

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA 1996 AND SECTION 8(1)
OF THE PUBLIC PROTECTOR ACT 1994**



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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IRREGULAR
APPOINTMENT OF MR MJ SANKE TO THE POSITION OF THE SUPERVISOR:
WATER GROOT MARICO, BY RAMOTSHERE MOILOA LOCAL MUNICIPALITY**

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Executive Summary

- (i) This is my report issued in terms of section 182(1) (b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and published in terms of section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- (ii) The report communicates my findings and appropriate remedial action that I am taking in terms of section 182(1)(c) of the Constitution, following an investigation into allegations of maladministration and impropriety by the Ramotshere Moiloa Local Municipality (the Municipality) in the appointment of the Supervisor: Water Groot Marico, Mr Meleko Johannes Sanke (Mr Sanke) who misrepresented his qualifications, when applying for the position of Supervisor: Water Groot Marico.
- (iii) The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.
- (iv) **Based on an analysis of the allegations, the following issues were identified to inform and focus the investigation:**
 - (a) Whether the Ramotshere Moiloa Local Municipality irregularly appointed Mr Sanke to the position of Supervisor: Water Groot Marico; and
 - (b) Whether the taxpayers of the Municipality, Complainant and or other candidates suffered prejudice as a result of the alleged irregular appointment of Mr Sanke.
- (v) Key laws and policies taken into account to determine if there had been maladministration by the Municipality and prejudice to the Complainant and other candidates were principally those imposing administrative standards that should have been complied with by the Municipality when processing this complaint and include:

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- (a) The Constitution of the Republic of South Africa Act 108 of 1996;
 - (b) Municipal Finance Management Act No 56 of 2003 (MFMA); and
 - (c) The Municipal Recruitment and Selection Policy.

(vi) I issued notices to the Member of the Executive Council, the Head of Department, the Municipal Manager, the former Municipal Manager, the Speaker and the Mayor in terms of section 7(9) (a) of the Public Protector Act, but no response was received from the said officials. I also issued notices to the former Municipal Manager, Acting Municipal Manager, the current Municipal Manager, the Speaker and the Mayor. I only received responses from the Municipal Manager, the former Municipal Manager, the Speaker and the Mayor dated 27 June 2019 and 01 July 2019 respectively. No responses were received from the Member of the Executive Council and the Head of Department.

(vii) Having considered the evidence received during the investigation, as against the relevant regulatory framework, the complaint received as against the concomitant responses received, I make the following findings:

(a) Regarding whether the Municipality irregularly appointed Mr Sanke to the position of Supervisor: Water Groot Marico

(aa) The allegation that the Municipality irregularly appointed Mr Sanke to the position of Supervisor: Water Groot Marico, is substantiated.

(bb) The Municipality irregularly appointed Mr_Sanke, who was not in possession of the relevant Tertiary qualification in Local Government or accounting as required by the advertisement, when he applied for the post. The Municipality's decision to shortlist and subsequently appoint him was in contravention of clause 7 of the Municipality's Recruitment and Selection Policy.

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- (cc) The Municipality further contravened Clause 7 of the Recruitment and Selection Policy by failing to verify Mr Snake's academic qualifications.
- (dd) The conduct of the Municipality, particularly the former Municipal Manager, Mr Maema, constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4) (i) of the Public Protector Act.
- (b) Regarding whether the taxpayers of the Municipality, Complainant and / or other candidates suffered prejudice as a result of the alleged irregular appointment of Mr Sanke.**
- (aa) The allegation that the taxpayers of the Municipality, the Complainant and other candidates who applied for position with Mr Sanke suffered prejudice as a result of his irregular appointment, is substantiated.
- (bb) The Complainant and other candidates were deprived of a possible work opportunity, in that Mr Sanke was appointed to the position without holding the required qualifications.
- (cc) Mr Sanke received from the Municipality a salary package of R143 972,00 – R155 649,00 per annum when he was appointed from April 2013. He is still employed and earning a salary, including benefits.
- (cc) The irregular appointment of Mr Sanke may have caused the Municipality to incur irregular expenditure by paying him the salary which is in contravention of section 62 of the MFMA.
- (dd) The conduct of Mr Maema, in the irregular appointment of Mr Sanke which led to the Municipality incurring irregular expenditure, might also constitute financial misconduct in terms of section 171(1) of the MFMA.

(viii) **Remedial Action**

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

(a) **The Municipal Manager must:**

- (aa) Within 30 working days from the date of this report, put processes in place to consider the termination of the employment of Mr Sanke;
- (bb) Bring the possible irregular expenditure in the irregular appointment of Sanke to the attention of the Auditor General of SA (AG) in order for the AG to investigate whether there was any liability on the side of the Municipal Manager or any other employee of the Municipality and whether the expenditure was indeed irregular in terms of the MFMA.
- (cc) Within 60 working days from the date of this report, ensure that disciplinary steps are considered against officials who conducted the shortlisting and interviews during the irregular appointment of Mr Sanke.

