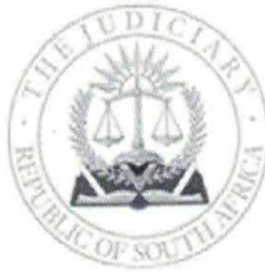


REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 33658/2020

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
14 July 2025	
DATE	SIGNATURE

In the matter between:

MEC FOR HEALTH: NORTH WEST PROVINCE

First Applicant

JEANETTE HUNTER N.O.

Second Applicant

and

**THE PUBLIC PROTECTOR
BENJAMIN SENTSHO
GENL (RET) DR MOKHETHI RADEBE**

First Respondent
Second Respondent
Third Respondent

ANDREW KYEREH

Fourth Respondent

ELLIOT ANDREW KABELO MOTENE

Fifth Respondent

ADV THELVI MMAKO

Sixth Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

Introduction

[1] The applicants apply for an order reviewing and setting aside a report of the first respondent dated 21 February 2020, in respect of allegations that the North West Department of Health failed to process an appeal lodged by the second respondent.

[2] The application is only opposed by the second respondent.

Parties

[3] The first Applicant is the Member of the Executive Council responsible for the Department of Health in the North West Province (the Department").

[4] The second Applicant, Jeanette Hunter N.O., is cited in her official capacity as administrator of the Department.

[5] The first Respondent, the Public Protector, is cited in her official capacity as the incumbent of the Office of the Public Protector. The first defendant filed a notice to abide by the decision of the court.

[6] The second respondent, Benjamin Sentsho, is the subject matter of the report prepared by office of the Public Protector.

- [7] The third to sixth respondents are former and current employees of the Department and was joined as respondents by an order of this court dated 13 September 2023 insofar as they may have an interest in the relief claimed herein.

Background

- [8] The second respondent was appointed by the Department on a fixed term contract for the period 1 March 2010 to 31 January 2012 as a site project manager in the hospital revitalisation division. During the course of his fixed-term contract and more particularly during January 2012, allegations of misconduct relating to fraud and corruption were levelled against the second respondent.
- [9] The Department decided to investigate the allegations and to extent the second respondent's fixed-term contract to 31 January 2012 to allow for the finalisation of the investigation.
- [10] On 14 December 2012 the Department notified the second respondent that he had been found guilty of fraud and corruption and that a sanction of dismissal had been imposed. The second lodged an appeal against the finding during December 2012.
- [11] According to the Department and "*as a result of a serious backlog of internal appeal cases*" the Department did not finalise the second respondent's appeal prior to the expiry of his fixed term contract on 31 January 2012.
- [12] The aforesaid conduct of the Department prompted the second respondent to lay a complaint with the office of the Public Protector.

Findings and remedial action

- [13] The Public Protector found that the Department's failure to process the second respondent's appeal within 30 days after being lodged violated the provisions of clause 8.8 of Regulation 1 of 2003. The conduct further amounted to fruitless and wasteful expenditure in violation of the Public Finance Management Act 1 of 1999 "PFMA". Furthermore, the second respondent had been prejudiced by the Department's conduct because he remains with a guilty verdict of fraud and corruption, which is on his departmental record.

[14] In the result, the Department's failure constituted improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act 23 of 1994.

[15] As part of the remedial action, the Public Protector ordered the MEC to, within thirty (30) working days from the date of the report, objectively process the second respondent's appeal and to provide the second respondent with the outcome of his appeal.

[16] The Department does not take serious issue with the Public Protector's finding but contends that the remedial action is a legal impossibility.

Remedial action legally impossible to comply with?

[17] The Department maintains that the implementation of the remedial action would effectively revive an employment contract which terminated by operation of law on 31 January 2013. The remedial action is therefore not only unlawful and arbitrary but also offends against the principle of legality and the rule of law.

[18] Furthermore, the MEC, who derives his power to consider internal appeals from the Public Service Act, 1994 and Resolution 1 of 2003, will be acting outside of the bounds of his statutory and collective agreement powers to entertain an appeal of a former employee whose contract terminated by passage of time.

[19] Lastly, the consideration of an internal appeal that was lodged some eight years ago will not only amount to mootness but have no other practical effect or serve any public interest.

[20] In the result and according to the Department, the remedial action should be set aside, because there is no rational and/or legal basis for ordering the remedial action.

[21] Mr Arcangeli, counsel for the second respondent, to his credit, conceded that the remedial action should be set aside for the reasons advanced by the Department. I agree.

Costs

- [22] The only issue that remains is that of an appropriate cost order. The application was brought to review and set aside both the findings and the remedial action contained in the report of the Public Protector.
- [23] The second respondent was entitled to oppose the relief sought in respect of both the findings and the remedial action. The second respondent's opposition insofar as the findings are concerned is successful. Although the Department was successful in setting aside the remedial action, I take note of the fact that the genesis of the application is the Department's failure to timeously process the second respondent's appeal.
- [24] In the result, I am of the view that a fair and reasonable order in the circumstances will be for the Department to pay the second respondent's costs. The complexity of the matter justifies counsel's fees on scale B.

ORDER

1. The remedial action contained in paragraphs 7.1 and 7.2 of the Public Protector's *"Report on an investigation into allegations of a failure by the Department of Health to process an appeal lodged by Mr Benjamin Sentsho following the outcome of a disciplinary hearing process"* dated 21 February 2020 is reviewed and set aside".
2. The matter is referred back to the Public Protector to consider alternative remedial action, if any.
3. The applicants are ordered to pay the costs of the application, counsel's fees on scale B.



N. JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DATE HEARD:

5 May 2025

DATE DELIVERED:

14 July 2025

APPEARANCES

Counsel for the Applicant:

Adv Chwaro

Instructed by:

Modiba Attorneys Inc.

Counsel for the second respondent:

Adv Arcangeli

Instructed by:

Isaac Teke Mothibe Attorneys