

**Statement by Public Protector Adv. Busisiwe Mkhwebane and Deputy Public Protector Adv. Kholeka Gcaleka during a media briefing in Pretoria on Monday, January 31, 2022.**

**Programme Director, Mr. Oupa Segalwe;  
Deputy Public Protector, Adv. Kholeka Gcaleka;  
Chief Executive Officer, Ms. Thandi Sibanyoni;  
Acting Chief Operations Officer, Ms. Lethabo Mamabolo;  
Chief of Staff, Mr. Luther Lebelo;  
Executive Managers;  
Chief Investigators;  
Staff;  
Members of the media;  
Ladies and gentlemen;**

Good afternoon;

I wish to take this opportunity to convey the Public Protector South Africa's compliments of the year 2022. We wish you all of the best for the year ahead. One hopes that it will be a productive year filled with success and joy.

Today marks a month since we returned from the festive recess. We returned to work well rested and energised to pick up where we left off at the end of 2021 and carry on with our mission of taking the services of this institution to grassroots communities.

We kicked-off the year with one of the most pertinent matters, being the plight of students in the high education sector. We are in the process of finalising that systemic investigation, with a view to finding everlasting solutions that the problems that continue to trouble that sector.

We are also moving at full speed to conclude another pertinent systemic investigation in respect of the level at which organs of state within the justice value chain are welcoming, accommodating and responsive to victims of Gender-Based Violence and parents or children who interact with the system for purposes of child maintenance.

We hope to wrap up those two investigations during this final quarter of the financial year, along with all other performance targets as set out in the 2021/22 Annual Performance Plan.

Coming back to today's programme, we are releasing a number of investigation reports, covering a variety of themes including public housing, public transport, general service delivery, irregular staff appointments and executive ethics.

The Deputy Public Protector and I will alternate, taking you through our findings in respect of the various investigations. I now hand over to her to deal with the first few matters.

### **GENERAL SERVICE DELIVERY**

We investigated allegations of poor service delivery, irregular billing of water, lack of transparency on budget allocation, lack of health and school facilities and high crime rate at Rand West City Local Municipality. A complaint lodged in March 2020 by Mr Leonard Lebogang Short on behalf of the Finsbury residents triggered the investigation.

In essence, Mr Short alleged that:

1. There is no transparency on budget allocation at Ward 2 and there are empty promises by the Mayor with regard to the Integrated Development Plan (IDP);
2. The residents of Ward 2 stated their dissatisfaction of being overcharged for water. The accounts allocation is based on estimates and as a result the residents are being unfairly overcharged. The residents requested to buy electricity directly from Eskom rather than buying it from the Municipality. The Municipal officials cannot explain the bills and statements to the residents;
3. The community of Ward 2 requested that prepaid water meters be installed as soon as possible so that they can be able to monitor their own usage through meters. The community is not content with the current Water Management System that the Municipality has put in place. Among other reasons is that the current water infrastructure is old and they need it to be revamped. The accounts that are given to each household are also on estimates and results in residents being unfairly overcharged;
4. The maintenance of the environment is not satisfactory as the area has uncut grass which is a security risk and health hazard for the residents. The community requested good services to maintain a clean environment. Furthermore, the roads are poorly maintained with a large number of potholes. This is costly to residents as cars often experience damages and a lot of accidents. Street lights are also not working and it has been reported countless times with no response or effort by the Municipality to attend to the matter. They requested that these potholes should be attended to and dealt with as a matter of urgency to avoid any further unforeseen circumstances;
5. The community requested that the increasing crime be given high priority by the Randfontein South African Police Services (SAPS) Station Commander. The community asked for intervention from the Minister of Police, Mr Bheki Cele to help them open the local Police Station premises which have not been

operating for a period of 15 years because of the high population in Ward 2. There is little effort from the police to combat the increasing levels of crime and car hijackings;

6. They further requested that more initiative should be taken and more police patrol vehicles be made frequently available to patrol the streets of Ward 2. The community also found it inconvenient to make use of public transport to visit the police station in town for services. They informed the Station Commander, Brigadier Manamela and Executive Mayor, Mr Mzi Khumalo and Councillor Steve Mazibuku to intervene in this matter, with no response;
7. The residents of Ward 2 do not have a 24-hour health care clinic. The clinic that they have starts operating from 19:30 in the evening. Patients queue outside the clinic yard while emergency patients must travel to Mohlakeng and Leratong Hospitals for health services;
8. There is only one primary school for the whole Ward 2 and the residents are forced to take their children elsewhere for education; and
9. Mr Short further alleged that the residents of Ward 2 in Sporong have seen that the area increased by seven informal settlements allocated by the Municipality without basic needs.

Based on the analysis of the complaint, the following issues were identified to inform and focus the investigation:

1. Whether there is a lack of transparency on budget allocation for Ward 2 in Finsbury through the Integrated Development Plan by the Municipality;
2. Whether there is irregular billing for water and electricity to the residence of Ward 2 in Finsbury by the Municipality;
3. Whether there is poor maintenance of the following environment and municipal infrastructures at Ward 2 in Finsbury by the Municipality;
4. Whether there is undue delay by the South African Police Services to renovate the existing Satellite Police Station at Ward 2 in Finsbury;
5. Whether there is poor service delivery due to shortage of health facilities at Ward 2 in Finsbury;
6. Whether there is poor service delivery due to shortage of schools at Ward 2 in Finsbury; and

7. Whether the residents of Ward 2 in Sporong where allocated informal settlements by the Municipality without basic needs.

Based on the evidence, it can be concluded that although the Municipality complied with the constitutional imperatives, by developing the IDP, it did not give notice to the public within 14 days of the adoption of its IDP, make the copies of or extracts from the plan available for public inspection at specified places and publicise a summary of the plan. A conclusion can be drawn that the Municipality did not comply with the relevant prescripts during the 2017 IDP, thereby violating the Municipal Systems Act.

