

OUT OF THE BLUE

Report on an investigation into alleged maladministration by the George Municipal Manager relating to the appointment of the Area Coordinator in Touwsrante

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INDEX

Executive Summary	3
1. INTRODUCTION	8
2. THE COMPLAINT	9
3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR	9
4. THE INVESTIGATION	10
5. STANDARD THAT SHOULD HAVE BEEN COMPLIED WITH	13
6. EVIDENCE AND INFORMATION OBTAINED	17
7. MEASURING CONDUCT AGAINST THE RULES	22
8. FINDINGS	27
9. REMEDIAL ACTION	28
10. MONITORING	29

Executive Summary

"...service [delivery] failures by municipalities may be attributed to elements of uneven and unstable governance. There is evidence of a high incidence of irregular or inappropriate appointments, coupled with low capacities, poor skills development programmes and weak institutional management..."¹

- (i) "Out of the Blue" is my report in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and section 9(7) of the Public Protector Act, 1994.
- (ii) The report relates to an investigation into the alleged maladministration by the George Municipal Manager relating to the appointment of the Area Coordinator in Touwsrante.
- (iii) The report communicates my findings and directives on remedial action following an investigation into allegations of maladministration by the George Municipal Manager, Mr Trevor Botha, in making the appointment of the Area Coordinator in Touwsrante. The appointment was made on a temporary contractual basis for a six month period that started in September 2011 and has, subsequently, been extended on a month to month basis indefinitely. It was alleged that the post was not advertised; selection and interview processes were not followed; the incumbent does not meet the requirements for the post and there was political interference in the appointment.
- (iv) In the main, the complaint was that the appointment of the Area Coordinator of Ward 4 in Touwsrante, under the jurisdiction of George Municipality, Mr Trevor Botha, did not comply with the Local Government: Municipal Systems Act, 32 of 2000 and the George Municipality Appointment Policy, in the appointment of the incumbent. Further, that the incumbent did not possess the required qualifications or was *suitably qualified* to be appointed as an Area Coordinator in terms of the Employment Equity Act, 55 of 1998, and the South African Qualifications Authority Act, 58 of 1995.

¹ Department of Cooperative Governance and Traditional Affairs, *State of Local Government Assessments*, Working Document 2009.

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- (v) The Municipality did not dispute that the essential requirements of the position of Area Co-ordinator in Touwsrante are a B-Tech Diploma in Municipal Management and it is on a grade 12 post and that the incumbent's highest formal qualification is grade 10 (standard 8). It also did not dispute that the incumbent's only known work experience is that he was a ward committee member and has been solving housing problems within his community. It transpired, in the response to my section 7(9) notice to the Municipal Manger, that he never intended on permanently appointing Mr Botha and that he would have complied with the procedure and post requirements when the post was permanently filled.
- (vi) On analysis of the complaint, the following issues were identified and investigated:
- (a) Whether the procedure followed in the appointment of the Area Coordinator in Touwsrante was improper and constitutes maladministration.
 - (b) Whether the academic qualifications of the incumbent meet the requirements of the post and if so was the appointment improper and constitutes maladministration.
 - (c) Whether there was any political interference by the Executive Mayor's office and if so was this improper and constitutes maladministration.
- (vii) The investigation included the consideration and perusal of documents, correspondence and information gathered during consultations and meetings. Relevant legislation, policies and case law were also analysed and applied.
- (viii) In order to test the validity of the allegations a number of laws were applied including the Local Government: Municipal Systems Act, 32 of 2000; the George Municipality Appointment Policy; The Employment Equity Act, 55 of 1998; the case of *Allen Paulse v Oudtshoorn Local Municipality and Others* (unreported Case No 25790/2011). Of

these laws the Municipal Systems Act and the George Municipal Appointment Policy were the ones that informed a significant number of the findings as they determined whether or not the appointment was improper and constituted maladministration.

