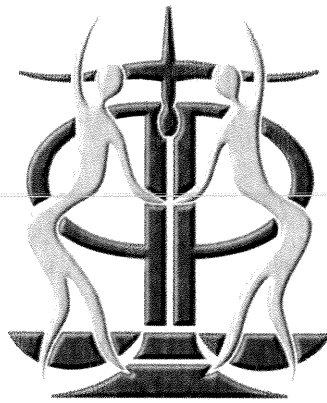


**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION
182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH
AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR
ACT, 1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO. 26 OF 2009/10

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF
MALADMINISTRATION AND CORRUPTION AT KOPANONG MUNICIPALITY,
FREE STATE PROVINCE**

INDEX

Executive Summary	3
<hr/>	
1. INTRODUCTION	6
2. THE COMPLAINT	6
<hr/>	
3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT	8
4. THE INVESTIGATION	9
<hr/>	
5. LEGISLATION REGULATING APPOINTMENT OF OFFICIALS OF A MUNICIPALITY	10
6. EVALUATION OF EVIDENCE	11
<hr/>	
7. OBSERVATIONS	17
8. RECOMMENDATIONS	18
9. CONCLUSION	19

Executive Summary

- (i) The Office of the Public Protector (OPP) investigated a complaint against Kopanong Municipality (the Municipality) lodged at one of the monthly Outreach and Public Awareness Clinics held on 21 May 2007, in Bethulie; an area within the jurisdiction of Kopanong Local Municipality, Xhariep District, Free State Province. In essence the allegations against the Municipality, in particular the Municipal Manager, are, *inter alia*, the following:
- (a) Nepotism by the Municipal Manager in the appointment and/or transfer of his aged father (Mr Andrew Mantshiyane) as an Assistant Technical Supervisor whilst he does not possess any technical qualifications as required for the post;
 - (b) Nepotism or interference by the Municipal Manager in the appointment of the Municipal Manager's former girlfriend and the mother of his son as a Receptionist at the Municipality;
 - (c) Irregularities with regard to the appointment of a Senior Manager who did not have the relevant qualifications for the position that he has been appointed to, in contravention of the advertisement for the position;
 - (d) The Municipal Manager unlawfully authorised a mortuary to operate in a residential area without following proper procedures, this being a health risk to other residents in the area; and
 - (e) Following the lodging of the complaint, the Municipality suspended the Complainant from working at the Municipality and purported to institute disciplinary proceedings against him.

(ii) From the investigation it was found that:

- (a) The appointment of Mr Andrew Mantshiyane was irregular and same constitutes nepotism. Procedures were also not followed in transferring him from a position of being a political assignee to the Speaker, to that of an Assistant Technical Supervisor, at the Municipality. It was discovered that he is receiving a cell phone and travelling allowance which he does not qualify for.
- (b) The allegation that the Municipal Manager played a role or tried to use his influence in the appointment of Ms Bulelwa Mkafi, his former girlfriend, as a Secretary in the Municipality, is unfounded, as she went through a proper interviewing process.
- (c) The Senior Manager did not qualify in terms of the advertisement's requirements for the position that he was appointed in, and as such this appointment was found to have been made irregularly.
- (d) The Municipal Manager inappropriately allowed a mortuary to be operated in a residential area whereas the property has not been rezoned for such purpose.
- (e) The suspension of the Complainant from work for having lodged a complaint with the OPP was inappropriate, and found to have constituted an abuse of power.
- (f) The Human Resources Department of the Municipality is in a totally dysfunctional state and the filing systems need to be upgraded or improved. There are no control systems in place to ensure that personnel information is kept in a safe environment and be

accounted for, and as such an urgent audit of the said Department needs to be undertaken with a view to improving and upgrading the systems.