Evidence also clearly indicates that the Municipality estimated the quantity of water consumption by residents of Ward 2 in Finsbury for more than 180 days due to the residents denying meter readers access to the meters. The conduct of the residents of Ward 2 should not be viewed as a deterrent by the Municipality to fulfil its mandatory obligation as the Municipality has a privilege to request assistance from the relevant authorities. However, the investigation established that some of the meters are in a dilapidated condition that the meter readers would not be able to obtain actual readings, even if access thereto was not obstructed by the community.

Although the investigation confirmed that residents of Finsbury are billed based on estimated consumption instead of actual readings for longer periods contrary to the municipal by-laws, it was also established that the residents of Finsbury intimidated and prevented municipal meter readers from collecting accurate data or meter readings resulting in the municipality issuing invoices based on estimated consumption.

It can be concluded from the observations made during the on-site visits that were undertaken by our investigation team that the Municipality did not effectively manage infrastructure at Ward 2 in Finsbury. The allegations that there is poor maintenance of the environment and municipal infrastructure at Ward 2 in Finsbury by the Municipality is substantiated.

Evidence in our possession shows that the SAPS delayed to implement the recommendations of the work-study report to re-establish a satellite station in Kocksoord and to upgrade Mohlakeng Satellite Police Station to a fully-fledged police station as approved and requested by the Gauteng Provincial Commissioner, Lieutenant Mawela a year ago.

Therefore, the allegation that there is undue delay by the SAPS to revamp the existing Satellite Police Station at Ward 2 in Finsbury is substantiated. However, the SAPS is taking appropriate steps to implement the recommendations of the work-study report to re-establish satellite station in Kocksoord and to upgrade Mohlakeng Satellite Police Station to a fully-fledged police station.

It can be concluded from observations made during the on-site visit that was undertaken by the investigative team, evidence obtained during the investigation and

the application of the relevant legal framework that the Kocksoord Clinic starts operating from 07:30 in the morning to 16:30 in the afternoon.

Further that the Gauteng Department of Health took reasonable legislative and other measures, within its available resources to ensure the progressive realisation of the right to health care by building a new storied 24-hour Community Health Centre within a 5km radius in Mohlakeng, which will also accommodate the community of Ward 2 in Finsbury. It is envisaged that construction will be completed in February 2022.

According to the factual evidence in our possession, it can be concluded that the Gauteng Department of Education (GDE) adhered to the provisions of the Constitution in ensuring that the community of Finsbury has access to basic education through reasonable measures traversed above. In the circumstances, the GDE's version is more probable than that of Mr Short. Therefore, the allegation that there is poor service delivery due to shortage of schools at Ward 2 in Finsbury is unsubstantiated.

It can be concluded therefore that the Municipality violated the Constitution and the Municipal Systems Act by not providing the residents of Sporong informal settlement with water and sanitation. The allegation that the residents of Ward 2 in Sporong where allocated informal settlements by the Municipality without basic needs is substantiated.

Having said that, we make the following recommendations. The Acting Municipal Manager of the Rand West City Local Municipality should ensure that:

1. Within 30 working days of receipt of this report and after every 30 working days, provide a progress report to us until all the issues are addressed;
2. Mr Short is provided with the copy of the IDP as approved by the Council on 30 May 2017;
3. The engagements with the Premier's Office with regard to the linking of the Municipal call centre with the Premier's call centre for the community to be able to provide their monthly meter readings and to report service delivery and other issues of concern are finalised;
4. All water meters at Ward 2 in Finsbury are read monthly and that all the accounts found to have been overcharged and undercharged are adjusted accordingly;
5. All faulty water meters at Ward 2 in Finsbury are tested and fixed whilst awaiting Municipal Infrastructure Grant (MIG) funding from the Provincial Government for the installation of prepaid water meters;
6. There is constant follow-up with the Provincial Government with regard to the MIG funding application for the installation of prepaid water meters at Ward in Finsbury;

7. The grass is cut, the faulty street lights and the potholes are fixed at Ward 2 in Finsbury; and
8. Water Services Infrastructure Grant funding with the Department of Water and Sanitation for the provision of water and sanitation to the residents of Sporong informal settlement is applied for.

The national Commissioner of the SAPS should ensure that Within thirty (30) working days of receipt of this report and after every 30 working days, provide a progress report to the Public Protector with regard to re-establishment of Kocksoord Satellite Police Station and the upgrading of Mohlakeng Satellite Police Station to a fully-fledged police station.

The Commissioner must also ensure that a constant follow-up is made with the National Department of Public Works and Infrastructure regarding the renovations and handing over of Kocksoord Police Station to the South African Police Services for use by the Gauteng Provincial Office as a satellite police station.

The Divisional Commissioner of the SAPS Organisational Development should ensure that a constant follow-up is made with the Gauteng Provincial Office of the SAPS regarding feedback and way forward on the outcome of the assessment done at Mohlakeng Police Station for approval by the National Commissioner.

The Head of Department of the Gauteng Department of Health must provide a progress report to us with regard to the ongoing construction of the 24-hour Community Healthcare Centre in Mohlakeng until its completion in February 2022 within 30 working days of receipt of this report and after every 30 working days.

## **HOUSING**

### **Bosman v Knysna Local Municipality (Report No. 83 of 2021/22)**

We investigated allegations of improper conduct, undue delay and maladministration by the Knysna Local Municipality in the Western Cape relating to its failure to provide Ms Lydia Bosman with a low-cost house at ERF 9890A, White Location.

A complaint from Mr Themba Bosman — lodged in May 2019 on behalf of his pensioner mother, Lydia Bosman — gave rise to the investigation. Our investigation dealt with whether the municipality failed to provide Ms. Bosman with the house after having approved it and if so, whether such conduct amounts to undue delay, improper conduct, constitutes maladministration and prejudice to her.

We found that, it was true that the municipality failed to provide Ms Bosman with the house after having approved it. On several occasions, Ms Bosman engaged with the municipality, unsuccessfully requesting that her house be built.