**REPORT ON AN INVESTIGATION INTO THE ALLEGED IRREGULAR APPOINTMENT
OF MR MJ SANKE TO THE POSITION OF SUPERVISOR: WATER GROOT MARICO,
BY THE RAMOTSHERE MOILOA LOCAL MUNICIPALITY**

1. INTRODUCTION

1.1 This is my report as the Public Protector issued in terms of section 182(1) (b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and published in terms of section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2. The report is submitted in terms of section 8(3) of the Public Protector Act to the following people to inform them of the outcome of the investigation and implementation of the remedial action:

1.2.1. The Premier of the North West Provincial Government, Professor JT Mokgoro;

1.2.2. The Member of the Executive Council for Cooperative Governance and Traditional Affairs: MEC G Kegakilwe;

1.2.3. The Head of Department for Cooperative Governance and Traditional Affairs, Mr PE Motoko;

1.2.4. The Former Municipal Manager, Ramotshere Moiloa Local Municipality; Mr C Maema

1.2.5. The Director: Corporate Services, Ramotshere Moiloa Local Municipality, Mr B Selebogo.

1.2.6. The Mayor, Ramotshere Moiloa Local Municipality Councillor PK Mothoagae,

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- 1.2.7. The Speaker Ramotshere Moiloa Local Municipality Councillor A Nyamane;
- 1.2.8. The Municipal Manager, Ramotshere Moiloa Local Municipality, Mr D Makhate;
- 1.2.9. The Complainant, Mr RI Khethele.
- 1.2.10 The report relates to an investigation into allegations of maladministration and impropriety by Ramotshere Moiloa Local Municipality (the Municipality) in the appointment of the Supervisor: Water Groot Marico, Mr Meleko Johannes Sanke (Mr Sanke) who misrepresented his qualifications, when applying for the position of Supervisor: Water, Groot Marico.

2. THE COMPLAINT

- 2.1. On 20 June 2016, Mr RI Khethele (the Complainant), an adult male person lodged a complaint with my office.
- 2.2 In essence, the Complainant alleged that:
- 2.2.1 On 31 May 2012, the Municipality advertised a post of Supervisor: Water, Groot Marico in the Sowetan Newspaper;
- 2.2.2 Mr Sanke applied for the position of Supervisor: Water, Groot Marico and included a copy of a school report indicating that he had passed Grade 11 at Thuto ke Maatla Secondary School at Groot Marico in 1996;
- 2.2.3 It came to the Complainant's attention that Mr Sanke was once a Chairperson of the School Governing Body (SGB) at Thuto ke Maatla Secondary School at Groot Marico;

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- 2.2.4 During his term of office, Mr Sanke managed to improperly and/or fraudulently use the school documents and reports to fake a Grade 11 report and other certificates for himself in order for him to qualify for the post of Supervisor: Water, Groot Marico, which position he is currently still occupying at Ramotshere Moiloa Local Municipality;
- 2.2.5 The Municipality appointed Mr Sanke to the position of Supervisor: Water, Groot Marico on 5 April 2013;
- 2.2.6 The school denied ever having had such an individual on their school roll/records. The school also lodged a complaint in this regard with the South African police; and
- 2.2.7 Mr Sanke was appointed to a position and is receiving a salary which he does not deserve.
- 2.2.8 When the Complainant lodged a complaint with my office on 20 June 2016, the Municipality had not yet attended to his complaint.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

- 3.1 The Public Protector is an independent constitutional body established under section 181(1) (a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.
- 3.2 Section 182(1) of the Constitution provides that:

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

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

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

3.4. In ***Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others***[2016] ZACC 11;2016(3) SA 580 (CC) and (5) BCLR 618 the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect [at para 76]. The Constitutional Court further held that: *“When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.”*

3.5 In the above-mentioned Constitutional matter of ***Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others***, the Chief Mogoeng stated the following, when confirming the powers of the Public Protector:

3.5.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65);

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

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

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

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

3.5.10. In the matter of ***President of the Republic of South Africa v Office of the Public Protector and Others (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017)***, the court held as follows, when confirming the powers of the Public Protector:

3.5.10.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the constitution (paragraph 71 of the judgment);

3.5.10.2 The Public Protector has the power to take remedial action, which include instructing the President to exercise powers entrusted on them under the constitution if that is required to remedy the harm in question (paragraph 82 of the judgement);

3.5.10.3 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(10) afford the Public Protector with the following three separate powers (paragraphs 100 and 101 of the judgement):

a) Conduct an investigation;

b) Report on that conduct; and

c) To take remedial action.

- 3.5.10.4. The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings. (paragraph 104);
- 3.5.10.5 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court. (Paragraph 105).
- 3.5.10.6 The fact that there is no firm findings on the wrong doing, this does not prohibit the Public Protector from taking remedial action. The Public Protector's observations constitute *prima facie* findings that point to serious misconduct (paragraphs 107 and 108 of the judgement); and
- 3.5.10.7 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (paragraph 112 of the judgement).
- 3.6 Section 182 (2) of the Constitution directs that the Public Protector has additional powers and functions prescribed by national legislation;
- 3.7 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and abuse or unjustifiable exercise of power in the conduct of state affairs or an improper or dishonest act by any person in the employ of government at any level;
- 3.8 Section 6(9) of the Public Protector Act grants me discretionary powers to accept complaints which are lodged more than two years after the occurrence of the incident. Some of the special circumstances that I took into account to exercise my discretion favourably to accept this complaint, includes the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether I would be able

to successfully investigate the matter with due consideration to the availability of evidence and / or records relating to the incident(s); whether there are any competent alternative remedies available to the Complainant and the overall impact of the investigation.

