Bachelor of Administration</p>	<p>Cashier/Owner at Elizabeth Matiwana Electricity for 05 years Driver/Manager at Matiwana Taxi Services 2013-2014 Inker and Scanner at IEC</p>	Driver's License Code C1
Candidate M	<p>Grade 12 Social Science Degree B.A. Honours in Development Studies First Line Management Certificates Assessor Training Certificate Moderator Training Certificate Moderator Training Certificate SDF Course Public Service Induction Training of Trainers Ward Based Primary Health Care Community Worker Training of Trainers Training Programme</p>	<p>District Training Coordinator at Department of Health 2008 to date Course Administrator at University of Cape Town 2007-2008 Faculty Officer at University of Western Cape 2006-2007 Administrator/ Data Capturer at SARS 2005-2006 Administrative Officer/ Credit Controller/Tutor at University of Western Cape 2002-2005</p>	None



	<p>Injection Safety in the context of Infection Prevention and Control Risk Management Certificate Short course: Information Systems for Human Resources for Health Certificate</p>		
Candidate N	<p>Grade 12 International Diploma in Business B.A. Honours in Business Studies Pastel Accounting Computer Proficiency Computer Literacy</p>	<p>Admin and Finance Manager at LMS Automation 2020 January-December Casual Interpreter at Mielburg Magistrate's Court 2018-2019 Office Administrator at Iprosat Pty. Ltd January-November 2018 Finance Assistant/Debtors Clerk/Receptionist 2014-2017 Accounts Clerk at Rena Business Solutions 2012-2014 Admin Assistant and Cashier at Mr. Price Group 2009-2011</p>	<p>Driver's License Code C1</p>
Candidate O	<p>Grade 12 B. SOC.SC LLB Degree</p>	<p>Admin Clerk at Department of Social Development currently Waitress at Steers 2009 Holidays Assistant Student Disability Unit at University of Free State 2009-2010</p>	<p>Driver's License Code B</p>
Candidate P	<p>Matric (no attachment of a copy of the certificate) Bachelor's degree in education Municipal Governance Advance Certificate Bachelor of Arts in Public Management and Governance Diploma in Human Resource Management Record Management Course Certificate Governance and Intergovernmental Relations Course Certificate Facilities Management Programme NQF Level 6 South African Clearance Certificate</p>	<p>Assistant Director: Auxiliary Services at City of Johannesburg 1995 to date Acting Assistant Director at City of Johannesburg Operational Manager at City of Johannesburg 2004-2010 Senior Administration Officer at City of Johannesburg 2000-2003</p>	<p>None</p>



Mr Khalankomo's CV

6.1.8.5. According to Mr Khalankomo's Curriculum Vitae (CV), he is in possession of the following:

- (a) National Senior Certificate completed in 2009;
- (b) Bachelor of Fine Arts (Hons) obtained from the University of Fort Hare, completed in 2014;
- (c) Post Graduate Diploma in Archives and Records Management obtained from the University of Fort Hare, completed in 2015;
- (d) Library Circulation Certificate at BDP and Associates, completed in 2017;
- (e) Masters in Information Science obtained from the University of Fort Hare, completed in 2018;
- (f) Labour Law Certificate (online short course) obtained from Damelin College, completed in 2019;
- (g) Three (03) certificates from the National School of Government completed online in 2020, in respect of Strategic Planning and Management, Introduction to Financial Management and Budgeting, and Leading Change Management;
- (h) Diploma in Legal Studies (online) at Alison "Empower yourself" School (Ireland), completed in 2021;
- (i) Diploma in Alternative Dispute Resolution (online) at Alison "Empower yourself" School (Ireland), completed in 2021; and
- (j) Work experience as a Registry Assistant Clerk (Learner) from 2015 to 2017, Librarian Assistant from 2016 to 2018, and Librarian from 2018 to 2021 at the Municipality.



Minutes of the Shortlisting Meeting

- 6.1.8.6. According to the document titled: “*Minutes of Shortlisting Meeting (Shortlisting Minutes)*”, dated 08 December 2021, the Municipality shortlisted nine (09) candidates, namely Mr Tuis, Mr Khalankomo, Candidate D, Candidate E, Candidate G, Candidate J, Candidate K, Candidate L, and Candidate P.
- 6.1.8.7. The Shortlisting Minutes reflect that the members of the Shortlisting Panel were as follows:
- (a) Mr Birtus Kapp (Mr Kapp), Senior Manager: Corporate Services;
 - (b) Mr Simphiwe Nkcithiso (Mr Nkcithiso), Senior Manager: Technical Services;
 - (c) Mr Takalani Tshikundu (Mr Tshikundu), Chief Financial Officer; and
 - (d) Mr F Mkhontwana (Mr Mkhontwana), Human Resource Clerk (Scriber).

Interview Score Card Section Head: Corporate Services

- 6.1.8.8. The Municipality provided a document titled: “*Interview Score Card Section Head (Interview Score Card)*”, dated 14 December 2021, which reflects that the Interview Panel members for the position of Section Head: Corporate Services were the following:
- (a) Mr Kapp;
 - (b) Mr Nkcithiso; and
 - (c) Mr Tshikundu.