(iii) It is recommended that:

- (a) The Municipality should take urgent steps to recover monies paid to Mr Andrew Mantshiyane in respect of travelling and cell phone allowances which he was, and still is, not entitled to;
- (b) The Municipal Council must ensure that the appointment of the Senior Manager is reviewed with a view to capacitating him to be able to perform his duties, more particularly in such a critical area as the technical department;
- (c) The Municipal Manager must ensure that the mortuary is closed forthwith. Proper application for rezoning procedures is to be followed, before it could be considered for future use;
- (d) The Council should consider undertaking an urgent audit of its Human Resources Division with a view to improving and upgrading its personnel filing systems.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION AND CORRUPTION AT KOPANONG MUNICIPALITY, FREE STATE PROVINCE

1. INTRODUCTION

1.1 This report is submitted to the Member of the Executive Council (MEC) responsible for Cooperative Governance, Traditional Leadership and Human Settlement in the Free State Provincial Government, the Mayor and the Speaker of Kopanong Municipal Council by virtue of the provisions of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and section 8(1) of the Public Protector Act, 1994 (Public Protector Act).

1.2 It relates to an investigation into allegations of corruption and maladministration in the Kopanong Municipality (the Municipality).

2. THE COMPLAINT

2.1 During its Outreach and Public Awareness Clinic held at Bethulie on 21 May 2007, the Office of the Public Protector (OPP) received a complaint from Mr M Phaku (the Complainant), a Councillor Support Officer in the employ of the Municipality in connection with allegations of maladministration, nepotism and corruption in the Municipality. This related to employment of staff as well as to the granting of permission to carry on a mortuary in a residential area without due regard to proper procedures having been followed.

2.2 In the Complainant's affidavit it was, in the main, alleged that :

- 2.2.1 In April 2006, Mr Simeon Mantshiyane (the Municipal Manager), being the Accounting Officer of the Municipality appointed his father Mr Andrew Mantshiyane as a Personal Assistant to the Speaker of the Municipality. The position was never advertised. The father, aged around 60 years, was previously in the employ of Spoornet and Ninam Shand Consulting Engineers, as a Labourer with no experience in general office administration;
- 2.2.2 He served in this position for a period of approximately four months and thereafter was transferred to the position of Store Man. This position was not in the Municipality's organogram, but was created so as to accommodate him, even though there is no store in Trompsburg for a position of Store Man to be created;
- 2.2.3 It was unknown how and under which circumstances this appointment was made. As a result of this, the matter was queried by several members of the public and he has now been transferred to Springfontein, being his home town within the Municipality, and was appointed in a position of Assistant Technical Supervisor;
- 2.2.4 One Bulelwa was appointed in a position of a Receptionist for the Municipality around May/June 2006. The Municipal Manager is alleged to be the father of Bulelwa's son;
- 2.2.5 The Municipal Manager is also alleged to have appointed another Senior Manager who does qualify for the position as required in the advertisement for the post;
- 2.2.6 A mortuary at No. 15 Vos Street was operating in a residential area in town, and that the Municipality is allowing it without it being rezoned for such purpose; and

- 2.2.7 Having raised the controversy surrounding the appointment of the Municipal Manager's father with the Speaker of the Municipal Council, Hon. Xolile Matwa (the Speaker) in April 2006 in a public meeting in Bethulie, he was suspended with immediate effect on 13 April 2006 with full pay for a period of ten (10) months - without any disciplinary hearing being held against him. It was only in February 2007 when these charges against him were withdrawn, and he was instructed to resume his duties during February 2007.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT

- 3.1 The institution of the Public Protector was established in terms of Chapter 9 of the Constitution to support and strengthen constitutional democracy in the Republic of South Africa.
- 3.2 The Public Protector Act provides for the additional powers and operational requirements of the Public Protector. The Public Protector receives complaints from aggrieved persons and institutions against government agencies and officials.
- 3.3 He/She has the power to investigate these matters, to report on his/her findings and to take appropriate remedial action.
- 3.4 In terms of Section 182(1) of the Constitution, the Public Protector has the power 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.

- 3.5 The complaints against the Municipal Manager therefore falls within the mandate of the Public Protector to investigate.