3.9 The Municipality is an organ of state and its conduct falls within the Public Protector's mandate to investigate; and

3.10 The Public Protector's powers and jurisdiction to investigate and take appropriate remedial action were not disputed by the Municipality.

4. THE INVESTIGATION

4.1 The investigation Process

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

4.1.2. The Public Protector Act confers on me the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.1.3. The investigation process included an exchange of correspondence with the Municipal Manager, an analysis of the relevant documentation, research conducted and the consideration and application of relevant laws, regulatory framework and jurisprudence.

4.1.4. During the investigation process, notices in terms of section 7(9) (a) of the Public Protector Act (section 7(9) notice) were served on MEC G Kegakilwe, Head of Department of Cooperative Government and Traditional Affairs, Mr E Motoko, the former Municipal Manager, Mr C Maema, Mr B Selebogo, Mr D Makhate, Councillor A Nyamane, and Councillor PK Mothoagae and dated 18

April 2019 respectively, to afford them an opportunity to respond to my provisional findings. Responses were received from the former Municipal Manager Mr C Maema, Mr D Makhate, Councillor A Nyamane, and Councillor PK Mothoagae as per my section 7(9) notices.

4.2 Approach to the investigation

4.2.1. Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?

4.2.1.2 What should have happened?

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

4.2.1.4 In the event of maladministration what would it take to remedy the wrong or to place the Complainant as close as possible to where they would have been but for the maladministration or improper conduct?

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether the Municipality irregularly appointed Mr Sanke to the position of Supervisor: Water; and if so whether the Complainant and other candidates suffered prejudice as a result of the alleged irregular appointment of Mr Sanke.

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

4.2.4. The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration or improper conduct. Where a complainant has suffered any prejudice, the idea is to place him or her as close as possible to where he/she would have been had the Municipality or organ of state complied with the regulatory framework setting the applicable standards for proper conduct and good administration.

4.3 On analysis of the complaint, the following were issues were considered and investigated:

4.3.1 Whether the Ramotshere Moiloa Local Municipality irregularly appointed Mr Sanke to the position of Supervisor: Water, Groot Marico; and

4.3.2 Whether the taxpayers of the Municipality, the Complainant and other candidates suffered prejudice as a result of the alleged irregular appointment of Mr Sanke.

4.4 The Key Sources of information

4.4.1 Documents received and considered

4.4.1.1 A copy of an advertisement of the post of Supervisor Water: Groot Marico;

4.4.1.2. A copy of Mr Sanke's application letter;

4.4.1.3 A copy of Offer of Employment letter dated 27 March 2013;

4.4.1.4 A copy of acceptance of employment letter dated 3 April 2013; and

4.4.1.5. A copy of an invoice dated 13 March 2003;

4.4.2 Correspondence sent and received

4.4.2.1 A copy of the letter dated 17 March 2017 to the Municipal Manager, Mr Olebogeng Monchusi;

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- 4.4.2.2 A copy of the letter dated 12 January 2018, to the Municipal Manager Mr Sayed Adroos;
 - 4.4.2.3 A copy of the letter dated 1 August 2018, to the Chief Director: Mr James Mashigo, Department of Local Government and Human Settlement;
 - 4.4.2.4 A copy of the letter dated 29 March 2018, from Mr James Mashigo, Acting HOD, Department of Local Government and Human Settlement to Public Protector;
 - 4.4.2.5 A copy of the Section 7(4) Notice to the HOD Mr E. Motoko Department of Local Government and Human Settlement;
 - 4.4.2.6 A copy of the letter dated 28 September 2018, from the Acting Municipal Manager, Ramotshere Moiloa Local Municipality Mr C. Selebogo
 - 4.4.2.7 A copy of a letter dated 1 July 2019 from Mr C. Maema the Former Municipal Manager
 - 4.4.2.8 Letter dated 27 June 2019 from the Office of Mayor, Dr PK Mothoagae

4.4.3 Notices issued and responses received

- 4.4.3.1 Section 7(9) (a) notices to the MEC Mr G Kegakilwe, The HOD Mr E Motoko, the Former Municipal Manager Mr C Maema, the Chief Director Corporate Services Mr C Selebogo, the Speaker Mr A Nyamane, the Mayor Councillor Mothoagae, the current Municipal Manager Mr D Makhate dated 24 June 2019. Response were received from the former Municipal Manager Mr C Maema and the Municipal Manager Mr Makhate, the Mayor and the Speaker dated 27 June 2019.
- 4.4.3.2 I have received written submissions in response to the notices the contents of which were taken into account in this report.