6.1.8.9. In terms of the Interview Score Card, eight (08) candidates were interviewed and were scored as follows:

Panellists	Mr Kapp	Mr Nkcithiso	Mr Tshikundu
Mr Tuis			
Score out of 90	48	47	45
Average	46.7%		
Score out of 90	37	52	48
Average	45.7%		
Mr Khalankomo			
Score out of 90	63	55	39
Average	52.3%		
Candidate D			
Score out of 90	41	38	36
Average	38.3%		
Candidate J			
Score out of 90	15	24	17
Average	18.7%		
Candidate K			
Score out of 90	32	29	25
Average	28.7%		
Candidate L			
Score out of 90	28	0	35



Average	21%		
Candidate G			
Score out of 90	49	42	46
Average	45.7%		

Memorandum on Interview Results: Section Head Corporate Services and Financial Interns

6.1.8.10. A document titled: “*Interview Results: Section Head Corporate Services and Financial Interns (Interview Results Memorandum)*” dated 15 December 2021, from Mr Kapp addressed to Mr Mpela indicates that nine (09) candidates were shortlisted and only eight (08) were interviewed as one of the candidates did not attend.

6.1.8.11. In terms of the Interview Results Memorandum, the Interview Panel scored the eight (08) candidates as follows:

Candidate	Score
Mr Khalankomo	52.3%
Mr Tuis	46.7%
Candidate G	45.7%
Candidate E	45.7%
Candidate D	38.3%
Candidate K	28.7%
Candidate L	21%
Candidate J	18.7%



6.1.8.12. According to the memorandum, it was recommended that Mr Khalankomo be appointed to the position of Section Head: Corporate Services.

Mr Khalankomo's Appointment letter

6.1.8.13. A document titled: "*Vacancy: Section Head Corporate Services*", dated 15 December 2021, indicates that Mr Mpela appointed Mr Khalankomo as Section Head: Corporate Services with effect from 01 January 2022.

Mr Khalankomo's Employment Contract

6.1.8.14. According to a document titled: "*Employment Contract Apiwe Khalankomo*", signed and dated 01 January 2022, the Municipality appointed Mr Khalankomo as the Section Head: Corporate Services.

Response from Mr Kapp

6.1.9. On 22 July 2022, the Investigation Team sent a request for a meeting to Mr Mpela to discuss the complaint. On 04 August 2022, a meeting was held by the Investigation Team with Mr Kapp and Mr Mpela. During the said meeting, Mr Kapp stated, *inter alia*, that:

6.1.9.1. Mr Tuis was not appointed as he did not have experience in municipal administration/environment;

6.1.9.2. Mr Khalankomo did not have a Bachelor's Degree in Public Administration qualification; however, he had the relevant work experience because at the time that he was employed as a Librarian, he accumulated extensive experience in municipal administration under his (Mr Kapp's) mentorship;

6.1.9.3. Mr Khalankomo's work included assisting with Collective Agreements, Disciplinary Procedures, and Conditions of Services occasionally, as well as presiding over disciplinary actions on an *ad hoc* basis;

6.1.9.4. The advertisement was not in line with the Job Description. The Municipality previously advertised the position on 14 February 2019, 14 March 2019, and



30 October 2020, in line with the Job Description, but there were no candidates who responded to the advertisements;

- 6.1.9.5. Mr Mpela then informed him to advertise the position and, in the advertisement, to include any Degree or Diploma. Mr Mpela's instruction was, however, not in writing;
- 6.1.9.6. The advertisement stipulated that "*applicants must preferably be in possession of a valid Driver's License*", therefore, it was not mandatory for the appointable candidate to have a valid Driver's License; and
- 6.1.9.7. The Municipality does not have a signed and dated Recruitment, Selection and Appointment Policy but it has been applicable since 2011. There are no records of when the Policy was approved by Council.
- 6.1.9.8. During the said meeting, Mr Kapp provided the Investigation Team with the following documents:

Advertisements

- 6.1.10. According to the February 2019 and March 2019 advertisements, the academic requirements for the position of Section Head: Corporate Services included a three (03) year Diploma or Degree in Public or Business Administration and a valid Driver's License. On the other hand, in terms of the advertisement dated 30 October 2020, the requirements for the position included, *inter alia*, a three (03) year Diploma or Degree in Public or Business Administration or an equivalent qualification, and applicants must be in possession of a valid Driver's License.

Job Description

- 6.1.11. In terms of a document titled: "*Job Description, Umsobomvu Local Municipality Position Title Librarians*", dated 28 July 2017, the job purpose for the position includes, coordinating the operations of the Library Services and monitors the

execution of procedural sequences/requirements associated with aligning standards to meet customer objectives, attending to the acquisition, organization of information, interacting and providing users with information from various media, creating an environment conducive to learning through the arrangement of displays and signage of new library materials.

Responses from Mr Nkcithiso and Mr Msengana

6.1.12. On 13 August 2024, the Investigation Team sent a request for a meeting to Mr Nkcithiso and Mr Simphiwe Msengana (Mr Msengana), the Municipal Manager, to obtain responses to the complaint. On 14 August 2024, a virtual meeting was held between the Investigation Team and Mr Nkcithiso and Mr Msengana. In the said meeting, Mr Nkcithiso stated, *inter alia*, that:

6.1.12.1. He was appointed as a member of both the Shortlisting and Interview Panels for the position of Section Head: Corporate Services in 2021;

6.1.12.2. In a shortlisting meeting held on 08 December 2021, the Panel decided to dispense of a Driver's License as a material requirement of the position since the vacancy was not specifically for a driver;

6.1.12.3. The qualifications of Mr Khalankomo were never an issue during shortlisting as the advertisement stated that the qualifications required for the position were a Degree/Diploma in Public/Business Administration or an equivalent qualification;

6.1.12.4. Mr Khalankomo has a Post Graduate Diploma in Records and Archives and a master's degree in information science, which are functions of the administration that speak directly to the requirements of the position; and

6.1.12.5. Different learning institutions have different terminologies that refer to Public Administration qualifications.

