PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. 9 OF 2018

PRESIDENT of the REPUBLIC of SOUTH AFRICA

SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996 (ACT NO. 74 OF 1996): REFERRAL OF MATTERS TO EXISTING SPECIAL INVESTIGATING UNIT

WHEREAS allegations as contemplated in section 2(2) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996) (hereinafter referred to as the "Act"), have been made in respect of the affairs of the Mbhashe Local Municipality (hereinafter referred to as the "Municipality"), which is situated in the Eastern Cape Province;

AND WHEREAS the Municipality or the State suffered losses that may be recovered;

AND WHEREAS I deem it necessary that the said allegations should be investigated and civil proceedings emanating from such investigation should be adjudicated upon;

NOW, THEREFORE, I hereby, under section 2(1) of the Act, refer the matters mentioned in the Schedule, in respect of the Municipality, for investigation to the Special Investigating Unit established by Proclamation No. R. 118 of 31 July 2001 and determine that, for the purposes of the investigation of the matters, the terms of reference of the Special Investigating Unit are to investigate as contemplated in the Act, any alleged—

(*a*) serious maladministration in connection with the affairs of the Municipality;

(*b*) improper or unlawful conduct by councillors, officers or employees of the Municipality;

(*c*) unlawful appropriation or expenditure of public money or property;

(*d*) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;

(*e*) intentional or negligent loss of public money or damage to public property;

(*f*) offence referred to in Parts 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), and which offences were committed in connection with the affairs of the Municipality; or

(*g*) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof,

which took place between 1 January 2015 and the date of publication of this Proclamation or which took place prior to 1 January 2015 or after the date of publication of this Proclamation, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or contracts investigated under authority of this Proclamation, and to exercise or perform all the functions and powers assigned to or conferred upon the said Special Investigating Unit by the Act, including the recovery of any losses suffered by the Municipality or the State in relation to the said matters in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this 22 day of March Two thousand and eighteen.

CM Ramaphosa
President

By Order of the President-in-Cabinet:

TM Masutha
Minister of the Cabinet

SCHEDULE

1. The contracting for or procurement of motor vehicles and equipment, by or on behalf of the Municipality in terms of hire purchase agreements dated 4 March 2015 and 6 July 2015, respectively, and payments made in respect thereof in a manner that was—

(*a*) not fair, competitive, transparent, equitable or cost-effective; or

(*b*) contrary to applicable—

- (i) legislation;
- (ii) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury or the relevant Provincial Treasury;
- (iii) manuals, policies, procedures, prescripts, instructions or practices of or applicable to the Municipality; or

(*c*) fraudulent,

and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the Municipality or the State.

2. Any improper or unlawful conduct by the councillors, officials or employees of the Municipality or the applicable service providers or any other person or entity, in relation to the allegations set out in paragraph 1 of this Schedule.

PROKLAMASIE NO. 9 VAN 2018

PRESIDENT van die REPUBLIEK van SUID-AFRIKA

WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996 (WET NO. 74 VAN 1996): VERWYSING VAN AANGELEENTHEDE NA BESTAANDE SPESIALE ONDERSOEKEENHEID

AANGESIEN bewerings soos beoog in artikel 2(2) van die Wet op Spesiale Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna na verwys as die "Wet"), gemaak is in verband met die aangeleenthede van die Mbashe Plaaslike Munisipaliteit (hierna na verwys as "die Munisipaliteit"), wat in die Oos-Kaap Provinsie geleë is;

EN AANGESIEN die Munisipaliteit of die Staat verliese gely het wat verhaal kan word;

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en siviele geskille voortspruitend uit sodanige ondersoek bereg moet word;

DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, die aangeleenthede in die Bylae vermeld, ten opsigte van die Munisipaliteit, vir ondersoek na die Spesiale Ondersoekeenheid ingestel by Proklamasie No. R. 118 van 31 Julie 2001 en bepaal dat, vir die doeleindes van die ondersoek van die aangeleenthede, die opdrag van die Spesiale Ondersoekeenheid is om soos beoog in gemelde Wet, ondersoek te doen na enige beweerde—

(*a*) ernstige wanadministrasie in verband met die aangeleenthede van die Munisipaliteit;

(*b*) onbehoorlike of onregmatige optrede deur raadslede, beamptes of werknemers van die Munisipaliteit;

(*c*) onregmatige bewilliging of besteding van publieke geld of eiendom;

(*d*) onwettige, onreëlmatige of nie-goedgekeurde verkrygende handeling, transaksie, maatreël of praktyk wat op Staatseiendom betrekking het;

(*e*) opsetlike of nalatige verlies van publieke geld of skade aan publieke eiendom;

(*f*) misdryf bedoel in Dele 1 tot 4, of artikel 17, 20 of 21 (vir sover dit op voornoemde misdrywe betrekking het) van Hoofstuk 2 van die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004 (Wet No. 12 van 2004), en welke misdrywe gepleeg is in verband met die sake van die Munisipaliteit; of

(*g*) onwettige of onbehoorlike optrede deur enige persoon wat ernstige benadeling vir die belange van die publiek of enige kategorie daarvan veroorsaak het of kan veroorsaak,

wat plaasgevind het tussen 1 Januarie 2015 en die datum van publikasie van hierdie Proklamasie of wat plaasgevind het voor 1 Januarie 2015 of na die datum van publikasie van hierdie Proklamasie, wat relevant is tot, verband hou met, insidenteel of bykomstig is tot, die aangeleenthede vermeld in die Bylae of wat dieselfde persone, entiteite of kontrakte betrek wat ondersoek word kragtens die volmag verleen deur hierdie Proklamasie, en om al die werksaamhede en bevoegdhede wat deur die Wet aan die gemelde Spesiale Ondersoekeenheid toegewys of opgedra is, uit te oefen of te verrig in verband met die genoemde aangeleenthede in die Bylae, insluitend die verhaal van enige verliese wat deur die Munisipaliteit of die Staat gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die 22.dag van Maart Twee duisend-en-agtien.

CM Ramaphosa
President

Op las van die President-in-Kabinet:

TMMasutha
Minister van die Kabinet

BYLAE

1. Die kontraktering vir of aanskaffing van motorvoertuie en toerusting, deur of namens die Munisipaliteit ingevolge huurkoopooreenkomste onderskeidelik gedateer 4 Maart 2015 en 6 Julie 2015, en betalings wat in verband daarmee gemaak is op 'n wyse wat—

(*a*) nie regverdig, mededingend, deursigtig, billik of koste-effektief was nie; of

(*b*) strydig was met toepaslike —

 (i) wetgewing;

 (ii) handleidings, riglyne, praktyknotas, omsendskrywes of instruksies wat deur die Nasionale Tesourie of relevante Plaaslike Tesourie uitgevaardig is;

 (iii) handleidings, beleid, prosedures, voorskrifte, instruksies of praktyke van, of wat op die Munisipaliteit van toepassing is; of

(c) bedrieglik was

en enige verwante ongemagtigde, onreëlmatige of vrugtelose en verspilde uitgawes wat deur die Munisipaliteit of die Staat aangegaan is.

2. Enige onbehoorlike of onwettige optrede deur die raadslede, beamptes of werknemers van die Munisipaliteit of die betrokke diensverskaffers of enige ander persoon of entiteit, ten opsigte van die bewerings uiteengesit in paragraaf 1 van hierdie Bylae.