4. THE INVESTIGATION

- 4.1 The investigation was conducted in terms of section 7 of the Public Protector Act. It comprised:

- 4.1.1 Consultation with the Complainant;
- 4.1.2 An assessment of the complaint;
- 4.1.3 Perusal and analysis of the relevant documentation provided by the Complainant;
- 4.1.4 Correspondence with the Mayor, Speaker and Municipal Manager; and
- 4.1.5 Interviews with:
 - 4.1.5.1 The Municipal Manager and Strategic Managers of various components of the Municipality, including but not limited to, the Human Resources and Finance Divisions; and
 - 4.1.5.2 Affected members of staff, and the Speaker of the Municipality.
- 4.1.6 Studying applicable provisions of legislation regulating local governments; and
- 4.1.7 Consideration of all relevant documentation obtained during the investigation.

5. LEGISLATION REGULATING THE APPOINTMENT OF OFFICIALS OF A MUNICIPALITY

5.1 The Constitution, 1996

5.1.1 A municipality has a right to govern the local government affairs of its community, subject to national and provincial legislation. The executive and legislative authority of a municipality is vested in its Municipal Council.

5.1.2 In terms of section 160(1) of the Constitution, a Municipal Council makes decisions concerning the exercise of all the powers and functions of the municipality. It may employ personnel that are necessary for the effective performance of its functions.

5.2 Delegation of Powers

5.2.1 Municipal Councils are obliged by section 59 of the Local Government: Municipal Systems Act, 2000 to develop a system of delegation that will maximize administrative and operational efficiency.

5.2.2 Kopanong Municipal Council adopted a system of delegation in terms of which the power to appoint a municipal manager and the executive managers directly responsible to him/her was delegated to the Executive Committee.

5.3 The Municipal Manager

5.3.1 As the head of the administration of the Municipality, the Municipal Manager is, *inter alia*, responsible and accountable for the formation and

development of an economical, effective, efficient and accountable administration.

5.3.2 Section 82 of the Local Government: Municipal Structures Act, 1998 provides that:

“(1) A municipal Council must appoint-

- (a) a municipal manager who is the head of administration and also the accounting officer of the municipality,*
- (b) a person appointed as a municipal manager must have the relevant skills and expertise to perform the duties associated with that post.”*

6. EVALUATION OF EVIDENCE

6.1 The appointment of Mr Andrew Mantshiyane

- 6.1.1 Mr Andrew Mantshiyane was initially appointed at the municipality with effect from 11 April 2006, in a political appointment as a Personal Assistant to the Speaker for a fixed term of five (5) years.
- 6.1.2 His remuneration was R73 609.80 per annum plus salary benefits of R3 600.00 per annum in respect of cell phone allowance which translates to R300.00 per month.
- 6.1.3 In correspondence addressed to the Municipal Manager in respect of this appointment, the Speaker wrote as follows:

“Kindly be informed that I have decided to appoint Mnyamana Andrew Mantshiyane as my Personal Assistant, therefore could you please write an appointment letter for him to commence duties on 11 April 2006.

Kindly note that I will discuss the employment details and employment contract of my Personal Assistant with you in due course.”

- 6.1.4 Mr Mantshiyane’s qualifications could not be verified as there were no *Curriculum Vitae* nor copies of qualifications on his personnel file. However, on 22 June 2006 he was transferred by the Technical Services Manager to a position of Assistant Technical Supervisor, as employee of the Municipality.
- 6.1.5 The motivation for this appointment by the Technical Services Manager is the fact that he has some technical experience arising from his previous employment with Consulting Engineering firms. There is however no indication that he has any technical qualifications.
- 6.1.6 The Speaker was interviewed and he confirmed his employment of Mr Mantshiyane as his Personal Assistant. He further confirmed that he terminated his services in July 2006, reason being that he was computer illiterate and could not perform his functions as a Personal Assistant.
- 6.1.7 He confirmed that he approached the Municipal Manager and they agreed that the Personal Assistant should be “transferred” to another position within the establishment. Having been so “transferred” the Municipality has and still is continuously paying Mr Mantshiyane a cell phone allowance since his appointment as a Personal Assistant, and during his appointment as an Assistant Technical Supervisor.