- (ix) I further took note that the situation was unfolding as the Department of Cooperative Governance and Traditional Affairs (COGTA) stated that “...*service [delivery] failures by municipalities may be attributed to elements of uneven and unstable governance. There is evidence of a high incidence of irregular or inappropriate appointments, coupled with low capacities, poor skills development programmes and weak institutional management...*”² and declared a war on such appointments.
- (x) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:
1. *Whether the procedure followed in the appointment of the Area Coordinator in Touwsrante was improper and constitutes maladministration:*
 - a) The Local Government: Municipal Systems Act, 32 of 2000, read together with the George Municipal Appointment Policy creates a duty on the Municipal Manager to be responsible and accountable for the appointment of staff in terms of certain procedures and requirements.
 - b) The appointment of the Area Coordinator in Touwsrante was a breach of the George Municipal Appointment Policy in that the Municipal Manager failed to adhere to paragraphs 3.3.1, 3.3.2, 3.3.3, 3.4.1, 3.4.2, 3.4.3 and 3.4.4 thereof. The appointment was accordingly unlawful, amounts to improper conduct and as such constitutes maladministration.

² Department of Cooperative Governance and Traditional Affairs, *State of Local Government Assessments*, Working Document 2009.

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2. *Whether the academic qualifications of the incumbent meet the requirements of the post and if so was the appointment improper and constitutes maladministration:*
- a) The incumbent whose highest level of education is Grade 10 does not meet the essential requirements of the position, that is, the relevant B-Tech Diploma in Municipal Management. No evidence was presented to show that the incumbent meets criteria as set out under section 20(3) of the Employment Equity Act, 55 of 1998, and as such his appointment by the Municipal Manager is accordingly unlawful, amounts to improper conduct and as such constitutes maladministration.
3. *On alleged political interference by the Executive Mayor's office.*
- a) Although there was no evidence of interference from the Mayor's office, the manner of the appointment lends itself to an investigation into the nature of the relationship that existed between the incumbent and all the various people involved in his appointment. There is the possibility of the existence of an improper or possibly corrupt relationship between the incumbent and one of the people involved in the process of his appointment. This is especially true of the Municipal Manager who provided no plausible explanation as to why the position was offered to the incumbent who was not only unqualified for it, but had not solicited for the position.
- (xi) The appropriate remedial action I am taking in pursuit of section 182(1)(c), with the view of placing the Complainant as close as possible to where he would have been had the improper conduct or maladministration not occurred is the following:

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1. Municipal Council to:
 - a. In order not to perpetuate the illegality of the appointment of the Area Coordinator in Touwsrante, the Council should refrain from renewing the current incumbent's monthly contract.
 - b. Ensure that the vacancy of Area Coordinator in Touwsrante is permanently filled by following the appropriate Municipal Appointment Policy.
 - c. Consider taking disciplinary action against the Municipal Manager for failure to adhere to the prescribed George Municipality Appointment Policy in the appointment of the Area Coordinator in Touwsrante.

**REPORT ON AN INVESTIGATION INTO ALLEGED MALADMINISTRATION BY THE
GEORGE MUNICIPAL MANAGER RELATING TO THE APPOINTMENT OF THE AREA
COORDINATOR IN TOUWSRANTEN**

1. INTRODUCTION

- 1.1 *“Out of the Blue”* is my report as the Public Protector issued in terms of section 182(1)(b) of the Constitution, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 23 of 1994 (the Public Protector Act).
- 1.2 The report is submitted in terms of section 8(1) of the Public Protector Act, to the following parties:
- 1.2.1 The Speaker of the George Municipal Council;
- 1.2.2 The Executive Mayor of George;
- 1.2.3 The Municipal Manager;
- 1.2.4 The Member of the Executive Council (MEC) for Local Government of the Western Cape Provincial Government; and
- 1.2.5 The Premier of the Western Cape.
- 1.3 A copy of the report is also provided to Mr Jakobus Vaas (the Complainant), as well as to Mr P Buys, the current incumbent, in terms of section 8(1) of the Public Protector Act.
- 1.4 The report relates to an investigation undertaken by the Public Protector into the fairness and the procedure followed in the appointment of the Area Coordinator of Touwsranten by the George Municipal Manager (Mr Trevor Botha).