4.4.4 Legislation and other prescripts

- 4.4.4.1 The Constitution of the Republic of South Africa, Act 108 of 1996;

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- 4.4.4.2 The Public Protector Act 23 of 1994;
 - 4.4.4.3 The Municipality Finance Management Act, No 56 of 2003 (MFMA)
 - 4.4.4.4 Ramotshere Moiloa Local Municipality Recruitment, Selection and Induction Policy 47/05/2015 (the Recruitment and Selection Policy)
 - 4.4.4.5 *Khumalo and Another v Member of the Executive Council for Education: KwaZulu-Natal* 2014 (3) BCLR 333 (CC)

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

5.1 Regarding whether the Ramotshere Moiloa Local Municipality irregularly appointed Mr Sanke to the position of Supervisor: Water Groot Marico

Common cause issues

- 5.1.1 The Municipality advertised a post of Supervisor: Water (Groot Marico) in the *Sowetan* newspaper dated 31 May 2012.
- 5.1.2 The requirements for the post as per the advertisement were:
 - (a) Tertiary qualification in Local Government or accounting discipline;
 - (b) NQF Level 4,
 - (c) Preferably three (3) years Local Government experience within a billing environment or similar environment,
 - (d) Two years' experience in staff supervision,
 - (e) Sound professional knowledge and understanding of the accounting discipline with particular emphasis on billing,
 - (f) Computer literacy,
 - (g) Good verbal and writing communications skills,
 - (h) Capability of working under pressure and still meet deadlines; and

(i) Valid code B driver's licence.

- 5.1.3 The incumbent was expected to supervise staff at satellite offices, manage the maintenance of the billing system, reconcile all income receipted on daily basis, bank monies received, control pre-paid water system, attend to client queries, be responsible for reports, maintain and enhance the internal control environment, Manage and control the meter reading function in the area. The salary was indicated at R119 100.00 - R137 772.00.

Issues in dispute

- 5.1.4 The Complainant argued that the recruitment process and appointment of Mr Sanke was irregular in that the Municipality shortlisted and appointed a candidate who did not meet the minimum requirements of the post and should therefore not have been shortlisted.
- 5.1.5 On 29 August 2018, my investigation team raised the matter with the then Acting Municipal Manager, Mr B Selebogo and Mr E Motoko, the Head of Department of Local Government and Human Settlements. The purpose of the enquiry was for the Municipality to provide my investigation team with a response including copies of the advertisement and shortlisted candidates, their applications and qualifications, the members of interviewing panel and a report relating to the appointment of Mr Sanke.
- 5.1.6 On 28 September 2018 the then Acting Municipal Manager, Mr B Selebogo, provided my office with the following: a report and copy of an advertisement, Mr Sanke's application for employment, Mr Sanke's offer of employment letter dated 3 April 2013 and his acceptance thereof dated 4 April 2013. The Municipality could not provide my office with reports relating to the shortlisting and the interview processes which resulted in Mr Sanke's appointment to the advertised position.

5.1.7 From the documents received from the Municipality, it was apparent that Mr Sanke submitted an undated application letter and an application for employment form addressed to the former Municipal Manager, Mr C Maema, and he indicated the following:

- (a) He was the acting Supervisor: Water at Groot Marico at the time of his application; and
- (b) His key performance areas included supervising staff at satellite offices; banking monies received; maintaining and enhancing the internal control environment; and managing and controlling the meter reading function;
- (c) He passed Grade 11 at School in 1996;
- (d) He had a qualification in Installing and Maintaining Drainage Systems from Damelin College in 2009; and
- (e) He had a qualification in Preparation and Maintaining from INTEC College in 2011.

5.1.8 In his application for employment, Mr Sanke attached a copy of a Grade 11 report obtained in 1996 dated 4 June 2012, but he failed to provide copies of Certificates from Damelin and INTEC Colleges.

5.1.9 Based on the information received from the Municipality, the former Municipal Manager, Mr C Maema, advised Mr Sanke on 5 April 2013 as follows:.. “... *I am pleased to inform you that your appointment as Supervisor Water has been approved with effect from 02.04.2013. Your salary scale is R143 972,00-R155 649,00 per annum, on the salary notch of R143 972,00 as per SALGA circular 34/2009 ref 4.3.10.7 dated 06 August 2009. The appointment is subject to a six months probationary period and further to the Council’s Standard Condition of Service that may be amended from time to time and to further other legislations”..[sic]*

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- 5.1.10 The letter indicated that Mr Sanke was offered a different and higher salary scale than the salary reflected in the post advertisement dated 31 May 2012.
- 5.1.11 My investigation team raised the matter with the then Acting Municipal Manager, Mr B Selebogo, on 29 August 2018 and the Municipality responded as follows in a letter dated 28 September 2018:

"I have established from Human Resource records in the Municipality that the position of Supervisor water became vacant and was externally advertised wherein interested candidates were invited to apply for the position. It appears ex facie documents that the method of advertisement was consistent with the dictates of clause 6.2 recruitment advertisement of the policy of the Municipality. The employee, Mr. Sanke was amongst candidates who applied for the position. From Human Resource records I could not establish information related to the interview score sheets and interview report on the position." [sic]

INTERVIEW CONDUCTED WITH MR. SANKE ON 12 SEPTEMBER 2018

"The employee confirms that he applied for the position of Supervisor Water which was at that time externally advertised on Sowetan Newspaper. He further indicated that at the time of his application he was already appointed by the erstwhile Municipal Manager Mr. Maema to act on the same position."