6.1.13. In the said meeting, Mr Msengana stated, *inter alia*, that:



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- 6.1.13.1. Mr Khalankomo was already working for the Municipality for more than five (05) years at the time when he was appointed as the Section Head: Corporate Services;
- 6.1.13.2. He had a Bachelor's Degree in Fine Arts and a Post Graduate Diploma in Archives and Record Management even before he was appointed into the position. The aforementioned qualifications form part of Public Administration;
- 6.1.13.3. He also has a Master's Degree in Information Sciences, and if his qualifications were to be evaluated in terms of administrative functions, all of them would qualify as administrative functions within Local Government; and
- 6.1.13.4. An advertisement of a vacancy must be drafted in line with the Job Description.
- 6.1.14. During the aforementioned meeting with Mr Nkcithiso and Mr Msengana, the Investigation Team formally requested the following documentation:
- 6.1.14.1. Appointment letters of the members serving on both the Shortlisting and Interview Panels;
- 6.1.14.2. The Council Resolution approving the relevant policy; and
- 6.1.14.3. The Minutes of the shortlisting meeting in which the Panel resolved to waive the requirement of a Driver's License for the position of Section Head: Corporate Services.
- 6.1.15. Despite follow-up communication, the Municipality did not furnish the Investigation Team with the requested documentation. This lack of cooperation impeded the Investigation Team's ability to fully assess the procedural integrity and compliance associated with the appointment process.



Response from Mr Khalankomo

- 6.1.16. On 13 August 2024, the Investigation Team sent a request for a meeting to Mr Khalankomo, to discuss the complaint. During the virtual meeting between Mr Khalankomo and the Investigation Team, Mr Khalankomo stated, *inter alia*, that:

“I am having a Bachelor of Fine Arts where I did electives Psychology and Criminology, then attained Post Graduate Diploma in Archives and Records Management.

In the academic record of the qualification, there is more of management and the modules for the whole Post Graduate Diploma: Archives and Records Management are divided in sections.

There is also Registry core competencies in the same module of the Post Graduate Diploma which is NQF Level 8. I also have a Master’s in Information Sciences on the core competencies of Archives and Records Management and a Labour Law Certificate from Damelin.

The advert attracted me to apply as it also mentioned an equivalent qualification of Public/Business Administration. I applied with a Learner Driver’s License because I was in the process of a obtaining a Driver’s License.

I started working at the Municipality in 2015 at Registry then I was appointed as an Assistant Librarian for one (01) year. From there, I was appointed to act in the position of Acting Librarian for seven months before being appointed as a Librarian for four (04) years. I have experience of more than five (05) years.”



Response from SAQA

6.1.17. On 06 June 2025, the Investigation Team sent a request to the South African Qualifications Authority (SAQA) requesting the verification of Mr Khalankomo's academic qualifications. On 23 July 2025, an affidavit dated 21 July 2025 was received from Ms Phumzile Mtsweni stating that the following records with their achievement status were found on the National Learners' Records Database (NLRD) in respect of Mr Khalankomo:

Qualification/Part Qualification	Institution	Achievement Year	Achievement Status on the NLRD	NQF Level
Senior Certificate	Department of Basic Education	2009	Achieved	04
Bachelor of Fine Arts	University of Fort Hare	2013	Achieved	07
Position Graduate Diploma in Archives and Records Management	University of Fort Hare	2014	Achieved	08
Master of Social Science	University of Fort Hare	2018	Achieved	09

Response from Ms Shereave Felix

6.1.18. On 10 November 2025, the Investigation Team sent an e-mail to Mr Msengana requesting additional information relating to Mr Khalankomo's work experience



as a Registry Clerk Assistant (Learner). On 11 November 2025, a response was received from Ms Shereave Felix (Ms Felix), Senior Manager: Corporate Services on behalf of Mr Msengana stating, *inter alia*, that:

“The only information pertaining the Learner appointment at Umsobomvu Municipality that could be found was the letter from the University addressed to the Municipality, requesting an opportunity for fieldwork to be done by the student (Mr A Khalankomo), as was required for the course he attended. There is no appointment letter for the position as Registry Clerk Assistant (Learner) in LGSETA program and the Municipality did not pay him a stipend for that period therefore no records can be provided by the Salary Section of the Municipality”.

- 6.1.19. In addition to the response, Ms Felix provided the investigation Team with a letter titled *"Student Fieldwork Attachment" (Fieldwork Attachment Letter)* dated 12 June 2014, from Mr Festus Khayundi (Mr Khayundi), Senior Lecturer/Programme Coordinator of the University of Fort Hare addressed to Mr Mpela. According to the Fieldwork Attachment Letter, Mr Khayundi informed Mr Mpela that Mr Khalankomo was a registered student at the University for a Postgraduate Diploma in Archives and Records Management and were required to undergo fieldwork for a period of three (03) weeks from 17 June 2014 to 04 July 2014. Thus, the University was requesting the Municipality to place Mr Khalankomo at the Municipality to conduct his fieldwork for three (03) weeks.