2. THE COMPLAINT

2.1 The Complainant, a representative of the Ward Committee for Ward 4 in Touwsranteen approached the Public Protector's Western Cape Regional Office situated in George on 14 October 2011, alleging that the appointment of the Area Coordinator of Ward 4 in Touwsranteen, under the jurisdiction of George Municipality, Mr Trevor Botha, was procedurally and administratively unfair.

2.2 The Complainant alleged the following:

2.2.1 The post was not advertised;

2.2.2 Selection and interview processes were not conducted;

2.2.3 The criteria were not communicated to relevant internal stakeholders;

2.2.4 The incumbent does not meet the required qualifications for the position and

2.2.5 That there was possible political interference in the appointment of the incumbent.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1. The Public Protector was established under section 181(1)(b) 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 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, to report on that conduct and take appropriate remedial action. Section 182(2) directs that I have additional powers prescribed in legislation.

3.3. The public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state

affairs and to resolve the disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.4. The George Municipality is an organ of state and its conduct amounts to conduct in state affairs, as a result the matter falls within my ambit.

3.5. The public Protector's jurisdiction to investigate was not disputed by any of the parties.

4. THE INVESTIGATION

4.1. Methodology

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 the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration. Section 6 of the Public Protector Act gives the Public Protector the authority to resolve a matter without conducting an investigation and resolve a complaint through appropriate dispute resolution (ADR) measures such as conciliation, mediation and negotiation.

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:

- What happened?
- What should have happened?

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- Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?
 - 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 or not the appointment procedure followed in appointing the Area Coordinator of Ward 4 in Touwsrante, Mr Trevor Botha, was proper and done in accordance with the requirements stipulated by the law.

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 organ of state to prevent maladministration and prejudice.

4.2.4. The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration. Where a Complainant has suffered prejudice the idea is to place him or her as close as possible to where they would have been had the organ of state complied with the regulatory framework setting the applicable standards for good administration.

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

4.3.1. Whether the procedure followed in the appointment of the Area Coordinator in Touwsrante was improper and constitutes maladministration.

4.3.2. Whether the academic qualifications of the incumbent meet the requirements of the post and if so was the appointment improper and constitutes maladministration.

4.3.3. Whether there was any political interference by the Executive Mayor's office and if so was this improper and constitutes maladministration.

4.4. The Key Sources of information

4.4.1. Correspondence

4.4.1.1. A letter of enquiry was sent to the Municipal Manager and the Executive Mayor of George Municipality by the investigator Mr M H Lolwana on 9 November 2011.

4.4.1.2. A reminder letter was sent to both the above individuals of George Municipality by the investigator Mr M H Lolwana on 28 November 2011.

4.4.1.3. E-mail sent to Mr Eksteen, Manager: Human Resources at George Municipality by the investigator Mr M H Lolwana on 4 January 2012.

4.4.1.4. A letter was sent to Mr P Buys (the current incumbent) by the investigator Mr M H Lolwana on 4 January 2012.

4.4.1.5. E-mail sent to Ms Robertson (the Executive Mayor's Secretary) by the investigator Mr M H Lolwana on 12 January 2012.

4.4.2. Meetings and consultations

4.4.2.1. A meeting was held by the investigator Mr M H Lolwana with the Municipal Manager of George Municipality at his office on 8 March 2012; and

4.4.2.2. A consultation was held by the investigator Mr M H Lolwana with the Complainant at George Regional Office on 8 March 2012 regarding response received from the Municipal Manager of George Municipality.

4.4.3. **Legislation and other prescripts**

4.4.3.1. Local Government: Municipal Systems Act, 32 of 2000;

4.4.3.2. George Municipality Appointment Policy of 2004;

4.4.3.3. Employment Equity Act, 55 of 1998;

4.4.3.4. South African Qualifications Authority Act, 58 of 1995, and

4.4.3.5. Allen Paulse v Oudtshoorn Local Municipality and Others unreported Case No 25790/2011

5. **STANDARD THAT SHOULD HAVE BEEN COMPLIED WITH**

5.1. **Regarding the procedure to be followed by the Municipality in the appointment of an Area Coordinator:**

5.1.1. *Local Government: Municipal Systems Act, 32 of 2000*

5.1.1.1. Section 55(1)(e) of the Act provides as follows:

"[The head of administration, the Municipal Manager is] responsible and accountable for the appointment of staff other than those referred to in section 56(a), subject to the Employment Equity Act, 1998..."