The municipality conceded she had applied for the house and a subsidy was approved in that regard on 26 March 2009. She has been prejudiced as no house has been built for her despite one having been approved for that purpose.

The conduct of the municipality in this regard is accordingly improper as envisaged in the Constitution and constitutes maladministration and undue delay as envisaged in the Public Protector Act. It also prejudices Ms Bosman.

To remedy this conduct appropriately, we direct the Acting Municipal Manager to apologise in writing to Ms Bosman for the undue delay in providing her with a house in terms of her approved application. This must take place within 30 working days from the date of the report.

The Acting Municipal Manager must also take urgent and appropriate steps to ensure that Ms Bosman is provided with a low-cost house as required in terms of the applicable sections of the Constitution, the Housing Act and the National Housing Code. This must happen within 120 working days from the date of the report.

In addition, the Acting Municipal Manager must take appropriate steps in respect of disciplinary action against the municipal officials who were implicated in non-compliance with the municipality's policies and procedures that resulted in the undue delay to provide Ms Bosman with a house. This must happen within 60 working days of the report.

Moreover, the Acting Municipal Manager must see to it that the municipality's Internal Audit Function, in accordance with the Municipal Finance Management Act, conducts regular audits and reviews the adequacy and effectiveness of controls, processes and procedures on the delivery of low cost houses and reports accordingly.

Lastly, the Acting Municipal Manager must report to the Municipal Council on the steps taken to implement the remedial action referred to above within 120 working days from the date of this report and submit a copy to us.

This report is also referred to the Western Cape MEC for Human Settlements for noting.

### **Moleshiwa v City of Tshwane (Report No. 84 of 2021/22)**

We investigated allegations of maladministration by the City of Tshwane in connection with undue delay or failure by the municipality to convene a Dispute Resolution Committee hearing. This was in order to adjudicate on a matter relating to the transfer and compensation for incomplete houses and semi-developed stands situated at Lotus Gardens in the western parts of the city.

A complaint lodged in October 2019 by Mr Samuel Moleshiwa led to the investigation. He alleged that the municipality failed to assist him to transfer incomplete houses and semi-developed stands to his company or to compensate him for partial work completed on the said stands despite a complaint he raised in that regard in 2012.

Our investigation focused on whether the municipality unduly delayed or failed to convene a Dispute Resolution Committee hearing in order to adjudicate on Mr Moleshiwa's matter and if so, whether its conduct constitutes improper conduct as envisaged in the Constitution and undue delay as envisaged in the Public Protector Act.

We found that the municipality unduly delayed or failed to convene a Dispute Resolution Committee hearing in order to adjudicate on the matter as alleged. The municipality did not implement a resolution taken at an Alternative Dispute Resolution (ADR) meeting of 17 October 2019 to refer the matter to the Dispute Resolution Committee.

The conduct of the municipality in this regard failed to promote the basic values and principles governing public administration as stipulated in section 195(f) of the Constitution, 1996. This section obliges organs of state to be accountable to citizens.

There is also Section 237 of the Constitution, which provides that all constitutional obligations be performed diligently and without delay, thus imposing a responsibility on the municipality to table Mr Moleshiwa's matter timeously before the appropriate committee as provided for in the Municipal Structures Act. The conduct of the municipality constitutes improper conduct as envisaged in the Constitution and undue delay as envisaged in the Public Protector Act.

In order to appropriately remedy this improper conduct and undue delay, we direct the City Manager to issue a written apology to Mr Moleshiwa for the undue delay or failure by the municipality to implement the ADR resolution and the legal obligation to refer the matter to the Dispute Resolution Committee.

The City Manager must also take appropriate steps to ensure that a Dispute Resolution Committee hearing is convened or set up to hear and subsequently make a finding/determination on Mr Moleshiwa's grievance.

The Executive Mayor must note this report and oversee that the City Manager refers the matter to the Dispute Resolution Committee.

### **Benya v Nelson Mandela Metropolitan Municipality and another (Report No. 89 of 2021/22)**

We investigated allegations of undue delay and maladministration by the provincial Department of Human Settlements and the Nelson Mandela Metropolitan Municipality in the Eastern Cape. This was in connection with failure to provide Mr SK Benya with his approved RDP house number 3350 in KwaNobuhle, Uitenhage, Gqeberha.

The investigation followed Mr Benya's complaint, which he lodged with our provincial office in Bisho in November 2020. In a nutshell, he alleged that the undue delay by the municipality to provide him with a house since 2004 is improper, constitutes maladministration and has resulted in him and his family suffering prejudice.



Our investigation centered on whether the municipality and the department unduly delayed to provide Mr Benya with the house after it was approved as far back as 2004 and if so, whether such failure amounts to improper conduct, maladministration and prejudice.

We found that, indeed, the municipality and the department unduly delayed to provide Mr Benya with a house after it was approved. There is evidence that, on several occasions since 2004, he visited the municipal offices requesting that he be provided with the house — all in vain.

Both the municipality and the department conceded that the Municipal RDP housing subsidy records show that the ERF in question was allocated to Mr Benya and that he has been waiting for the house to be built for 17 years.

He appears as an approved beneficiary on the Housing Subsidy System Portal report but, in reality, neither a house nor title deed has been allocated to him since approval in 2004. This has left him prejudiced.

This undue delay and conduct failure by the municipality and the department is at odds with the relevant provisions of the Constitution; the Housing Act; and the Deeds Registries Act. It also constitutes improper conduct as envisaged in the Constitution and maladministration as envisaged in the Public Protector Act. It further prejudiced Mr Benya and his family.

To appropriately remedy this conduct, we direct the City Manager to take urgent and appropriate steps, in consultation with the Head of the Department (HOD) to ensure that Mr Benya is provided with his approved house and the title deed to the property within 180 working days from the date of this report.

The City Manager must ensure that the municipality provides Mr Benya with a temporary structure to occupy within 30 working days from the date of this report until the construction of the house is concluded.