"The employee further confirms that following his application he was invited to attend an interview around year 2012. Of importance, the Employee was able to identify the following officials whom he confirmed to be panel members that conducted his interview proceedings: Tiro Seleka- Former Director Community Services; Belinda Seabi- Former Director Local Economic Development; Thabo Mothusi- Former Manager Legal Services and lastly; Donald Modibetsa-Electrical Manager."

"He further identified the following officials who serves as Shop Steward in the Municipality and on behalf of IMATU (Independent Municipal & Allied Trade Union) Polena Lekaba and SAMWU (South African Municipal Workers Union) Buang Motsiane who were allegedly observers in the interview".

"He confirms that he was informed that his application to the aforementioned position was successful and later presented with an offer of appointment which he accepted".

"With regards to the allegation pertaining to the fraudulent grade 11 report he indicated that, firstly he last attended school in Vereeniging in the 80's and to his knowledge his highest grade passed was grade 10 of which he was not in possession of the report".

"He further informed us that at no point had he attended school at Thuto Ke Maatla Secondary School. In fact the Grade 11 report which he used in support of his application for the position of Supervisor Water, he was assisted by one Mr Oneman Mokgatla, a former councillor of the Municipality, to fraudulently obtain it from the school principal." (own emphasis added)

"We have since requested Mr. Sanke to depose to an affidavit confirming his testimony in as far as it relates to the authenticity of the Grade 11 report. We confirm that he has indicated to the Municipality that he obtained legal advice on the matter and in terms of which he was advised not to depose to any affidavit in this regard".

"Mr. T Merafe (Manager Labour Relations) and Mr. M Myambo (Legal Representatives of the Municipality) were present during the interview proceedings with Mr. Sanke. They have deposed to sworn affidavits confirming

the concessions as made by the Employee in as far as the authenticity of the grade 11 report in concerned”.

“It becomes abundantly clear based on the concessions that the employee has made in the interview process with regards to the authenticity of the grade 11 report which he used in support of his application for the position of Supervisor Water, that the grade 11 report was obtained fraudulently. To take this point further it becomes clear that the Employee misrepresented his qualification when he applied for the position Supervisor Water, which constitutes serious misconduct and justifies a disciplinary action against the Employee”.

CONCLUSION

IRREGULAR APPOINTMENT

“I submit that based on documents I have perused during this investigation and in particular those that we have attached to this report, it appears more fully that the Municipality followed its recruitment, selection and induction policy when recruiting candidates for the position Supervisor Water. Consequently, we submit appointment was not done in violation of either the recruitment policy of the municipality and/or the provisions of the municipal systems act, 32 of 2000”.

FRAUDULENT GRADE 11 REPORT

“Following the concessions by the Employee with regards to the authenticity of the grade 11 report during the interview proceedings, the Municipality will be conducting further investigations on this aspect in totality and depending on the outcome of the investigation possible disciplinary actions will be taken against the employee”[sic]

Application of the relevant law

5.1.12 Section 195(1) (a) and (f) of the Constitution provides that:

“Public Administration must be governed by the democratic values and principles enshrined in the Constitution including the following principle:

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

(b) ...

(c) ...

(d) ...

(e) ...

(f) Public administration must be accountable”.

5.1.13 These principles enjoin the Municipality and its officials to exercise a high level of professionalism and ethics, including accountability in the performance of their duties.

5.1.14 In *Khumalo and Another v Member of the Executive Council for Education: KwaZulu-Natal* 2014 (3) BCLR 333 (CC) paras [35] & [36] the Constitutional Court said the following concerning the duty of a functionary to correct any unlawfulness in public administration:

“Public functionaries, as the arms of the State, are further vested with the responsibility, in terms of section 7(2) of the Constitution to 'respect, protect, promote and fulfil the rights in the Bill of Rights. As bearers of this duty and in performing their functions in the public interest public functionaries must, where faced with an irregularity in the public administration, in the context of employment or otherwise, seek to redress it. This is the responsibility carried by those in the public section as part of the privilege of serving the citizenry who invest their trust and taxes in the public administration”.

“This duty is founded, inter alia, in the emphasis on accountability and transparency in section 195(1) (f) and (g) and the requirement of a high standard of professional ethics in section 195(1) (a) (of the Constitution).”