Email to LGSETA

- 6.1.20. On 12 November 2025, the Investigation Team sent an e-mail to Ms Raesibe Maja (Ms Maja), an Administrator at Local Government Sector Education Training Authority (LGSETA) requesting information pertaining to the placement of Mr Khalankomo at the Municipality as Registry Clerk Assistant



under the LGSETA learnership. Despite a follow-up email and telephone calls, no formal response was received from Ms Maja.

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

- 6.1.21. On 09 December 2025, Notices in terms of section 7(9)(a) of the Public Protector Act were served to Mr Msengana, Mr Khalankomo, Dr Saul, Mr Vass, Mr Lenkoe, Ms Stafa and Mr Toto, affording them an opportunity to make representations regarding the intended findings and likely remedial action of the Public Protector.
- 6.1.22. Of all the persons served with the section 7(9)(a) Notices only Mr Khalankomo, Mr Msengana, Ms Stafa and Mr Toto responded. On 10 December 2025, Mr Borman, Manager: Office of the Head of Department: COGHSTA, acknowledged receipt of the Notice on behalf of the Department. He further noted the contents of the Notice and stated that the contents of the Notice would be processed accordingly but failed to provide any response. There was no response from the office of the Premier.

Response from Mr. Msengana, the Municipal Manager

- 6.1.23. Mr Msengana responded to the Notice in a letter dated 17 December 2025. In his response, he acknowledged receipt of the Notice issued under section 7(9)(a) of the Public Protector Act and stated, *inter alia*, that:
- (a) The statement recorded in Paragraphs 2.2.2.1 and 2.2.2.3 of the Notice was not in line with the Municipality's understanding of the requirements mentioned in the advertisements which are separated by a semicolon and not a comma i.e. a three year degree in Public Administration; three year diploma; or equivalent qualification, and not separated by a comma as per the Notice.



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- (b) The understanding and historic use of the insertion of a semicolon,
- 'I suppose is to separate the requirements and to afford the municipality to consider the one or the other. Thus, a candidate who are in possession of a three-year degree in Public/Business Administration or a three-year diploma or equivalent qualification would qualify for shortlisting and appointment if the respective applicant achieve the required score in the interview'.*
- (c) Mr Khalankomo's five (05) year experience in a municipal administration/environment excluding LGSETA or Student fieldwork letter dated 12 June 2014.
- (d) The period in municipal administration/environment from 02 November 2016 as Libraries Assistant, as Acting Librarian (2017) to date of shortlist for the post of Section Head: Corporate Services. (08 December 2012).
- (aa) 02 November 2016 till 02 November 2017 (year one).
- (bb) 02 November 2017 till 02 November 2018 (year two).
- (cc) 02 November 2018 till 02 November 2019 (year three).
- (dd) 02 November 2019 till 02 November 2020 (year four).
- (ee) 02 November 2020 till 02 November 2021 (year five)
- (e) Paragraph 6.2 of the Policy states that a person shall not be considered for appointment, unless he/she complies with the required qualification requirements as stipulated. Paragraph 6.2 must be applied in line with the purpose of the Policy. Paragraph 1.3 of the Policy states that, *"to ensure that the recruitment process complies with the Equity Employment Act, Labour*



Relation Act, the municipal Employment Equity Plan and the target set thereunder”.

- (f) In terms of Section 20(3) of the Employment Equity Act (Act 55 of 1998) provides,

“For purposes of this Act, a person may be suitably qualified for a job as a result of any one of, or any combination of that person’s –

- (a) Formal qualifications,*
- (b) Prior Learning;*
- (c) Relevant experience; or*
- (d) Capacity to acquire, within a reasonable time, the ability to do the job.*

- (g) Section 20 (5) provides that *“In making a determination under subsection (4), an employer may not unfairly discriminate against a person solely on the grounds of that person’s lack of relevant experience”.*

- (h) A municipality is a creature of statute, and a post-graduation diploma in Archives and Records Management (NQF 08) is relevant as municipal records management is the place where municipal data is kept correctly to support the institution and personnel records, processes and council minutes are developed and kept to affirm the institution’s existence beyond the lifetime of its personnel.

- (i) In terms of section 55(1)(e) of the Local government: Municipal Systems Act, 2000 (Act 32 of 2000), *“As the head of administration the Manager of a municipality is, subject to the policy direction of the municipal council, responsible and accountable for- the appointment of staff other than those referred to in section 56(a), subject to the Employment Equity Act, 1998 (Act*



55 of 1998). When an interviewing Panel make a recommendation, it is clearly a recommendation and not an appointment.

- (j) All persons who served on the Interviewing Panel, i.e. Messrs Kapp, Tshikundu and Nkcithiso as well as the then Manager, Mr Mpela, are no longer in the employ of the municipality, and action envisaged by Section 182 (1) (c) of the Constitution would serve no judicious purpose.

Response to section 7(9) Notice-Mr Khalankomo, dated 17 December 2025

- 6.1.24. Mr Khalankomo responded to the Notice in a letter dated 17 December 2025. In his response, he noted the contents of the Notice issued under section 7(9)(a) of the Public Protector Act and stated, *inter alia*, that:
- 6.1.24.1. When the post was advertised, he applied showing interest having knowledge of the municipality administration over the years. Additionally, he was already in a position of Post Graduate qualification which fitted more to or equivalent qualifications that were indicated in the advertisement.
- 6.1.24.2. The issue of the driver's license was on the basis of preference as indicated in the advertisement, beside he had a learner's drivers license during that time, and he obtained it a month after the appointment was made.
- 6.1.24.3. He was shortlisted and was invited for interviews. He was subsequently appointed by the Municipality in January 2022. He was still in the same position and had proven to management and Council that he was able to perform the duties linked to the position of Section Head: Corporate Services.
- 6.1.24.4. He proved to be competent in the position and his work rate speak for itself.