In addition, the City Manager must apologise in writing to Mr Benya for the undue delay in providing him with his approved house and further inform him of the steps taken as referred to above within 30 working days from the date of the report.

Moreover, the City Manager must ensure that the Internal Audit Function of the municipality, in accordance with section 165 of the Municipal Finance Management Act, conducts regular audits, and reviews the adequacy and effectiveness of controls, processes and procedures on the delivery of low cost houses and reports accordingly.

Lastly, the City Manager must report to the Municipal Council on the implementation of the remedial action referred to above within 90 working days from the date of this report and provide us with a copy.

This report is also being referred to the Eastern Cape MEC for Human Settlements for noting.

## **STAFF APPOINTMENTS**

### **Anonymous v Water Research Commission (Report No. 81 of 2021/22)**

We investigated allegations of maladministration and improper conduct by functionaries of the Water Research Commission in relation to the appointment of Ms Khosi Jonas in the post of the Executive Manager: Knowledge Management and Communications on 1 August 2019.

The investigation stemmed from an anonymous complaint received in August 2019 in which it was alleged, among other things, that the Commission appointed Ms Jonas in the post even though she did not meet the requirements for the post as advertised.

The requirements for the post were that the ideal candidate must be in possession of a suitable Master's Degree in Marketing, Communication Science or an MBL/MBA specialisation in marketing, knowledge management or related field as the minimum educational requirements for the post.

We looked into whether the Commission appointed Ms Jonas in the post in question even though she did not meet the minimum educational requirements stipulated in the vacancy advertisement and, if so, whether the conduct constitutes improper conduct or maladministration.

Our investigation confirmed that, indeed, the Commission appointed Ms Jonas in the post concerned even though she did not meet the minimum educational requirements stipulated in the job advertisement. This constituted an irregular appointment.

Ms Jonas should not have been shortlisted, interviewed and appointed in the post as she was unqualified in terms of the advertised requirements for the post, namely possession of a suitable Master's Degree.

She was in possession of a Bachelor of Creative Communications and an Honours Degree in Marketing Management as her highest qualifications at the time of her shortlisting, interview and appointment.

The conduct of the recruitment, selection and interview panel failed to promote the basic values and principles governing public administration as stipulated in section 195 of the Constitution, 1996. These values and principles oblige organs of state to, amongst other things, uphold and maintain high standard of professional ethics, engage in employment and personnel practices based on ability, objectivity, fairness and render services impartially, fairly, and equitably and without bias.

In addition, the conduct of the panel breached Clause 2.8.1 of the Water Research Commission Human Resource Manual, 2019 which stipulates that "Selection criteria shall be objective, related to the inherent requirements of the job and consistently applied to all applicants". In this regard, the conduct of the panel constitutes improper conduct as envisaged in the Constitution and maladministration as envisaged in the Public Protector Act.

As an appropriate remedy, we direct the Chairperson of the Commission to take steps to address the irregular appointment of Ms Jonas within the legal and policy prescripts available to the Commission or take any other steps provided for in the Labour Relations Act 66 of 1995.

The Chairperson must further take disciplinary action in terms of Clause 2.11 of the Water Research Commission Human Resource Policy Manual and/or applicable policies and prescripts against the panel members.

Such action should be taken for the panel's failure to adhere to the recruitment and selection policy of the Commission resulting in the shortlisting, interviewing and appointment of a candidate who did not meet the requirements for the post concerned. These must take place within 90 working days of receipt of this report.

### **EXECUTIVE ETHICS**

#### **Mashego v former Gauteng MEC of Economic Development and another (Report No. 87 of 2021/22)**

We investigated allegations of an irregular extension of a lease agreement by the former Gauteng MEC for Economic Development, Mr Lebogang Maile, and those of corruption by the former acting Chief Financial Officer, Ms Karabo Nokoane. This followed a complaint lodged in June 2019 by Ms Mandisa Mashego, then the Economic Freedom Fighters (EFF) Party Leader in the Provincial Legislature.

She alleged that, around May 2015, Mr Maile and the former Acting Chief Executive Officer (CEO) of Gauteng Enterprise Propeller (GEP), Ms Leah Manenzhe signed an irregular and unlawful lease agreement for the building situated at 124 Main Street, Marshalltown. The agreement was allegedly signed without following prescribed procurement processes.

The building accommodates the Economic Development Department Entities, including Gauteng Enterprise Propeller (GEP), Gauteng Growth Development Agency (GGDA), the Gauteng Tourism Agency (GTA) and Gauteng Liquor Board (GLB).

Ms Mashego also alleged that Mr Maile signed the lease agreement despite a legal opinion discouraging the lease in that it was illegal and over-priced. She further alleged that Mr Maile was on record confirming voluntarily to the GEP Board members during a board meeting that the lease agreement was illegal and overpriced at R1.3 million per month. He allegedly threatened the Board not to discuss the lease agreement matter as it was his issue despite taxpayer's money being expended illegally.

According to Ms Mashego, round about June 2017, Mr Maile violated the Executive Ethics Code and abused his authority as the former MEC by irregularly appointing two bodyguards for Ms Manenzhe without following Human Resources processes and without valid reasons.

The appointment of the bodyguards was allegedly done at the taxpayer's expense without the Minister of Police's prior conducting of a security risk assessment and threat analysis. Ms Mashego alleged that the bodyguards remained employed at the time of her complaint.

In addition, Ms Mashego alleged that in 2016, Mr Maile appointed a Forensic Investigation Firm, Ngubane & Company Chartered Accountants and Auditors. The firm was allegedly appointed to conduct forensic investigations into the manipulation, tampering with and deletion of a loan book at GEP. It allegedly completed its investigation around July 2017 and the investigation report apparently criminally implicated Mr Maile, Ms Manenzhe and Board members, including Executives of GEP. According to Ms Mashego, Mr Maile never released the report.