5.1.1.2. The Municipal Manager of George Municipality in appointing the incumbent temporarily relied on the above section that provided him executive authority.

5.1.2. *George Municipality Appointment Policy*

5.1.2.1. Paragraph 3 relates to the Appointment Process. Paragraph 3.3 deals with the appointment of posts for level 7-19 positions and requires that:

"Paragraph 3.3.1 - A Senior Manager to request the filling of the post by submitting a personnel requisition to the Department Corporate Services: Human Resources.

Paragraph 3.3.2 - The advertisement is compiled by the relevant Senior Manager in consultation with the Department Cooperate Services: Human Resources.

Paragraph 3.3.3 - Post is advertised."

5.1.2.2. Paragraph 3.4 - deals with Temporary Appointments.

"Paragraph 3.4.1 - Temporary appointments for the maximum period of six (6) months, must if possible, be made according to Processes 3.2 and 3.3.

Paragraph 3.4.2 - Should a temporary person work for longer than six (6) months, motivation must be submitted to the Municipal Manager and approval must be obtained.

Paragraph 3.4.3 - In order to comply with the determination of the Bargaining Council the motivation must give an indication of the additional period that the person has to be temporary and the reason why the post cannot be filled permanently.

Paragraph 3.4.4 - Should a temporary person be appointed for longer than twelve (12) months, approval must be obtained from the Bargaining Council..."

5.1.2.3. The vacancy of Area Co-ordinator is a post level 12 position and as such relates to the Appointment Process above.

5.2. **Regarding the required academic qualifications of the post:**

5.2.1. *Employment Equity Act, 55 of 1998*

5.2.1.1. In terms of section 20(3) of the Employment Equity Act, 1998 –

"(3) For purposes of this Act, a person may be suitably qualified for a job as a result of any one of, or a combination of that person's-

(a) Formal qualifications;

(b) Prior learning;

(c) Relevant experience; or

(c) Capacity to acquire, within a reasonable time, the ability to do the job."

5.2.1.2. The Municipal Manager of George Municipality in his response submitted that he considered the above legislation when he appointed the incumbent temporarily in the position.

5.2.2. *South African Qualifications Authority Act 58 of 1995*

5.2.2.1. The South African Qualification Authority Act provides for the Recognition of Prior Learning (RPL) in making an appointment. The definition of RPL as defined under the Act is as follows:

"RPL means the comparison of previous learning and experience of a learner obtained against the learning outcomes required for a specific qualification. RPL is a practice that gives value and recognition to a person's previous learning regardless of how and where that learning was acquired. According to the South African Qualification Authority (SAQA), this recognition can be in the form of academic credits or advanced placement."

5.2.3. *Allen Paulse v Oudtshoorn Local Municipality and Others) unreported Case No 25790/2011*

5.2.3.1. Mr Allan Paulse applied for the positions of Municipal Manager and Director of Corporate services of Oudtshoorn Local Municipality. He was unsuccessful in his application and approached the Western Cape High Court for the review and setting aside of the appointment of the municipal manager, alternatively the director of corporate services, by the Municipal Council.

5.2.3.2. Mr Paulse argued that the appointed Municipal Manager, Mr Mnyimba, did not have the management experienced required for the post.

5.2.3.3. The court concluded that Mr Mnyimba did not possess the five years' experience at senior management level within the meaning of Regulation 38, and therefore found that the appointment of Mr Mnyimba as Municipal Manager and any contract concluded, between the Council and Mr Mnyimba, in consequence of such decision, were null and void.

5.2.3.4. The court found Mr Mnyimba's lack of relevant qualifications and experience just cause to set aside his appointment.