- 5.1.15 Failure by the then Municipal Manager to seek redress on the irregular appointment of Mr Sanke reflected a lack of professional ethics and accountability as envisaged in section 195(1)(a) and (f) of the Constitution.
- 5.1.16 Section 62(1) (d) of the MFMA provides that: *“The Accounting Officer is responsible for managing the financial administration of the municipality, and must for this purpose take all reasonable steps to ensure that unauthorised, irregular or fruitless and wasteful expenditure and other losses are prevented.”*
- 5.1.17 Failure to follow a proper recruitment and selection process would lead to the Municipality incurring unauthorised, irregular or fruitless and wasteful expenditure.
- 5.1.18 Clause 7 of the Ramotshere Moiloa Local Municipality Recruitment, Selection and Induction Policy 47/05/2015 (the Rec and Selection Policy) provides that *“all qualifications of the successful candidate will be verified before the final offer of employment”*.
- 5.1.19 Clause 7 of the Recruitment and Selection Policy puts an obligation on the Municipality to verify the qualifications of a successful candidate before the final offer of employment is made. The Municipality could not and thus did not verify the qualifications as Mr Sanke did not include certificates of his qualifications except the fraudulent Grade 11 report.
- 5.1.20 The Recruitment and Selection Policy was established for the purpose of ensuring a fair, efficient, effective and a transparent system of recruitment. The Recruitment and Selection Policy serves as a guideline for shortlisting appointable candidates. It therefore follows that when advertising a vacant post, the requirements such as prescribed skills, expertise, competences or

qualifications are indicated on the advertisement. It is a pre-requisite to consider such requirements prior to making an appointment or filling a vacant position.

- 5.1.21 In terms of the provisions of clause 7 of the Recruitment and Selection Policy, the Municipality was expected to verify Mr Sanke's qualifications before appointing him to the post of Supervisor: Water.

Conclusion

- 5.1.23 Based on the evidence gathered, it can be concluded that the Municipality did not comply with legal prescripts regulating the selection and appointment of its staff.

5.2 Regarding whether the taxpayers of the Municipality or the Complainant and other candidates suffered prejudice as a result of the alleged irregular appointment of Mr Sanke

Common cause issues:

- 5.2.1 It is common cause that the Municipality appointed Mr Sanke in the position of Supervisor: Water on 5 April 2013.

Issues in dispute:

- 5.2.2 The irregular appointment of Mr Sanke, led to the Complainant and other candidates being denied an opportunity to compete fairly for the position of Supervisor: Water, Groot Marico

-
- 5.2.3 The salary scale as per the advertisement dated 31 May 2012 was R119 100.00-R 137 772.00 per annum. However, when appointing Mr Sanke on 5 April 2013, the Municipality offered him a salary package of R 143 972.00. On 22 February 2019, my office requested clarity regarding the discrepancy on the salary scale from the Municipality, but the Municipality failed to respond.

Application of the relevant law

- 5.2.4 Section 61(1) of the MFMA provides that “the accounting officer of a municipality must-

a) act with fidelity, honesty, integrity and in the best interests of the municipality in managing its financial affairs.”

- 5.2.5 Section 62(1) (d) of the MFMA provides as follows:

“The Accounting Officer is responsible for managing the financial administration of the municipality, and must for this purpose take all reasonable steps to ensure that unauthorised, irregular or fruitless and wasteful expenditure and other losses are prevented.”

- 5.2.6 The former Municipal Manager was expected to ensure that correct recruitment procedures were followed in the appointment of a Supervisor: Water, to ensure that irregular expenditure is prevented.

- 5.2.7 Section 171(1) MFMA provides that, “*the accounting officer of a municipality commits an act of financial misconduct if that accounting officer deliberately or negligently-*

(a) contravenes a provision of this Act;

(b) fails to comply with a duty imposed by a provision of this Act on the accounting officer of a municipality;”

- 5.2.8 The former Municipality Manager was expected to comply with Sections 61 and 62 of the MFMA to avoid committing financial misconduct.

-
- 5.2.9 The former Municipal Manager was expected to comply with the Recruitment and Selection Policy when appointing Mr Sanke. Irregular expenditure in relating to a municipality or municipal entity means *expenditure other than unauthorised expenditure that is incurred in contravention of or that is not in accordance with the requirements of the supply chain management policy of a municipality or any of the municipality's by-laws or policies*".

Conclusion

- 5.2.10 Based on the evidence gathered, it can be concluded that both the taxpayers of the Municipality and other candidates who applied for the position suffered prejudice as a result of Mr Sanke's irregular appointment contrary to the recruitment and selection regulations.

The Municipality's response to the Section 7(9)(a) notice

- 5.2.11 At the conclusion of my investigation, the following persons were served with a section 7(9 notices), namely: - MEC G Kegakilwe, The HOD, Mr E Motoko, the Former Municipal Manager Mr C Maema, the Chief Director Corporate Services Mr B Selebogo, the Speaker Councillor A Nyamane, the Mayor Councillor PK Mothoagae, and the current Municipal Manager Mr D Makhate dated 24 June 2019.
- 5.2.12 The notices were served by way of email, personal delivery and courier. These notices were served on the respective persons on 24 June and 27 June 2019 respectively. Responses were received from the former Municipal Manager Mr C Maema and the Municipal Manager Mr Makhate, the Mayor and the Speaker dated 27 June 2019.
- 5.2.13 The purpose of the Notices was to afford the officials an opportunity to comment on the possible adverse findings arising from the investigation. The

recipients were afforded 10 working days to respond to the notices. However MEC G Kegakilwe and the HOD, Mr E Motoko failed to respond by the expiry of the time allocated.