6.1.8 He has also been paid a travelling allowance throughout his appointment. In his appointment letter there is no indication that he is entitled to these benefits. The breakdown of the payments made as at the period of investigations are as follows:

DATE, MONTH & YEAR	TRAVELLING CLAIM	CELL PHONE ALLOWANCE	TOTAL AMOUNT
21 April 2006		300	
26 May 2006		300	
30 June 2006		300	
28 July 2006		300	
25 August 2006		300	
29 September 2006	3281.07	300	
27 October 2006	1178.84	300	
24 November 2006	3277.56	300	
15 December 2006	4940.04	300	
26 January 2007	3653.24	300	
23 February 2007	779.04	300	
30 March 2007		300	
26 April 2007		300	
25 May 2007		300	
29 June 2007		300	
27 July 2007	1223.97	300	
27 August		300	
Total			

6.1.9 The foregoing does not presume to be the exhaustive list of all irregular payments made to Mr Mantshiyane, as same are calculated as at the date of conducting this investigation. It is therefore assumed that the payments are still ongoing to date.

6.1.10 The Municipal's Executive Director: Finance, Mr W Mpikheleli, was interviewed with regard to the payments for the cell phone and travelling claims for Mr Mantshiyane. Mr Mpikheleli confirmed that these payments were approved by the Municipal Manager himself and a directive was given to Finance to effect these payments.

6.1.11 He confirmed that Mr Mantshiyane was not entitled to such payments in the position that he was holding at the time of investigation. Such benefits are applicable to Senior Management of the Technical Department. The Human Resources Department did not advise them to stop such payments on Mr Mantshingane's transfer to the current position, hence they are still continuing to pay these benefits to him.

6.2 The appointment of Ms Bulelwa Mkhafi as a Receptionist

6.2.1 Ms Bulelwa Mkhafi was appointed at the Municipality as a Receptionist on 19 April 2006 following her application, and after a successful interview for the vacant position of a Receptionist. She confirmed her relationship with the Municipal Manager from 1999 to 2003, and that they have a son.

6.2.2 Despite the fact that the Municipal Manager is the father of her son, he played no part in her appointment as a Receptionist at the Municipality, as it was found that she applied and went through the interviewing process.

6.3 The appointment of Mr Sidwell James as Assistant Technical Manager

6.3.1 Mr James was appointed to the position of an Assistant Technical Service Manager effective from 01 August 2006.

6.3.2 His employment benefits include R48 000.00 per annum travelling allowance, R3 600.00 per annum cell phone allowance as well as a salary of R160 000.00 per annum.

6.3.3 The requirements for the position were that, a candidate should be in possession of an applicable qualification in Civil Engineering or equivalent qualification or appropriate experience in a similar post, a valid driver's licence and strong computer literacy skills.

6.3.4 Mr James was interviewed for the position and conceded to the fact that he did not have any technical qualification. He submitted his *Curriculum Vitae*. From 1993 to 2006, when he was appointed by the Municipality, he was a teacher having qualified for a primary teacher's diploma in 1992. He was a councillor from 1996 to 1998, and was the Chairman and Deputy Chairman respectively of the infrastructure committee within the Municipality. He alleged that he submitted his *Curriculum Vitae* when he applied for the position, but it was not found on his HR Personnel File during perusal of records.

6.4 Operation of mortuary in residential area

6.4.1 Further to this investigation, the OPP investigated a complaint against the Municipality regarding allegations of its failure to close a mortuary allegedly operated without having been duly granted permission to operate as such, or allowing it to continue operating as such. The allegations are to the effect that the mortuary is operated in a residential area not suitable for such a business.

6.4.2 No application for rezoning was forwarded to the Municipality, for the house to be rezoned from a residential to a business premises (as needed to operate as a mortuary). It was further alleged that no advertisements calling for objections to the opening of the mortuary were circulated via local media, at any stage to date of the complaint.

6.4.3 The matter was followed-up with the Municipality, and in particular with the Municipal Manager, who conceded to the fact that the owners of the mortuary were asked to cease operations in April 2007, but to date the operation of the mortuary has not stopped, and it is still operating in the residential area. When asked whether the Municipality was considering any action to address the complaint, the Municipal Manager said he would not know what to do if the business was to continue with its operations.