6. EVIDENCE AND INFORMATION OBTAINED

6.1. Matters not in dispute

- 6.1.1. Ms. Robertson, the Executive Mayor's Secretary, was requested by Mr Eksteen of the Human Resource Department of George Municipality to contact Mr Buys to collect his appointment letter after he could not reach him.
- 6.1.2. Mr Buys collected his written offer for the incumbent position at the Human Resources Department of George Municipality.
- 6.1.3. The position was vacant for more than two years and there were no previous incumbents.
- 6.1.4. The essential requirements of the position of Area Co-ordinator in Touwsrante are a B-Tech Diploma in Municipal Management and it is on a grade 12 post.
- 6.1.5. The incumbent's highest formal qualification is grade 10 (standard 8), and the qualification requirement for the position of Area Coordinator is a B-Tech Diploma in Municipal Management.
- 6.1.6. The incumbent's only known work experience is that he was a ward committee member and has been solving housing problems within his community. The Public Protector was also provided with documentary evidence confirming the incumbent's previous experience.
- 6.1.7. The Complainant presented his case through the original complaint, several meetings held with the investigative team and documents submitted regarding the appointment of the incumbent.

6.2. Regarding the procedure followed by the Municipality in the appointment of the Area Coordinator in Touwsrante:

6.2.1. Municipality's Case

- 6.2.1.1. In a response dated 20 February 2013 Mr Eksteen (HR Officer) he indicated that part of his function is to contact people and to hand them written offers of appointments (temporary, contract or permanent).
- 6.2.1.2. He further stated that the contract is only offered to the appointee after the offer has been signed by the Municipal Manager;
- 6.2.1.3. In this case, the offer was made and the incumbent was contacted to collect the written offer;
- 6.2.1.4. When HR could not reach the incumbent, the Secretary of the Executive Mayor was requested to assist in reaching him.
- 6.2.1.5. Mr Buys submitted in writing that he was telephonically contacted by the Secretary of the Executive Mayor of the George Municipality, Ms M Robertson, and offered the position of Area Coordinator in Touwsrante on a month to month basis for a six month period, and thereafter the post would be advertised.
- 6.2.1.6. The position of Area Coordinator in Touwsrante was not advertised. The incumbent first heard about the job offer from the Secretary of the Executive Mayor, and by then the offer had already been signed by the Municipal Manager and given to the HR officer to hand to the incumbent.

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- 6.2.1.7. The incumbent has been occupying the position for more than two and a half years, since November 2011, and no approval has been obtained from the Bargaining Council.
- 6.2.1.8. Mr Eksteen, from the Human Resources Department of George Municipality, only became aware of the appointment when they had to locate the incumbent in order to hand him a written offer of employment. It is however, noted that Mr Eksteen was somewhat evasive and advised that the Municipal Manager should respond to some of the questions put to him.
- 6.2.1.9. The Secretary of the Executive Mayor was asked, by HR, to assist in contacting the incumbent regarding the position.
- 6.2.1.10. On 19 May 2014 I provided the Municipality with the opportunity to respond to certain evidence and possible adverse findings which I intended on making against it in terms of section 7(9) of the Public protector Act. The Municipality responded to the abovementioned issue and evidence by stating, by way of the Municipal Manager, that the appointment was regarded as critical and in his capacity, in terms of Section 55(1)(e) of the Municipal Systems Act, he appointed the incumbent in the temporary position.
- 6.2.1.11. The incumbent was appointed for a temporary period on a month to month period. The restructuring of the Municipality's staff establishment is currently in process; where after the advertising of the relevant position on a permanent basis will be considered. The Municipal Manager also responded that in line with the Appointment Policy the processes as contemplated in Section 3.2 and 3.3 must be followed, if possible. The post was therefore not advertised, as a temporary appointment urgently had to be made, until such time the Council could apply their mind with regards to the organizational structure. The trade unions could also not be consulted in this instance, because of the fact that

both trade unions issued a notice of strike when the urgent need was identified.