- 5.2.14. In response to my Section 7(9) Notice, the former Municipal Manager, Mr C Maema provided my office with a letter dated 1 July 2019 and he submitted that:

"Your letter dated 24 June 2019 regarding the above matter bears reference; I wish to acknowledge the receipt of your letter as indicated above and noted the contents thereof. I however wish to place the following on record,

It is most unfortunate that the complaint was only lodged with your office after my resignation from the municipality on 4th February 2016 as it could have been easier for me to also conduct my own investigation into the matter because what is being alleged is tantamount to corruption.

I wish to inform you that an Accounting Officer (Municipal Manager) does not participate in the panel for the appointment of junior officials but rather establish an Interviews Panel to that effect as guided by the Municipality's Delegation System of Authority."

I have indeed established the panel which was headed by the Corporate Services Department which was inter alia, responsible for the shortlisting, the verification of qualifications of all shortlisted candidates and subsequently for conducting interviews."

The panel thereafter makes recommendations for appointment to my office for ratification, hence my appointment of Mr M.J. Sanke to the position of Supervisor Water."

It is also regrettable and unacceptable that the municipality could not provide you with some of the documents as requested because such records should have been included in the employee's personal file."

In conclusion I wish to inform you that I cannot deny nor agree to the allegations because you are better placed because you have conducted an investigation in this regard. I only hope that this matter will be dealt with in such a way that it will not prejudice any of the parties. "{sic}

5.2.15 In terms of his response dated 1 July 2019, Mr Maema neither agreed nor denied the contents of my report.

5.2.16 Furthermore, in response to my Section 7(9) Notice, the Municipality provided my Office with a letter dated 27 June 2019 signed by the Municipal Manager, Mr D Makhate, the Mayor Councillor P K Mothoagae, and the Speaker Councillor A. Nyamane submitted that:

The Municipality

"1. We acknowledge the receipt of your letter referred: 7/2-018238/16 and the contents thereof noted.

2. The Municipality concurs and supports the remedial action as proposed by the Public Protector.

3. That the irregular appointment of Mr Sanke will be terminated with immediate effect by the Municipality.

4. That the conduct of the former Municipality Manager, Mr Maema, in the irregular appointment of Mr Sanke which led to the Municipality incurring

irregular expenditure since 2013 April 13, be recouped from the former Municipal Manager.

5. That based on paragraph 4, the actions of Mr Maema constitutes financial misconduct in Terms of Section 171(1) of the Municipal Financial Management Act.”

- 5.2.17 In terms of the letter dated 27 June 2019 from the Municipal Manager, the Speaker and the Mayor of the Municipality are of the view that the irregular appointment of Mr Sanke should be terminated with immediate effect by the Municipality and that the conduct of the former Municipal Manager, Mr Maema, in the irregular appointment of Mr Sanke led to the Municipality incurring irregular expenditure since 13 April 2013.

6. FINDINGS

Having considered the evidence received during the investigation, the regulatory framework determining the standard that should have been complied with, I make the following findings:

- 6.1 Regarding whether the Ramotshere Moiloa Local Municipality irregularly appointed Mr Sanke to a position of Supervisor: Water, Groot Marico**
- 6.1.1 The allegation that the Municipality irregularly appointed Mr Sanke to the position of Supervisor: Water Groot Marico, is substantiated.
- 6.1.2 The Municipality irregularly appointed Mr Sanke, who was not in possession of the relevant Tertiary qualification in Local Government or accounting as required in the advertisement, when he applied for the post. The Municipality's decision to shortlist and subsequently appoint him was in contravention of clause 7 of the Recruitment and Selection Policy.

6.1.3 The Municipality further contravened Clause 7 of the Recruitment and Selection Policy by failing to verify Mr Sanke's academic qualifications.

6.1.4 The conduct of the Municipality, particularly the former Municipal Manager, Mr Maema, constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4) (i) of the Public protector Act.

6.2 Regarding whether the taxpayers of Ramotshere Moiloa Local Municipality, the Complainant and other candidates suffered prejudice as a result of the alleged irregular appointment of Mr Sanke.

6.2.1 The allegation that the taxpayers of the Municipality, the Complainant and other candidates who applied for position with Mr Sanke suffered prejudice as a result of his irregular appointment, is substantiated.

6.2.1 The Complainant and other candidates were deprived of a possible work opportunity, in that Mr Sanke was appointed to the position without holding the required qualifications.

6.2.2 Mr Sanke received from the Municipality a salary package of R143 972.00 – R155 649.00 per annum when he was appointed from April 2013. He is still employed and earning a salary, including benefits.

6.2.3 The irregular appointment of Mr Sanke may have caused the Municipality to incur irregular expenditure by paying him the salary which is in contravention of section 62 of the MFMA.

6.2.4 The conduct of Mr Maema, in the irregular appointment of Mr Sanke which led to the Municipality incurring irregular expenditure, might also constitute financial misconduct in terms of section 171(1) of the MFMA.

7. REMEDIAL ACTION

In light of the above findings, I am taking the following remedial action as contemplated in section 182(1) (c) of the Constitution:

7.1. The Municipal Manager must:

7.1.1 Within 30 working days from the date of this report, put processes in place to consider the termination of employment of Mr Sanke;

7.1.2 Bring the possible irregular expenditure in the irregular appointment of Mr Sanke to the attention of the Auditor General of SA (AGSA) in order for the AG to investigate whether there was any liability on the side of the Municipal Manager or any other employee of the Municipality and whether the expenditure was indeed irregular in terms of the MFMA.