6.5 The state of the Human Resources/Personnel Files

6.5.1 During the course of the investigation it became prudent and imperative that inspection of staff personnel files be conducted so as to verify some of the allegations or submissions by the members of staff who were interviewed. The state of the personnel files was found to have been totally unacceptable as they did not have important documentation such as staff *Curriculum Vitae*'s or leave records, thus rendering progress with the investigation almost impossible.

6.5.2 It was then decided to interview the Executive Director: Corporate Services, on important personnel information that was missing on files. Her answer was that some information is actually removed from files by the Finance Department, and at times they fail to return it. She did not know how to control this "loss" of some of the documents and was aware that documents are not filed and bounded properly.

- 6.5.3 This had to be verified with Mr Wiseman Mpikeleli who denied that they remove documents from files and informed us that if and when they need some information on a personnel file, they requisition the whole file, and then return the file as it was, back to the Human Resources Department.
- 6.5.4 When one of the Executive Managers, Mr Ntwanambi was interviewed, his *Curriculum Vitae* or application for employment for the position that he is holding could not be located in his personnel file, and it was established that there were no leave applications, or records of leave taken, on his file.
- 6.5.5 No control systems, such as a register for movement of files, or a control register for leave, could be shown or found, and the files itself were incomplete and documents were not bound or kept in an orderly fashion. The conclusion was made that there was serious negligence within the Municipality as far as the handling of personnel information and movement of files were concerned, which required urgent attention from the Human Resources Manager, and or Municipal Manager.

7. OBSERVATIONS

- 7.1 The following observations and findings were made from the investigation of this complaint:
- 7.1.1 The appointment of Mr Andrew Mantshiyane is irregular and constitutes nepotism on the part of the Municipal Manager. When “transferring” him from the position of being a Personal Assistant to the Speaker, to that of an Assistant Technical Supervisor, at the Local Municipality, no proper procedures were followed. He is receiving a cell phone and travelling allowance which he does not qualify for.

- 7.1.2 The allegation that the Municipal Manager played a role in the appointment of Ms Bulelwa Mkafi as a Secretary in the Municipality was found to be without basis.
- 7.1.3 Mr James does not qualify for the senior managerial position that he was appointed in and such appointment is therefore found to have been made irregularly.
- 7.1.4 The Municipal Manager inappropriately allowed a mortuary to be operating in a residential area, whereas the property has not been rezoned for such purpose.
- 7.1.5 The suspension of the Complainant from work for having lodged a complaint with the OPP is inappropriate, and found to have constituted an abuse of power.
- 7.1.6 The Human Resources Department of the Municipality is found to be in a disorderly, dysfunctional state. The filing system needs to be upgraded or improved. There are no control systems in place to ensure that personnel information is kept in a safe environment, and can be accounted for, and as such an urgent audit of the said Department needs to be undertaken with a view to improving and upgrading the systems.

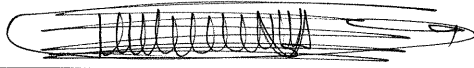
8. RECOMMENDATIONS

- 8.1 In terms of the provisions of Section 182(1)(c) of the Constitution and Section 6(4)(c)(iii) of the Public Protector Act, 1994 it is recommended that:

- 8.1.1 The Municipality should take urgent steps to recover monies paid to Mr Andrew Mantshiyane in respect of travelling and cell phone allowances which he was, and still is, not entitled to;
- 8.1.2 The Municipal Council must ensure that the appointment of the Senior Manager is reviewed with a view to capacitating him to be able to perform his duties, more particularly in such a critical area as the technical department;
- 8.1.3 The Municipal Manager must ensure that the mortuary is closed forthwith. Proper application for rezoning procedures is to be followed, before it could be considered for future use;
- 8.1.4 The Council should consider undertaking an urgent audit of its Human Resources Division with a view to improving and upgrading its personnel filing systems.

9. CONCLUSION

The OPP will monitor implementation of the recommendations referred to in paragraph 8 on a monthly basis.



ADV ML MUSHWANA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 28/09/09.

Assisted by: Mr Abongile Madiba, Senior Investigator, Free State Provincial Office