



agriculture, environmental affairs,  
rural development and land reform

Department:  
agriculture, environmental affairs,  
rural development and land reform .  
NORTHERN CAPE PROVINCE  
REPUBLIC OF SOUTH AFRICA

## HUMAN RESOURCE MANAGEMENT AND DEVELOPMENT

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Date:	02 DECEMBER 2022	File:	SP.1.4
To:	THE ACCOUNTING OFFICER	From:	MRS N MANTANTANA
RE: OUTCOME OF DISCIPLINARY ENQUIRY– Mr C MOLOTO			

### 1. BACKGROUND

On the 07 June 2022 I presided in the disciplinary hearing of Mr C Moloto (hereunder referred to as the employee), he is appointed as a District Manager in the Pixley Ka Seme District Manager on a full-time basis and has 22 years of service in the Public Service. The Employee was represented by Mr R Bindemann (PSA official) and the department was represented by Ms P Ben (Labour Relations Officer), accompanied by an intern who will be observing the process as part of training.

### 2. PLEA

The charge sheet was read to Mr C Moloto, he confirmed that he received the charge sheet on time and also understood the charges as outlined the charge sheet dated 8 February 2022. The employee was charged with 2 Counts of misconduct in terms of Resolution 1 of 2003. The counts are as follows:

#### Count 1: Quid Pro Quo Harassment

It is alleged that between the period of October to November 2020 at or near De Aar you intentionally committed a misconduct in that you orchestrated a 12 fixed term contract of employment for Ms Line-Hendricks in exchange to obtain sexual favours whereas you knew or ought to have known that is not fundamental requirement to obtain employment in the public service and by doing so you are committing an act of sexual harassment.

#### Alternative Count 1: Unprofessional Conduct

It is alleged that between the period of December 2020 to October 2021 at or near De aar you committed an act of misconduct in that, as a public service employee inter alai Regional Manager De Aar Regional office, you unlawfully and intentionally conducted yourself in a wrongful manner, in that, you abused your authority as a Regional Manager you influenced a 12 month fixed term contract of employment to Ms Line-Hendricks and by doing so you contravened item 4.3.3 of the Code of Conduct for the Public Service.



## **Count 2: Committed an act of Sexual Harassment**

It is alleged that between the period of October to November 2020 at or near De Aar you committed a misconduct in terms of Disciplinary Code and Procedure, in that, on more than one occasion you hinted and/or suggested sexual advances from Ms Line-Hendricks inter alia insisting to sleep with Ms Line-Hendricks at her place and utilised such words “vry”, *hoe laat kan ek kom, jy is darem allen etc*” whilst you knew or ought to have known that such conduct constitutes an act of sexual harassment prohibited by Sexual Harassment Policy and thereby committed an act of sexual harassment.

The employee pleaded not guilty to all charges proffered against him.

The matter was set down for the 07-08 June 2022 and finalised on the 16 September 2022.

Arguments were submitted by both employer and employee parties.

### **3. THE HEARING**

#### **3.1. Employer Case:**

The Employer representative Ms P Ben was allowed to call her witnesses in order to state the employer’s case and the first witness Mr SB Marekwa a Senior Admin officer acting as Assistant Director responsible for a recruitment and selection outlined the process of appointing short term contracts. He alluded to the fact that the normal procedure was that a Manager will submit a formal request to a Senior Manager for filling a contract post if there is a vacancy and then this will be forwarded to HR with an instruction to advertise.

He indicated that the request to appoint a contract worker for Monitoring and Evaluation was written by the District manager who is Mr C Moloto and approved by the senior manager Civilian Oversight

The submission was done by the Human Resource unit for appointment and circulated to all managers who recommended and approval was signed by the Executing Authority.

In this case the prescribed requirements was not followed as outlined in the Recruitment and Selection Policy about first advertising any vacant post either contract or permanent but rather CV’s were sought from the Regional Manager and a submission appointment done by the human resource unit and was approved by the MEC.