6.3. Regarding whether the academic qualifications of the incumbent, appointed, meet the requirements of the post:

6.3.1. Municipality's Case

6.3.1.1. According to the Municipal Manager of George Municipality the essential requirements of the position of Area Co-ordinator in Touwsrante is a B-Tech Diploma in Municipal Management and it is on a post grade 12.

6.3.1.2. The Municipal Manager stated furthermore that, in terms of section 20(3) of the Employment Equity Act:

"(i) A person may be suitably qualified for a job as a result of any one or a combination of that person's

(a) Formal qualification;

(b) Prior learning;

(c) Relevant experience; or

(d) Capacity to acquire, within a reasonable time, the ability to do the job;"

6.3.1.3. Mr Buys submitted in writing that his highest school qualification is grade 10 (standard 8) and that he has also completed the following courses:

- a) Community liaison officer,
- b) Introduction to Ward Committee Governance, and
- c) Introduction to Computers and Windows.

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- 6.3.1.4. He contended that he was a ward committee member and had experience solving housing problems and, therefore, considered himself the best qualified person for the job in Touwsrante.
- 6.3.1.5. In its response to the section 7(9) notice the Municipality, by way of the Municipal Manager, reiterated that although a B-Tech Diploma in Municipal Management, or similar qualification and/or experience, will be a requirement when the position is filled permanently and that section 20(3) of the Employment Equity Act makes provision for a suitably qualified person based on his or her qualification, prior learning, experience and the ability to do the job. The Municipal Manager reiterated that the incumbent was appointed temporarily in this position taking into account the above

6.4. Regarding the possible political interference by the Executive Mayor's office:

6.4.1. Municipality's Case

- 6.4.1.1. In a letter, dated 30 July 2012, from the Executive Mayor he indicated that the post was regarded as a critical post and was funded by the re-allocation of funds from other posts; this is a normal practice within local government.
- 6.4.1.2. He further stated that the incumbent's lack of sufficient academic qualification was noted; however a B-Tech Diploma in Municipal Management or similar qualification and/or experience will be a requirement when the post is filled permanently. It was indicated that section 20(3) of the Employment Equity Act applied and was the guiding factor in making this appointment.
- 6.4.1.3. He stated that the incumbent was contacted by the Secretary of the Mayor regarding his availability, but no offer was made to the incumbent by the Secretary of the Mayor or the Mayor's office.

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- 6.4.1.4. The powers of the Municipal Manager are clearly stipulated in section 55 of the Systems Act.
- 6.4.1.5. He further stated that funds were available for the appointment of staff on the salary budget, all which happened in this matter, was that funds were reprioritised according to the critical needs within the department.
- 6.4.1.6. Finally, that no action would be taken against any official as no one is deemed to have acted ultra vires regarding this appointment.

7. MEASURING CONDUCT AGAINST THE RULES

7.1. Regarding whether the procedure followed in the appointment of the Area Coordinator in Touwsranteen was improper and constitutes maladministration:

- 7.1.1. Section 55 (1) (e) of the Local Government: Municipal Systems Act 32 of 2000 stipulates that – as head of administration the municipal manager of a municipality is subject to policy directions of the municipal council, responsible and accountable for the appointment of staff other than those referred to in section 56(a), subject to the Employment Equity Act 55 of 1998. This section therefore provides legislative authority to the Municipal Manager of a Municipality to appoint staff subject the policies and directions of the municipal council. The legislative authority given to the Municipal Manager specifically mentioned that this authority is subject to the policy and the directions of the municipal council that already exists. It is clear from the facts of the current case that the Municipal Manager did not consider the existing policies of George Municipality when he appointed the incumbent.