Upon a thorough analysis of the complaint, we identified the following issues on which to focus the investigation:

- a) Whether Mr Maile irregularly signed the lease agreement to accommodate GEP, GGDA, GTA and GLB at Building 124 Main Street without following prescribed procurement processes;
- b) Whether Mr Maile unduly delayed to release the Ngubane Forensic Investigation Report regarding the investigation completed in July 2017, which criminally implicated him, Ms Manenzhe and other Board members and executives of the GEP;
- c) Whether Mr Maile violated the Executive Ethics Code and abused his authority as the former MEC by irregularly appointing two bodyguards for Ms Manenzhe during June 2017 without following prescribed recruitment policies and processes; and
- d) Whether Ms Nokoane irregularly received a sum of R250 000.00 as a "kickback" from a service provider who was awarded an unknown contract at the GEP.

We found all of the above allegations unsubstantiated. There was no evidence indicating that Mr Maile signed or extended the lease agreement on behalf of the department as the agreement was concluded in February 2009 and certain clauses were amended as per the addendum signed in April 2011. This was prior to Mr Maile being appointed MEC for Economic Development. In addition, there is no evidence indicating that Mr Maile is in possession of a report regarding the investigation that was conducted against the former MEC or Board members of GEP. In fact, both Ngubane and Mkhabela reports do not contain any adverse findings and/or recommendations against Mr Maile.

We have no evidence indicating that Mr Maile was involved in the appointment of the two security guards for the protection of Ms Manenzhe. Available evidence indicates that a certain Mr Maruping conducted a risk assessment regarding the safety of Ms Manenzhe based on the security intelligence which determined that her life was at risk after the effect of employee suspensions and compiled the Risk Assessment Report recommending the procurement of close protection for Ms Manenzhe. Mr Maruping thereafter compiled a memorandum which was approved by Mr Mojapelo, the Chief Financial Officer, requesting approval to procure close protection for Ms Manenzhe, which was granted.

We have no evidence indicateing that Ms Nokoane received a “kickback” of R250 000.00 which was used as a deposit for the purchase of a Mercedes Benz vehicle. Although evidence obtained during the investigation confirmed that Ms Nokoane purchased a Mercedes Benz vehicle, which was owned by Maritime Motors, Mr Grant Boscombe, Sales Manager: Maritime Motors (Pty) Ltd stated in an email to the investigation team that company records show that Ms Nokoane purchased the vehicle from their company and the full purchase price was fully financed by a bank. There was no deposit paid on the contract with Ms Nokoane.

A Discretionary Notice was sent Ms Mashego on 20 September 2020, in terms of rule 42(1) of the Public Protector Rules as promulgated under section 7 (11) of the Public Protector Act, 1994. No response was received. Accordingly, we proceeded to close the file.

### **Mukwevho v former Acting Gauteng MEC for Health, Mr Jacob Mamabolo (Report No. 86 of 2021/22)**

We investigated allegations of a violation of the Executive Ethics Code against Mr Jacob Mamabolo in his capacity as the former Acting MEC for Health in Gauteng. This was in connection with his response to questions for oral reply during a sitting of the Provincial Legislature on 01 September 2020.

Mr Itani Mukwevho, a Member of Provincial Legislature, lodged the complaint which gave rise to the investigation on 28 September 2020. In his complaint, Mr Mukwevho requested us to investigate Mr Mamabolo’s conduct in relation to the alleged misleading of the legislature on a matter relating to forced and coerced sterilisation.

Ms Christine Mabala of the EFF had requested Mr Mamabolo to respond to questions for oral reply in connection with the report released by the Commission for Gender Equality in February 2020 regarding forced and/or coerced sterilisation on HIV/AIDS positive black women at certain public hospitals in Gauteng.

It was Mr Mukwevho’s contention that Mr Mamabolo deliberately misled the legislature in the aforesaid response and in so doing, violated the Executive Ethics Code. According to Mr Mukwevho, Mr Mamabolo’s inability to thoroughly investigate the

questions submitted by Ms Mabala for which he was given 10 days during which to prepare, can be considered as grossly negligent and incompetent.

We focused the investigation on whether Mr Mamabolo wilfully misled the legislature, thereby violating the Executive Ethics Code.

We found that the allegation was not substantiated. Although the former MEC did not willfully mislead the legislature, therefore did not breach section 2.3 of the Executive Ethics Code, he has a responsibility to exercise due diligence when reporting to the legislature on matters under his control by ensuring that the information provided to him is verified and accurate, especially in light of the seriousness of this issue where women, some minors at the time of the incident, were sterilized without their knowledge or consent, or the consent of their guardians, where applicable, as required by law.

The former MEC Mamabolo, was responsible for the Gauteng Department of Health and had to account to the legislature in terms of the Constitution and provide accurate reports concerning matters under his control. The evidence indicate that the report presented by former acting Health MEC to the legislature in response to the questions posed by Ms Mabala from the EFF was inaccurate

Further, that the officials from the GDoH, responsible for the submission of inaccurate information to the HOD for the former acting MEC to account to the provincial legislature, violated section 195(1)(g) of the Constitution.

Lastly, we are also inclined to conclude that the medical records of Ms Bongekile Msibi have been destroyed without proper authority, contrary to the National Archives Act, 1996. Ms. Msibi one of the alleged victims of forced sterilisation. Her medical records were destroyed without proper authority, contrary to the National Archives Act, 1996.

In the National Archives and Record Service of South Africa Act, 1996, section 13(2)(a) states that no public record under the control of a governmental body shall be transferred to an archives repository, destroyed, erased or otherwise disposed of without the written authorisation of the National Archivist.

Furthermore, that in terms of section 11(2), public records identified in a disposal authority as having enduring value shall be transferred to an archives repository when they have been in existence for 20 years.

In terms of appropriate remedial action, we directed the Premier of Gauteng to remind MECs of their constitutional responsibilities and in particular the provisions of clause 2.1 of the Executive Ethics Code when allocating responsibilities to them in terms of section 132(2) of the Constitution.

The Premier must also arrange a workshop to properly train MECs on the provisions of the Executive Ethics Code to avoid violations of the Code. The Public Protector is willing to assist the Premier in this regard.