The second witness was Ms Line-Hendricks who testified that she had known the alleged Mr C Moloto for some time now because they were active in the same political organisation and would normally ask favours from him to give her son a lift to De Aar. She indicated that there was no affair between the two of them and for her to submit CV for the contract post she was called by Mr Moloto who indicated that there is contract post that will be filled. She was then appointed on the 01 December 2020 and continued with her functions. She provided the hearing with whatsapp messages between herself and Mr C Moloto, which described the relationship and further indicated that she was entertaining Mr Moloto and never asked him to stop sending her messages. She said since she started working the relationship was very hostile as she also got a final written warning on the 15 February 2021 about gross insubordination and she thinks it is because she refused his advances, Ms Line-Hendricks felt that her contract was not extended because she did not want have sex with Mr Moloto. However, she further indicated that she understands contract appointment as it is not the first time that she has been appointed in the department on contract. She was informed on the 21 June 2021 that her contract will not be renewed because there was no money. During the cross examination she indicated that she had close contact five times with Mr Moloto prior to appointment.

She knew she had a job on the 30 November because on that day she signed a contract with the landlord for accommodation. She indicated that can confirm that Mr Moloto wanted sex from her although there is no evidence but he undressed in his flat when she visited him. And further when he wanted them to have a relationship although that is also not part of the whatsapp messages.

In a private conversation between them, at around 21:24, which is a highly inappropriate time to be contacting anyone, Mr Moloto asks if he can come over to visit Ms Fredericks and instead of shutting him down completely, telling him it's highly inappropriate, she responds with asking "what about the kids?". She defends this statement by saying that after receiving the written warning that she felt like she had nothing to lose by flirting with him, thus saying anything she wanted to say to him in the hopes of leading him on.

Ms Fredericks goes on to say that there had been flirting prior to the final written warning being given but there was no sex involved and she is of the opinion that she had received this final written warning because sex was withheld.

She claims to have told him on multiple times that his advances were unwarranted prior to the written warning but there is no evidence of this in any whatsapp messages.

On 30 November he came over to visit her, went to the bathroom and on his return from the bathroom he started undressing. She says that this is how she knew that he wanted sex from her and she said no.

*15 February 2021, Mr Moloto asks if he can come around, Ms Fredericks responds with "now" Mr Moloto asks if she's alone. She responds saying that Maya (working under the assumption that this is her son) will be back soon, he asks what time will Maya be back and he responds telling him that he'll will be back at 18:00. Mr Moloto asks Mrs Fredericks to send her son away and she responds with smiley emoji's, says she's just going to cover his books, feed him then she will take him away. This all happened before the written warning and not after like she claimed when she said that she only started flirting with him after the final written warning. She says that she was just leading him on because when he actually wanted to come, she told him she was in the Location.*

*17 February 2021, Mr Moloto asks when can he come around because he knows that she's alone to which she responds with asking why does he only wants to be intimate with her when his in the mood. She agrees that this statement implies that she's been leading him on, accepting his advances.*

*Despite the fact that she says there was no affair between the two of them she says that she doesn't want to be his second choice to him, that she hasn't been intimate with other people whilst that has not been the case with him.*

*22:21 in Feb 17, she asks if his still sleeping, he just reads the message. She asks why does he just read his messages and doesn't respond.*

*08 march, she asked him if he cooked. This alludes to an intimate relationship between the two which she denies.*

*12 march, asked him where he was the previous night. Again this alludes to the nature of their relationship that she disputes.*

*She asked him if his taking her for a joke. The nature of the way in which she speaks to him implies that there's a familiarity.*

*11 march, says she doesn't want to be his last choice, this would insinuate that she was a choice to begin with.*

*12 march, says he wants his bread buttered on both sides.*

*Same month, she says that he wants to use her when it suits him even when laying claim that she was never in a relationship with him.*

*Past 10, He propositions her, she says going to go bath and he asks if she wants him there, again leading him on.*

*She initiates a conversation past 10, says that sleeping alone is not a plan. He asks if he should come over or if she's going she's going to fetch him, she responds by asking him what does he propose? He asks her to fetch him instead because his grandchild is with him. She says ok. He asks her to let him know when she's on her way. She says she's going to fetch him first because once she has her bath, she's not going to want to drive. He says its fine. She says she's on her way. 10mins later she says outside.*