6.1.24.5. Further, when the previous management left at the end of 2022, he was appointed to act as a Director Corporate Services/Senior Manager Corporate Services where together with the Team excelled in that position to stabilise the Municipality for over eight (08) months.

6.1.25. In addition to the response, Mr Msengana provided the Investigation Team with Page 1 of an unsigned Mr Khalankomo's Appointment letter as Assistant Librarian-Colesberg dated 02 November 2016. The Appointment letter does not stipulate the commencement date of the employment and the signatories to the letter.

Response to section 7(9) Notice-Ms Stafa, the Speaker, dated 06 January 2026

6.1.26. Ms Stafa responded to the Notice in a letter dated 06 January 2026. In her response, she acknowledged receipt of the Notice issued under section 7(9)(a) of the Public Protect Act. She further stated that as soon as the final report is issued, it would be tabled to Council.

Response to section 7(9) Notice-Mr Toto, the Mayor, dated 06 January 2026

6.1.27. Mr Toto responded to the Notice in a letter dated 06 January 2026. In his response, he acknowledged receipt of the Notice issued under section 7(9)(a) of and noted its content as well as responses provided by the Administration of Umsobomvu Municipality. He further stated that:

"The final report to be issued by your office, is awaited deliberation by Council"



Applicable Law

The Constitution of the Republic of South Africa Act, 1996

6.1.28. Section 195(1) of the Constitution provides that the public administration must be governed by the democratic values and principles enshrined in the Constitution including, *inter alia*, the following principles:

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

(f) *Public administration must be accountable;*

(g) *Transparency must be fostered.*

The Local Government: Municipal Systems Act, 2000

6.1.29. Section 55(1) of the Local Government: Municipal Systems Act (Municipal Systems Act), 2000, 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.

6.1.30. Item 2 of the Code of Conduct for Municipal Staff 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;*



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- (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”.*

The Recruitment, Selection, and Appointment Policy of the Municipality

- 6.1.31. Paragraph 2.2 of the undated and unsigned Recruitment, Selection and Appointment Policy (Policy) states that candidates should be employed purely on the basis of job-related requirement, deployment, and personal attributes.
- 6.1.32. Paragraph 3.17 of the Policy provides that after a position has been advertised for the minimum period and no suitable candidate can be recommended for appointment, the Municipal Manager will have the authority to headhunt.
- 6.1.33. Paragraph 6.2 of the Policy states that a person shall not be considered for appointment, unless he/she complies with the required qualifying requirements as stipulated in the advertisement.

Case law

- 6.1.34. The appointment of candidates without appropriate qualifications was dealt with by the court in *the matter of Khumalo and Another v Member of the Executive Council for Education*³, *KwaZulu-Natal 2014 (5) SA-579 (CC)* (Khumalo case) the court held, *inter alia*, that:

³ (CCT 10/13) [2013] ZACC 49, at par 61 and 62



6.1.34.1. The rule of law is a founding value of our constitutional democracy and that it is the duty of the Courts to insist that the State, in all its dealings, operates within the confines of the law and in so doing, remains accountable to those on whose behalf it exercises power. It was held that:

“[t]he supremacy of the Constitution and the guarantees in the Bill of Rights add depth and content to the rule of law. When upholding the rule of law, we are thus required not only to have regard to the strict terms of regulatory provisions but so too to the values underlying the Bill of Rights”.

6.1.35. Reference was also made to section 195 of the Constitution which compelled the MEC, in the public interest, to avoid and eliminate illegalities in public administration and the fact that the MEC was not only entitled but also duty-bound to set aside irregular administrative acts. It was held that:

‘[35] Section 195 provides for a number of important values to guide decision-makers in the context of public-sector employment. When, as in this case, a responsible functionary is enlightened of a potential irregularity, section 195 lays a compelling basis for the founding of a duty on the functionary to investigate and, if need be, to correct any unlawfulness through the appropriate avenues...

‘[63] However, the fairness of the decision will typically be weighted heavily on the process and justification of the decision-makers. This would be in line with the interpretation offered by the MEC of section 11(3) to require justifications to be given for departing from the requirements. Section 11(3) allowed for the approval by an executing authority of a promotion to promote the basic values and principles in section 195(1) of the Constitution. The values in section 195(1) may, therefore, call for the approval of a person whose appointment would, for example, promote a more efficient, economic and effective use of resources; maximise the human-resource potential in the institution; or provide



for greater representativeness. The rationality of an approval of this nature would largely depend on the reasons of the executing authority”.

- 6.1.36. In *Hunter v Financial Sector Conduct Authority and Others* 4 2018 ZACC 31, the Constitutional Court held that the principles highlighted in the Khumalo case correctly and logically implies that there is a legal duty to investigate potential, as yet unproven, unlawful conduct. In short, whenever the attention of a responsible functionary is drawn to a potential irregularity, they have a duty to launch a proportionate investigation into it.
- 6.1.37. In the matter of *Notyawa v Makana Municipality and Others* [2019] ZACC 43, the Constitutional Court emphasised the appointment of suitably qualified Municipal Managers owing to the position they hold in the administration of a municipality. The Court noted that “the role played by the managers is crucial to the delivery of services to local communities and the proper functioning of municipalities whose main function is to provide services to local communities, and that candidates who are best qualified for the job must be recruited.