The HOD must, within 60 working days from the date of this report, consider taking appropriate action in terms of the Public Service Act against relevant official(s) of the Department of Health for providing inaccurate and misleading information to MEC Mamabolo for his response to the questions posed by Ms Mbala from the EFF to the Gauteng Provincial Legislature in line with section 195(1)(g) of the Constitution.

The CEO of Chris Hani Baragwanath Academic Hospital must, within 60 working days from the date of this report, consider taking appropriate action in terms of the Public Service Act against the official(s) responsible for medical record keeping at Chris Hani Baragwanath Academic Hospital and who authorised the destruction of Ms Msibi's hospital records which captured the events surrounding her subtotal hysterectomy performed on her in 2005 in contravention of the National Archives and Record Service of South Africa Act, 1996.

A meeting was held with the acting CEO of Chris Hani Baragwanath Hospital, Dr Mankhupane on 06 December 2021 to discuss the proposed remedial action in connection with record keeping contained in the section 7(9) notice sent to the CEO of Chris Hani Baragwanath Hospital.

The acting CEO of Chris Hani Baragwanath Hospital made the following undertakings:

*“Chris Hani Baragwanath Academic Hospital has put up improved systems to archive files. Also that the files are archived soft through scanning and therefore stored electronically.*

*In terms of the team that handles Patient Affairs the current observation is that the supervisors who were managing at the time exited the system for one reason or the other.*

*The hospital has adopted that the patients' documents be kept safe as hard copies as well as converting them into electronic copies. The documents shall not be tampered with for at least twenty-three years minimum.”*

Furthermore, in accordance with the undertakings made by the acting CEO of Baragwanath Hospital, Dr Mankhupane, the CEO of Baragwanath Hospital must provide within sixty (60) working days of issuing this report, provide a report on progress made to electronically archive patient files.

**Shivambu v Mokonyane (Report No. 85 of 2021/22)**

We investigated allegations of a violation of the Executive Ethics Code by former Minister of Water and Sanitation, Ms Nomvula Paula Mokonyane, MP. The investigation followed a complaint lodged by Mr Nyiko Floyd Shivambu in March 2018. He alleged that:

*“...Minister Nomvula Mokonyane, in her former capacity as Minister of Water and Sanitation, misled Parliament on the matter relating to the position of the Chief Financial Officer (CFO) at Magalies Water. In her response to a question asked by EFF Member of Parliament, Ms Makoti Khawula, about the status of the position of the CFO at Magalies Water, Ms Mokonyane replied that the position of the CFO was vacant after the former CFO resigned on August 31, 2017.*

*Subsequent to that, an investigation was done by The Star newspaper, and (it was) uncovered that, in actual fact, the CFO had resigned on the 24th July 2017 after a fallout with the entity’s executives over alleged tender irregularities she refused to be party to. In her reply to Ms Khawula’s question, Ms Mokonyane said that the post of the CFO was filled in an acting capacity by Sandile Mkhize, while, in actual fact, at the time, Nolubabalo Sondlo was acting as an Interim CFO.*

*At the moment, the CFO position is outsourced to Sondlo Chartered Accountants (SCA), whose founding director is none other than Nolubabalo Sondlo, the former Interim CFO, who had also been a Financial Manager at Magalies Water. The SCA continues to provide consulting services to Magalies Water.”*

Our investigation focused on whether the former Minister willfully misled the National Assembly in response to a question raised by Ms Khawula relating to the resignation date of the Chief Financial Officer of Magalies Water, Ms Khumo Kgatuke, and in so doing, violated the provisions of the Executive Ethics Code. We also dealt with whether the procurement process followed in appointing Sondlo Chartered Accountants (SCA) was irregular.

We found that the allegation that Ms Mokonyane willfully misled the National Assembly in response to a question raised by Hon Khawula relating to the resignation date of the former CFO of Magalies Water, Ms. Kgatuke is unsubstantiated.

It was established that the former Minister stated, in a written reply to a question from Ms. M Khawula MP, that the former CFO of Magalies Water, Ms Kgatuke resigned on 31 August 2017. It was confirmed in a letter from Acting CEO of Magalies Water that the correct date of resignation was in fact 31 July 2017. He conceded that the error rested solely with the administration of Magalies Water and that it was not intended to mislead the Minister and/or the National Assembly.



It is therefore established that, the former Minister did not intentionally/wilfully mislead the National Assembly and therefore did not breach paragraph 2.3 of the Executive Ethics Code published by proclamation in terms of section 2(1) of Executive Members' Ethics Act, 1998.

However, former Minister Mokonyane was responsible for Magalies Water, as a public entity and must account to Parliament on the operations of the public entity, in terms of the Constitution and the PFMA as well as provide full and regular reports concerning such matters under her control. The evidence indicate that the report presented by former Minister Mokonyane to Parliament in response to the questions posed by Ms. M Khawula MP from the EFF was inaccurate

The Board as the accounting authority for Magalies Water was responsible for the submission by the public entity of all reports, returns, notices and other information to Parliament and to the Minister as the executive authority. By providing inaccurate information to the Minister for reporting to Parliament, the Board contravened Section 51(1)(f) and (h) of the PFMA

In section 195 of the Constitution, the values and principles within which public administration must take place, are set out. Amongst others, it demands that public officials perform their duties to a high standard of professional ethics and requires that public administration be accountable and transparent by providing the public with timely, accessible and accurate information.

However, the evidence suggests that the error in question was inconsequential and void of any prejudice and making a finding on an incorrect date of a resignation is insignificant and would serve no judicious purpose.

The Public Protector observed that as the executive authority, the former Minister has an oversight responsibility through a wide range of other responsibilities that include inter alia coordinating the functions of state departments and administrations. In this regard due diligence is necessary, which requires of the Minister to be thorough and meticulous with information. Providing the National Assembly with inaccurate information is not in the interest of good governance or consistent with the integrity of the Ministers' office.