7.1.3 Within 60 working days from the date of this report, ensure that disciplinary steps are taken against officials who conducted the shortlisting and interviews during the irregular appointment of Mr Sanke.

8. MONITORING

8.1. The Municipal Manager must, within fifteen (15) working days from the date of the issuing of this Report, submit to my office the implementation, with timelines, indicating how the remedial action will be implemented.

8.2 In line with the Constitutional Court judgment 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 [2016] ZACC 11***, and in order to ensure the effectiveness of the Office of the

Public Protector, the remedial actions prescribed in this Report are legally binding on the Municipal Manager, former Municipal Manager: Ramotshere Moiloa Local Municipality unless the Municipal Manager, former Municipal Manager Ramotshere Moiloa Local Municipality obtains a Court order directing otherwise.



ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 05/09/2019



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Ephraimk@pprotect.org

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Attention: Hon. MEC Mr. G Kegakilwe
Member of Executive Council: NW Province
Garona Complex Building
MMABATHO

Dear Hon MEC Kegakilwe

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1) OF THE CONSTITUTION
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ACT, 1994**

Please find the attached a copy of my Report No: 60 of 2019/20 on allegations of maladministration and impropriety by Ramotshere Moiloa Local Municipality in the appointment of the Supervisor: Water Groot Marico. Your attention is specifically directed to the remedial action contained in paragraph 7 of the report.

Kind regards

ADV. BUSISIWE MKHWEBANE

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Attention: Hon Professor JT Mokgoro

NW Province: Premier

Office of the Premier

MMABATHO

Dear Hon Professor Mokgoro

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1) OF THE CONSTITUTION
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Attention: Mr. PE Motoko
The Head of the Department
Department of Cooperative Governance & Traditional Affairs
MMABATHO

Dear Mr Motoko

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1) OF THE CONSTITUTION
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Attention: Mr. C Maema
The Former Municipal Manager
Ramotshere Moiloa Local Municipality
ZEERUST

Dear Mr. Maema

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1) OF THE CONSTITUTION
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Attention: Mr. D Makhate

The Municipal Manager

Ramotshere Moiloa Local Municipality

ZEERUST

Dear Mr. Makhate

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1) OF THE CONSTITUTION
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Attention: Mr. B Selebogo
The Corporate Services Director
Ramotshere Moiloa Local Municipality
ZEERUST

Dear Mr. Selebogo,

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1) OF THE CONSTITUTION
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Attention: Councillor PK Mothoagae
The Executive Mayor
Ramotshere Moiloa Local Municipality
ZEERUST

Dear Cllr Mothoagae,

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Attention: Councillor A Nyamane

The Speaker

Ramotshere Moiloa Local Municipality

ZEERUST

Dear Cllr Nyamane,

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The Former Municipal Manager
Ramotshere Moiloa Local Municipality
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Dear Mr Maema

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Attention: Mr. RI Khethele

Per email: khethelerapula1@gmail.com

Dear Mr. Khethele,

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1) OF THE CONSTITUTION
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ADV. BUSISIWE MKHWEBANE

PUBLIC PROTECTOR OF THE

REPUBLIC OF SOUTH AFRICA

DATE: 05/09/2019



Department of Environmental Affairs and Forestry

CERTIFICATE OF COMPLIANCE

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No.	STANDARD EXPECTED	Investigat or/Senior Investigat or		Senior Manager		Executive Manager	
		YES	NO	YES	NO	YES	NO
1.	Report/section 7(9) notice/discretionary notice format and structure comply with Think Tank guidelines	✓		✓			✓
2.	Spelling & Grammar checked	✓		✓			✓
3.	Font, numbering & footnotes checked	✓		✓			✓
4.	Legal authorities properly cited	✓		✓			✓
5.	Cited legal authorities verified	✓		✓			✓
6.	Legal issues involved clearly identified	✓		✓			✓
7.	Sources of evidence clearly identified	✓		✓			✓
8.	Evidence obtained properly analysed & evaluated	✓		✓			✓
9.	Conclusion reached links evaluation of evidence to legal framework & legal framework to findings made	✓		✓			✓
10.	Remedial action taken relevant to the findings	✓		✓			✓
11.	Monitoring of remedial action clause included	✓		✓			✓

The signatories to this Certificate of Compliance below declare that the above checks have been performed.

CERTIFICATE OF COMPLIANCE



INVESTIGATOR/SENIOR INVESTIGATOR

DATE: 27 / 08 / 2019



SENIOR MANAGER/PROVINCIAL REP

DATE: 22 / 08 / 2019



EXECUTIVE MANAGER

DATE: 30 / 08 / 2019

NB. NO DOCUMENTS SUBMITTED TO QUALITY ASSURANCE WILL BE ACCEPTED UNLESS ACCOMPANIED BY THIS CERTIFICATE

CERTIFICATE OF COMPLIANCE