Analysis

- 6.1.38. The evidence before the Public Protector indicates that the functionaries of the Municipality advertised the position of Section Head: Corporate Services on 14 February 2019, 14 March 2019, 30 October 2020, and 10 September 2021, respectively.
- 6.1.39. According to the evidence before the Public Protector, the academic requirements for the position of Section Head: Corporate Services have undergone notable changes over time. In the advertisements dated **14 February 2019** and **14 March 2019**, the minimum academic qualification was specified as a **three (03) year Diploma or Degree in Public or Business Administration**. According to the advertisement dated **30 October 2020**, the



criteria were broadened to include **an equivalent qualification**, thereby expanding the pool of eligible candidates. The advertisement dated **10 September 2021**, further refined the requirements to include:

- 6.1.39.1. **A three (03) year Degree in Public or Business Administration;**
- 6.1.39.2. **A three (03) year Diploma or an equivalent qualification; and**
- 6.1.39.3. **CPMD (Certificate Programme in Management Development) listed as an added advantage**
- 6.1.40. The evidence before the Public Protector indicates that the Municipality did not advertise the position of Section Head: Corporate Services in line with the Job Description which indicates that the essential requirements for the position are a Bachelor's Degree in Public Administration and three (03) to four (04) years' experience and a Driver's License Code B was listed as one of the special conditions attached to the position. Paragraph 2.2 of the Policy provides that candidates should be employed purely on the basis of job-related requirements, deployment, and personal attributes.
- 6.1.41. The evidence at the Public Protector's disposal indicates that the key functions of the position included, *inter alia*, managing the Corporate Services Section, assisting the Senior Manager in the development, reviewing and publishing of Council policies, By-laws and procedures, ensuring that Conditions of Service, Collective Agreements, Laws and Ordinances, By-laws and Regulations are kept up to date, advising Departments on the interpretation and execution thereof and to provide advice and guidance to subordinates with regards to policies.
- 6.1.42. The evidence before the Public Protector shows that the functionaries of the Municipality advertised the position of Section Head: Corporate Services in



2019 and 2020. Paragraph 3.17 of the Policy provides that after a position has been advertised for the minimum period and no suitable candidate can be recommended for appointment, the Municipal Manager will have the authority to headhunt. In this instance, the Municipality had previously advertised the position three times, however, when information was requested from Mr Kapp, he informed that the Municipality could not attract suitable candidates during the previous recruitment processes.

- 6.1.43. There is no evidence to indicate that the Municipality exhausted the avenue of headhunting as envisaged in Paragraph 3.17 of the Policy. Paragraph 3.17 of the Policy empowers the Municipal Manager to recruit candidates by head hunting after failing to attract suitable candidates.
- 6.1.44. Mr Mpela is the head of administration as envisaged in section 55(1) of the Municipal Systems Act which places an obligation on him, as the head of the administration of a Municipality, to subject himself to the policy considerations of the Municipal Council and is bound by the policies of the Municipality. In this regard, he failed to follow the Recruitment, Selection and Appointment Policy of the Municipality as envisaged in section 55(1) of the Municipal Systems Act.
- 6.1.45. The evidence before the Public Protector indicates that, at the time of his appointment, Mr Khalankomo held the following qualifications: a Master's Degree in Information Sciences, a Bachelor of Fine Arts Degree, a Postgraduate Diploma in Archives and Records Management, and a Learner Driver's License. However, these qualifications are not aligned with the requirements stipulated in the advertisement and Job Description for the position of Section Head: Corporate Services. Specifically, the post required a Bachelor's Degree in Public or Business Administration. Mr Khalankomo's academic background and field of specialisation differ substantially from the qualifications prescribed for the role. The court in *Notyawa v Makana*



Municipality and Others emphasised the importance of recruiting suitably qualified candidates, and the role played by the managers in providing the delivery of services to local communities and the proper functioning of municipalities whose main function is to provide services to local communities.

- 6.1.46. The Public Protector further notes a discrepancy between the information provided by the South African Qualifications Authority (SAQA) and that reflected in Mr Khalankomo's CV. SAQA records indicate that Mr Khalankomo obtained a Master's Degree in Social Science from the University of Fort Hare in 2018. In contrast, his CV states that he holds a Master's Degree in Information Sciences from the same institution and year. This inconsistency raises concerns regarding the accuracy and verification of the qualifications presented during the appointment process.
- 6.1.47. Upon analysis of Mr Khalankomo's qualifications and work experience, it appears they align more closely with roles in recordkeeping or administrative support rather than the specialised requirements of a Section Head: Corporate Services position. At the time of his appointment, Mr Khalankomo did not possess this credential.
- 6.1.48. Upon further analysis of Mr Khalakomo's CV, it appears that there was an overlap in his work experience as it was recorded that he was appointed as a Registry Assistant Clerk (Learner) from 2015 to 2017 and Librarian Assistant from 2016 to 2018. The Public Protector notes the response from the Municipality indicating that there are no records of Mr Khalankomo's appointment and/or work experience as Registry Assistant Clerk (Learner) in LGSETA in the Municipality save for the Student Fieldwork letter dated 12 June 2014.
- 6.1.49. The Municipality failed to provide the Public Protector with documentation demonstrating that Mr Khalankomo's academic qualifications are equivalent to



a Bachelor's Degree in Public or Business Administration, as required for the position of Section Head: Corporate Services. Although the Investigation Team formally requested this information from the SAQA, the response received only verified the authenticity of Mr Khalankomo's qualifications and did not include any assessment of their equivalence to the prescribed qualification. This omission raises concerns regarding the adequacy of the qualification verification process and the Municipality's compliance with the stated requirements of the post.