We look forward to the full implementation of remedial action in all these reports. Likewise, we are available to clarify the findings and the remedial action to all the affected parties in the spirit of good governance.

However, the allegation that the procurement process followed in appointing Sondlo Chartered Accountants (SCA) was irregular is substantiated.

The Board, as the Accounting Authority of Magalies Water contravened section 55(1)(c) of the PFMA when it failed to submit the annual financial statements to the AGSA within two months after the financial year end. The financial year ended on the 30 June 2017 and the financial statements were only finalized in February 2018.

Contrary to the forgoing, the CEO asserted in his response to the section 7(9) notice that Magalies Water positively managed to comply with the timelines of submitting the report and received an unqualified finding. If Magalies Water has indeed complied with the timelines of submitting the financial statements to the AGSA, there would not have been a need for a second RFQ.

A Board Resolution of 28 July 2017 referred to the appointment of a GM: Finance on a contractual basis and not a Consultant as contended to by the former CFO, Ms Kgate. The appointment of a GM: Finance on a contractual basis is a Human Resource function and appointing a service provider, a SCM process. In this regard the CEO of Magalies Water and the former CFO failed to implement the resolution of the Board.

The Board Resolution to appoint a GM: Finance to compile and submit the annual financial statements, was a process of internal control determined necessary by the Accounting Authority to enable the preparation of financial statements in line with the PFMA.

This resolution was prompted by the resignation of the former CFO, Ms Kgate, the long outstanding vacant CFO position and the need to compile and submit the annual financial statements.

In terms of the resolution the sourcing strategy was to appoint a GM: Finance to compile and submit the annual financial statements to the AGSA. This is indicative of a needs analysis that was undertaken by Magalies Water in line with Treasury Regulation 16A3.2(d)(i)

Contrary to the Board resolution, the former CFO, Ms Kgate undertook a RFQ procurement process to appoint a Consultant.

Ms Kgate conceded to being the impetus behind the procurement of SCA in respect of the first RFQ, however, resigned before the second RFQ was issued. Notably, unlike the first RFQ, the second RFQ had no submission requesting the CEO to approve the appointment of a Consultant.

Both quotations submitted by SCA were less than R500 000, which justified the RFQ procurement process. However, combined, the cost for the service amounted to R689 329.56, which would have required a competitive bidding process in terms of National Treasury Practice Note No 8 of 2007/2008.

Due to a failure to properly evaluate the scope of the work and a lack of proper procurement planning, the period allocated for the project to meet the deliverables was too short and instead of extending the existing contract, Magalies Water embarked on another RFQ and appointed the same Consultant for the same service.

It is evident that the measures to monitor contract performance and delivery had not been defined and implemented and the contract performance measures and the methods whereby it was monitored were not sufficient to ensure effective contract management.

This is evident of a splitting into parts of lesser value merely for the sake of procuring the services otherwise than through the prescribed procurement process which is prohibited by paragraph 3.5 of the National Treasury Practice Note No 8 of 2007/2008 and amounts to irregular expenditure.

In this regard, effective and appropriate steps were taken to prevent irregular expenditure as provided for by section 38(1)(c)(ii) of the PFMA.

Notwithstanding the glaring irregularities, the procurement process continued unabated with the approval of the CEO. In this regard, the CEO as the Accounting Officer, failed to take all reasonable steps to prevent abuse of the supply chain management system and take appropriate action against those responsible, contrary to Regulation 16A9.1 of the Treasury Regulations.

The procurement process followed by Magalies Water, was therefore in violation of section 217(1) of the Constitution, which states that when an organ of state, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

Lastly, the annual financial statements submitted for auditing to the AGSA by Magalies Water, and compiled with the assistance of the consulting services of SCA, were found to be not prepared in all instances in accordance with the prescribed financial reporting framework and supported by full and proper records. Also that material misstatements were identified, but it was corrected, which resulted in the financial statements receiving an unqualified audit opinion.

In light of the above findings, we are taking the following appropriate remedial action:

No remedial action will be taken against the former Minister and the implicated officials of the department for an error made in providing the former Minister with an incorrect date. The error in question is inconsequential and void of any prejudice and taking remedial action on an incorrect date of a resignation is insignificant and also would serve no judicious purpose. However, the process appears to be inadequately

regulated and as such, due diligence was compromised resulting in inadequate submissions by officials to Ministers. In this regard, Ministers are put at risk of accounting to the National Assembly on inaccurate information.

This report will be provided to the President of the Republic of South Africa in terms of the provisions of sections 3 and 4 of the Executive Members' Ethics Act, 1998, which provides inter alia that the Public Protector must investigate any alleged breach of the Code of Ethics on receipt of a complaint by the President, a Member of the National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet Member or Deputy Minister.

**The President of the Republic of South Africa to:**

When allocating responsibilities to Ministers in terms of section 91(2) of the Constitution, remind Ministers of their constitutional responsibilities and in particular the Executive Ethics Code.

Arrange a workshop to inform Ministers on the provisions of the Executive Ethics Code to avoid violations of the Code. The Public Protector is willing to assist the President in this regard.

**The Minister of Water and Sanitation as the Executive Authority to:**

Take cognisance of the findings on the conduct failures of the Accounting Executive identified in the report and ensure that such conduct is not repeated and to prevent the recurrence of such conduct failures referred to, by putting measures in place.

**The Board as the Accounting Authority to:**

Take cognisance of the findings on the conduct failures of the Accounting Officer identified in the report and ensure that such conduct is not repeated and to prevent the recurrence of such conduct failures referred to, by putting measures in place to;

Ensure that Accounting Officer take all reasonable steps to prevent abuse of the supply chain management system,

Ensure that the Accounting Officer investigates any allegations against an official or other role player of corruption, improper conduct or failure to comply with the supply chain management system.

Ensure that the annual financial statements, for the submission to the AGSA, are prepared monthly as a control mechanism to prevent an unnecessary accumulation of unprepared statements. This will place unnecessary pressure on the Board to appoint a Consultant and incur unnecessary expenses.