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- 7.1.2. The George Municipality Appointment Policy stipulates under paragraph 3.3.1 that for post levels 7 – 19 Senior Managers should request the filling of the post by submitting a personnel requisition to the Department Corporate Services: Human Resources. Paragraph 3.3.2 stipulates that the advertisement is compiled by the relevant Senior Manager in consultation with the Department Corporate Services: Human Resources. Finally paragraph 3.3.3 stipulates that the post is advertised.
- 7.1.3. The post of Area Co-ordinator in Touwsrante is a level 12 post which means it is covered by paragraph 3.3 of the George Municipality Appointment Policy. According to the submissions made by Mr Eksteen of the George Municipality Human Resources Department he only became aware of the appointment when they had to locate the incumbent in order to hand him a written offer of employment signed by the Municipal Manager. No requests for the filling of the post were submitted by a Senior Manager to the Department Corporate Services: Human Resources as required. It is also common cause that no advertisement was compiled and that the post was never advertised as required.
- 7.1.4. The George Municipality Appointment Policy further stipulates under paragraph 3.4.1 that temporary appointments for the maximum period of six months, must if possible, be made according to processes 3.2 and 3.3. Meaning that a request must be made by a senior manager to the Department Corporate Services: Human Resources which in turn will compile an advertisement and advertise the post. It is common cause the incumbent post although temporary was not subjected to these processes.
- 7.1.5. Paragraph 3.4.2 stipulates that should a temporary person work for longer than six months, motivation must be submitted to the Municipal Manager and approval must be obtained. According to paragraph 3.4.3 in order to comply

with the determinations of the Bargaining Council the motivation must give an indication of the additional period that the person has to be temporary and the reasons why the post cannot be filled permanently. Paragraph 3.4.4 further stipulates that should a temporary person be appointed for longer than twelve months, approval must be obtained from the Bargaining Council.

7.1.6. It is common cause that the incumbent has been occupying the position for more than two and a half years, since November 2011, and that no motivation was given nor an indication of the additional period that he would occupy the post. George Municipality also never provided any reasons why the post was not permanently filled nor did they get approval from the Bargaining Council after the twelve month period as stipulated in the Appointment Policy.

7.2. **Regarding whether the academic qualifications of the incumbent meet the requirements of the post and if so was the appointment improper and constitutes maladministration:**

7.2.1. The essential requirements as stated by the Municipal Manager of the position of Area Co-ordinator in Touwsraten area is a B-Tech degree in Municipal Management and grade 12. The incumbent stated in his letter of response that his highest school qualification is a grade 10 (standard 8) and that he has completed the following courses:

- (i) Community liaison officer;
- (ii) Introduction to Ward Committee Governance; and
- (iii) Introduction to Computers and Windows.

7.2.2. He contended that he was a ward committee member and had experience solving housing problems and, therefore, considered himself the best qualified person for the job in Touwsrantein. It is common cause that the

incumbent person does not have the essential requirements for the position of Area Co-ordinator.

- 7.2.3. Even though the incumbent stated that he completed certain courses and has some experience, no documentary evidence was provided showing that any experience of the incumbent had been recognised. Neither was any justification provided to explain why the requirements of the Appointment Policy of the Municipality were not adhered to. Ironically, even though the Municipal Manager defends his decision in appointing the current incumbent, he states in his response to the section 7(9) notice that a B-Tech Diploma in Municipal Management , or similar qualification and/ or experience will be a requirement when the position was filled permanently.
- 7.2.4. The Municipal Manager in his response stipulated that when he considered the incumbent for the position he relied on part in terms of s20(3) of the Employment Equity Act, 55 of 1998, which set out four criteria which may deem a person suitably qualify for a job that he or she is not:
- 7.2.4.1. Formal Qualifications – it is clear from the facts that the incumbent does not have any formal qualification and only completed grade 10 (standard 8).
- 7.2.4.2. Prior Learning – the only written evidence available that the incumbent conducted prior learning was in his response given to the investigator that he completed courses in the following:
- a) Community liaison officer;
 - b) Introduction to Ward Committee Governance, and
 - c) Introduction to Computers and Windows.