- 6.1.50. The Public Protector notes a material inconsistency between the requirements outlined in the job advertisement dated 10 September 2021 and those specified in the official Job Description for the position of Section Head: Corporate Services. According to the Job Description, the essential requirements for the position included a Bachelor's Degree in Public Administration, a three (03) to four (04) years' relevant experience, and a Code B Driver's License, listed as a special condition attached to the role. However, the advertisement published on 10 September 2021 listed the following as requirements: a three (03) year Degree in Public or Business Administration, a three (03) year Diploma or an equivalent qualification, and CPMD (Certificate Programme in Management Development) as an added advantage. These discrepancies suggest a deviation from the formally approved Job Description, which may have implications for the transparency, fairness, and procedural compliance of the recruitment process.
- 6.1.51. The Public Protector further notes the concession by Mr Kapp that the advertisement dated 10 September 2021, was not in accordance with the Job Description.
- 6.1.52. In accordance with Paragraph 6.2 of the Recruitment Policy, a candidate shall not be considered for appointment unless he or she meets the qualifying requirements as stipulated in the job advertisement. In this instance, the Public



Protector acknowledges that Mr Khalankomo possesses more than five (05) years of experience within a municipal environment especially as a Librarian. However, the position of Section Head: Corporate Services specifically requires relevant **managerial experience**, as clearly outlined in both the job advertisement and the official Job Description. Based on the evidence presented, Mr Khalankomo does not possess the requisite relevant managerial experience as Section Head: Corporate Services. Furthermore, no documentation or supporting evidence was provided to the Public Protector to demonstrate that Mr Khalankomo met this essential criterion at the time of his appointment.

- 6.1.53. The Public Protector notes Mr. Msengana's response to section 7(9) Notice that Mr. Khalankomo's five years of experience in municipal administration (2016–2021) as Assistant Librarian and Acting Librarian is acknowledged. However, the reference to the student fieldwork letter dated 12 June 2014 is excluded, meaning his practical exposure prior to 2016 is not considered part of the qualifying experience.
- 6.1.54. The appointment process appears to have overlooked strict adherence to qualification requirements as per Paragraph 6.2 of the Policy. The reliance on demonstrated ability rather than compliance with statutory prescripts undermines the legality of the appointment.
- 6.1.55. While Mr. Khalankomo has five (05) years' municipal administration or environment experience and a valid learner's driver's license, his appointment was procedurally irregular because it did not fully comply with the Municipality's Recruitment Policy and statutory framework. The irregularity lies not in his capability to perform the job, but in the failure of the appointing authority to ensure compliance with legal prescripts governing municipal staff recruitment.



- 6.1.56. According to the evidence at the Public Protector's disposal, the Complainant met the minimum requirements of the post, he was number two (02) in terms of the scoring during the interviews behind the appointed candidate, Mr Khalankomo. His interview score was 46.7% and was not recommended for appointment.
- 6.1.57. The Public Protector finds that the functionaries of the Municipality failed to uphold and promote a high standard of professional ethics, objectivity, and fairness in the appointment of Mr Khalankomo to the position of Section Head: Corporate Services. At the time of his appointment, Mr Khalankomo did not possess a relevant Bachelor's Degree in Public Administration, a valid Driver's License, and the required managerial work experience as stipulated in both the job advertisement and the Job Description. In light of these deficiencies, Mr Khalankomo did not meet the qualifying criteria to be shortlisted or appointed to the position. The decision to proceed with his appointment despite these shortcomings reflects a serious deviation from the principles of merit-based recruitment and undermines the integrity of the Municipality's hiring processes.
- 6.1.58. Mr Mpela approved the recommendation made by the Interview Panel to appoint Mr Khalankomo without reservations, despite the statutory obligations imposed by section 195 of the Constitution, read together with Section 55(1) of the Municipal Systems Act. These provisions emphasize the principles of accountability, transparency, and the duty to implement policies and procedures governing the recruitment of municipal staff. The approval of the appointment, in the absence of compliance with the prescribed qualifications and experience, reflects a disregard for these constitutional and legislative responsibilities.
- 6.1.59. The Public Protector acknowledges Mr. Khalankomo's response to the Notice, as well as his concession that, at the time the post was advertised, he was in



possession of a learner's driver's license. It is further noted that he demonstrated to both management and council his ability to perform the duties associated with the position. The central issue under consideration, however, is whether his appointment complied with the applicable legal prescripts governing the recruitment and appointment of staff within the municipality.