### **The CEO as the Accounting Officer of Magalies Water to:**

Take cognisance of the findings on the irregular procurement by officials identified in the report and ensure that such irregularity is not repeated.

Within ninety (90) working days after the date of issue of this report, provide the Public Protector with a project plan on procurement systems, put in place to prevent abuse of the supply chain management system.

Also ensure that the annual financial statements are properly prepared and free from material misstatements.

### **PUBLIC PROCUREMENT**

#### **Masango v Gauteng Department of Roads and Transport (Report No. 82 of 2021/22)**

We investigated allegations of irregular implementation of the PUTCO Bus contract by the Gauteng Department of Roads and Transport (GDRT). The investigation followed a memorandum of complaints received on 01 October 2022 from Mr. Sam Masango, who was acting on behalf of the Moloto Corridor Concerned Residents (MCCR).

The MCCR complained about five issues, namely:

1. The alleged undue delay by National Department of Transport (NDoT) to implement the Moloto Rail Development Corridor Project (the MRDCP) which entails the building of the railway line that would run between the Gauteng and Mpumalanga Provinces;
2. The alleged misappropriation of public funds through feasibility studies conducted pertaining to the MRDCP by the NDoT and Mpumalanga Department of Transport and Public Works (MPUDoT);
3. The alleged undue delay by the South African National Roads Agency Limited (SANRAL) to finalise the expansion of Moloto Road;
4. The alleged undue delay by the Presidency to receive the MCCR's memorandum of complaints; and
5. The allegations of irregular implementation of the PUTCO bus contract by the Gauteng Department of Roads and Transport (GDRT).

This Report focuses on the issue referred to in paragraph (ee) above. The other issues mentioned in paragraphs (aa) to (dd) above remain under investigation and adjudication thereof will be dealt with in a separate report which will be issued at a later stage.

According to the MCCR, PUTCO as sole contractor to government, faces no competition, restricts other service providers to enter the market and do business with government, and also enjoys the power of setting its prices for services rendered on behalf of government.

We focused the investigation on whether the GDRT irregularly implemented the PUTCO bus contract and if yes, whether that conduct amounts to improper conduct as envisaged in the Constitution and maladministration as envisaged in the Public Protector Act.

We found that, the allegation that the GDRT irregularly implemented Contract IC52/97 is substantiated. The investigation revealed that the original 136 weeks Contract number IC52/97 which was awarded to PUTCO on 26 March 1997 has been continuously extended (evergreen contract) as at the date of this report.

The investigation also revealed that the GDRT has contravened section 41(3) of the National Land Transport Act (NLTA) by extending the Contract IC52/97 beyond a period of 12 years. The investigation also revealed that, the GDRT contravened section 41(5) of the NLTA, section 38(1)(c) of the PFMA and relevant provisions of the National Treasury Regulations and Instruction Notes by failing to ensure that timeous steps were taken before expiry of Contract IC52/97 to ensure that, services are procured through a competitive bidding process to ensure continuous service delivery to the passengers.

The PFMA, which is the national legislation that regulates procurement of goods and service in public service, supersedes the provisions of the NLTA which the GDRT used to manage the bus contract. Any procurement and contract management processes and the resultant insufficient contract performance measures to ensure effective contract management which is in contravention with the PFMA and all applicable legislation is improper.

The investigation also revealed that there are 108 bus contracts with similar conditions to the PUTCO bus contract. The Competition Commission is willing to look into these contracts for possible elements of restrictive horizontal practice as defined in the Competition Act.

The conduct of GDRT is in contravention of the section 217 of the Constitution, section 38 of the PFMA, Treasury Regulation 16A6.4 and Paragraphs 8 and 9 of National Treasury Instruction 3 of 2016/2017 Preventing and Combating Abuse in the Supply Chain Management System, and section 42(3) of the NLTA.

The conduct of the GDRT, particularly the HOD was improper and constitutes improper conduct as envisaged in the Constitution and maladministration as envisaged in the Public Protector Act.

To remedy this improper conduct and maladministration, the MEC for Roads and Transport must take note of the final report and monitor compliance regarding contract management, procurement of goods and services and extension of contracts as regulated in section 217 of the Constitution, section 38 of the PFMA, Treasury Regulation 16A6.4 and Paragraphs 8 and 9 of National Treasury Instruction 3 of 2016/2017 Preventing and Combating Abuse in the Supply Chain Management System, and sections 41(3) and 41(5) of the NLTA to avoid a recurrence of similar maladministration and improper conduct.

The HOD must, taking into account that the GDRT has commenced with the competitive bidding processes of the subsidised bus services, ensure compliance with procurement and contract management of goods and services as regulated in section 217 of the Constitution, sections 38 and 44 of the PFMA, Treasury Regulation 8.2.1,8.2.2, 16A6, 16A3,16A.9, 16A8, and Paragraphs 8 and 9 of National Treasury Instruction Note 2 of 2021/2022, 2017 Preferential Procurement Regulation, Instruction Note 1 of 2015/2016, General Conditions of Contract (GCC) (2010)Clauses 22 and 23, and and sections 41(3) and 41(5) of the NLTA to avoid a recurrence of similar maladministration and improper conduct.

The HOD must also, on a quarterly basis, provide us with reports from the meetings of NDoT, National Treasury and the Auditor-General South Africa with a view to ensuring compliance with section 42(3) of the NLTA and legislation on financial and procurement issues.

In addition, the HOD must ensure that the GDRT staff are trained on a regular basis about the provisions of the PFMA regarding contract management, procurement of goods and services and extension of contracts.

Lastly, the Competition Commissioner must note that, in terms of section 6(4)(c)(ii), the Public Protector is referring the matter to the Competition Commissioner to consider the possibility of investigating these 108 bus contracts with similar conditions to the PUTCO bus contract for possible elements of restrictive horizontal practice as defined in the Competition Act.

Thank you.