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- 7.2.4.3. Relevant experience – the only available written contention regarding relevant experience is the incumbent’s contention that he had experience solving housing problems and that he was a ward committee member.
- 7.2.4.4. Capacity to acquire, within a reasonable time, the ability to do the job. The only submission that one can undertake therefore is that the Municipal Manager accepted his capacity to acquire within a reasonable time the ability to do the job. This is also highly controversial as it is clear from the Municipal Manager’s own submission that he never had the intention of appointing the incumbent permanently.
- 7.3. **Regarding possible political interference by the Executive Mayor’s office:**
- 7.3.1. Even though the demonstrable evidence did not reveal political interference, good practice would dictate that there should have been a clear separation of functions between the political office and the administrative office in offering the position of Area Coordinator to the incumbent. It would be in keeping with good practice if this separation of functions were maintained with regard to the offering of any future positions.
- 7.3.2. The manner of the appointment lends itself to an investigation into the nature of the relationship that existed between the incumbent and all the various people involved in his appointment. There is the possibility of the existence of an improper or possibly corrupt relationship between the incumbent and one of the people involved in the process of his appointment. This is especially true of the Municipal Manager who provided no plausible explanation as to why the position was offered to the incumbent who was not only unqualified for it, but had not solicited for the position.

8. FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

8.1. **Whether the procedure followed in the appointment of the Area Coordinator in Touwsrante was improper and constitutes maladministration:**

8.1.1. The Local Government: Municipal Systems Act read together with the George Municipal Appointment Policy creates a duty on the Municipal Manager to be responsible and accountable for the appointment of staff in terms of certain procedures and requirements.

8.1.2. The appointment of the Area Coordinator in Touwsrante was a breach of the George Municipal Appointment Policy in that the Municipal Manager failed to adhere to paragraphs 3.3.1, 3.3.2, 3.3.3, 3.4.1, 3.4.2, 3.4.3 and 3.4.4 thereof. The appointment was accordingly unlawful, amounts to improper conduct and as such constitutes maladministration.

8.2. **Whether the academic qualifications of the incumbent meet the requirements of the post and if so was the appointment improper and constitutes maladministration:**

8.2.1. The incumbent whose highest level of education is Grade 10 does not meet the essential requirements of the position, that is, the relevant B-Tech Diploma in Municipal Management. No evidence was presented to show that the incumbent meets criteria as set out under section 20(3) of the Employment Equity Act 55 of 1998 and as such his appointment by the

Municipal Manager is accordingly unlawful, amounts to improper conduct and as such constitutes maladministration.

8.3. On alleged political interference by the Executive Mayor's office.

8.3.1. Although there was no evidence of interference from the Mayor's office, the manner of the appointment lends itself to an investigation into the nature of the relationship that existed between the incumbent and all the various people involved in his appointment. There is the possibility of the existence of an improper or possibly corrupt relationship between the incumbent and one of the people involved in the process of his appointment. This is especially true of the Municipal Manager who provided no plausible explanation as to why the position was offered to the incumbent who was not only unqualified for it, but had not solicited for the position.

9. REMEDIAL ACTION

The appropriate remedial action I am taking in pursuit of section 182(1)(c) of the Constitution, with the view of placing the Complainant as close as possible to where he would have been had the improper conduct or maladministration not occurred is the following:

Municipal Council to:

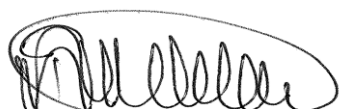
- 9.1. In order not to perpetuate the illegality of the appointment of the Area Coordinator in Touwsrante, the Council should refrain from renewing the current incumbent's monthly contract.
- 9.2. Ensure that the vacancy of Area Coordinator in Touwsrante is permanently filled by following the appropriate Municipal Appointment Policy.

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- 9.3. Consider taking disciplinary action against the Municipal Manager for failure to adhere to the prescribed George Municipality Appointment Policy in the appointment of the Area Coordinator in Touwsranteen.

10. MONITORING

The Public Protector will:

- 10.1. Require an implementation plan from the Municipal Council indicating the manner in which the Municipality intends to implement the remedial action within 30 days after receipt of this report;
- 10.2. Require a progress report within 30 days after receipt of the implementation plan referred to above in paragraph 12.1; and
- 10.3. Monitor the progress made in this regard over regular intervals.



ADV T N MADONSELA

**PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA**

DATE: 05/12/2014

Assisted by: Adv. B Wessels

Senior Investigator: George - Western Cape