Conclusion

- 6.1.60. Having considered the facts of the matter, the legal prescripts applicable thereto, the Public Protector concludes that the appointment of Mr Khalankomo was irregular in that the appointment of Mr Khalankomo was not made in accordance with the laws and prescripts regulating the appointment of municipal staff.
- 6.1.61. Based on the evidence before the Public Protector, the functionaries of the Municipality shortlisted seven (07) candidates who did not comply with requirements as set out in the advertisement and Job Description. Subsequently, Mr Khalankomo was appointed without having the requisite qualifications, a valid Driver's License, and the relevant work experience for the position of Section Head: Corporate Services.
- 6.1.62. The evidence before the Public Protector indicates that Mr Kapp, Mr Mpela, and Mr Nkcithiso acted in contravention of the Recruitment Policy when they proceeded with the appointment of Mr Khalankomo. Specifically, Item 2 of the Code of Conduct for Municipal Staff places a clear obligation on municipal officials to loyally execute the lawful policies of the municipal council. The failure to adhere to the qualification and experience requirements outlined in both the advertisement and Job Description constitutes a breach of this duty and undermines the integrity of the recruitment process.



7. FINDINGS

7.1. Having regard to the evidence, the regulatory framework determining the standard that the Municipality should have complied with and the impact thereof on good administration, the Public Protector makes the following adverse findings:

7.1.1. **Whether the functionaries of the Umsobomvu Local Municipality irregularly appointed Mr Khalankomo as Section Head: Corporate without following the prescribed recruitment process, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act**

7.1.1.1. The allegation that the functionaries of the Umsobomvu Local Municipality irregularly appointed Mr Khalankomo as the Section Head: Corporate Services without following the prescribed recruitment process, is substantiated.

7.1.1.2. Mr Mpela, as the Accounting Officer, acted in violation of Paragraph 3.17 of the Recruitment, Selection and Appointment Policy when he instructed Mr Kapp to amend the requirements of the advertisement in contravention of the Job Description instead of re-advertising or embarking on headhunting when the Municipality was unable to attract suitable candidates when the position was advertised in 2019 and 2020.

7.1.1.3. Mr Kapp, Mr Mpela, and Mr Nkcithiso acted in contravention of the Policy when they shortlisted seven (07) candidates who did not meet the requirements set out in the advertisement for the position. Furthermore, they appointed Mr Khalankomo without having the requisite qualifications, valid driver's license and relevant work experience for the position.



- 7.1.1.4. The conduct of the above-mentioned functionaries of the Municipality was in contravention of the Code of Conduct for Municipal Staff Members and Recruitment, Selection and Appointment Policy as they failed to perform their functions in good faith, diligently, honestly and in a transparent manner and loyally execute the policies of the Municipality.
- 7.1.1.5. The conduct of Mr Mpela was in contravention of section 195 of the Constitution and section 55(1) of the Municipal Systems Act. His conduct was inconsistent with the democratic values and principles governing good public administration as enshrined in the Constitution.
- 7.1.1.6. The conduct of the functionaries of the Municipality accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

8. **REMEDIAL ACTION**

- 8.1. The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action with a view of redressing the conduct referred to in this notice upon the conclusion of an investigation where adverse findings are made.
- 8.2. In the matter of *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. It should be noted that although the Public Protector made adverse findings against Mr Mpela, Mr Tshikundu, and Mr Kapp, any remedial action the Public Protector might have taken against them, as envisaged by section 182(1)(c) of



the Constitution would serve no judicious purpose as they are no longer in the employ of the Municipality.

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

The Premier of the Northern Cape

- 8.4.1. Take cognisance of the findings and remedial action and ensure that the MEC for COGHSTA tables this report by the Public Protector before the Provincial Legislature in line with section 133(3)(b) of the Constitution.
- 8.4.2. Within **ninety (30) calendar days** from the date of this report, submit to the Public Protector an implementation plan of the remedial action taken in Paragraph 8.4.1. above.

The Member of the Executive Council for Cooperative, Governance, Human Settlements, and Traditional Affairs

- 8.4.3. Take cognisance of the findings and remedial action and table this report by the Public Protector before the Provincial Legislature in line with section 133(3)(b) of the Constitution and monitor the implementation of the remedial action by the Municipal Manager.

The Head of the Department of COGHSTA

- 8.4.4. Take cognizance of the findings and remedial action contained in this report.



The Municipal Manager

- 8.4.5. Within **ninety (90) calendar days** from the date of receipt of this report to conduct refresher course training within the Municipality on salient legal prescripts related to Recruitment and Selection processes to ensure maximum effectiveness, build human resources capacity, quality, and to prevent recurrence of administrative lapses highlighted in this Notice as contemplated in section 68(1) of the Municipal Systems Act read with section 2(1)(a) of the Skills Development Act, 1998.
- 8.4.6. Within **thirty (30) calendar days** from the date of receipt of this report, admonish Mr Nkcithiso for his involvement in the shortlisting of candidates who did not meet the requirements stipulated in both the advert and Job Description in terms of the disciplinary procedures of the Municipality as envisaged in section 67(1)(h) of the Municipal Systems Act.
- 8.4.7. Within **thirty (30) calendar days** from the date of receipt of this report provide Council with an implementation plan on how the remedial action taken in Paragraphs 8.4.6.to 8.4.7 above will be implemented, and provide the Public Protector with a copy thereof, in line with section 55(1)(j) of the Municipal Systems Act.

9. MONITORING

- 9.1. The Head of Department to submit an action plan to the Public Protector **within thirty (30) calendar days** from the date of receipt 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.

ADV KHOLEKA GCALEKA
PUBLIC PROTECTOR
REPUBLIC OF SOUTH AFRICA
DATE: 31 MARCH 2026

Assisted by: Mr Mlungisi Khanya
Northern Cape Provincial Representative