*She only raised the fact that she was being sexually harassed only after an investigation started. She says this was because she only tolerated it because she decided to lead him on.*

*Postponement was asked for based on the fact that on both testimony accounts, other witnesses need to be brought forth based on the fact that the allegations made*



against the defendant are of a serious nature. Sexual harassment allegations are taken very seriously. Three-four witnesses are going to be called. 1- Mr Dirky Jason, he was mentioned in testimony, his a senior manager in the dept, supervisor to Mr Moloto, had some insight to the content. Has to confirm with availability, openness and willingness of witnesses to testify. 2-Colleague within the offices of Mr Moloto. Have already consulted with her but she is to still let him know at a later stage if she is willing to testify. 3-Grandchild of Mr Moloto, he is of age, still to be consulted. 4-Possible witness from the Depts HR section, to testify on terms of the contract. Mr Moloto will then testify.

Defence was in agreement on postponement of the case. Would like Mr Moloto to be given a fair case and to get more insight as to what had really transpired in terms of allegations and for him to state his case.

### **3.2. Employee case**

Employee representative called Mr C Moloto who indicated that he is a District Manager in the Pixley Ka Seme Region appointed in 2012 but has 22 years in service in the Public Service. He is responsible to ensure that the two different field workers responsible for monitoring and evaluations and the other for safety implement their programs as outlined in the mandate of the department. He indicated that Ms Line-Hendricks was a contract worker started on the 01 December and ended in November 2021. Her contract was not extended because the decision was taken by the seniors of the department and he had no say in the process. Although the employee had numerous where she was cautioned about her behaviour she was even given a final written warning for gross insubordination. He further indicated that there was still a need to fill the vacant post.

Mr C Moloto agreed that she knows Ms P Ben as the Labour Relations Officer who he has interacted with her numerous times to assist in dealing with discipline matters. The last time he interacted with her in her office was he requested her to investigate unruly behaviour of Ms Line-Hendricks, whilst waiting for a report regarding the matter he was informed that there is an investigation against him of allegations of

sexual harassment. Up to date he has not received any feedback on the matter he reported.

According to Annexure C-Submission of employment for Contract worker for Monitoring and Evaluation, Ms Line-Fredericks.

He stated that he made a submission to HR to fill the position of Field Worker after the previous one got a promotion, he then went on to say that he filed a submission with HR, Ms CN Jonker to have 3 Cvs submitted of which Ms Line-Fredericks was one of them. Based on her previous experience of Field work, she was recommended by the senior manager, Ms CN Jonkers on a contract basis for 12 months. It went through Corporate services Director EJ Crouch, also recommended by the Acting CFO Ms KM Paai ,the Senior Legal Admin Officer- Mr MC Modisa, the HoD –Mr Dichaba and then it was signed off and approved by the member of parliament, MEC SN Bloem.

Mr Moloto states that he was satisfied with the way the appointment of Ms Line-Fredericks went as it was within legal parameters.

Mr Moloto is being charged by The Department of Transport Safety and Liaison with: 1-Quid Pro Quo Harassment- based on the fact that they believe Mr Moloto to have orchestrated a 12 month fixed-term contract for Ms Line-Fredericks in exchange of sexual favours. Mr Moloto denies this being the reason for Ms Line-Fredericks being appointment based on the fact that he does not possess the powers to hire someone. The appointment of Ms Line-Fredericks was recommended by numerous other officials and then finally signed off and approved by the MEC. Ms Line-Fredericks was also not the only one who was considered for the position, there were two other two police officials but unfortunately they did not have the necessary experience for the job as Ms Line-Fredericks had.

Mr Moloto admits to the fact that he had been having an affair with Ms Line-Fredericks prior to the appointment when he was the regional executive member of the ANC in Prieska. They were both involved in the ANC. He also acknowledges that he had known Ms Line-Fredericks even before he himself was appointment at the

department. He says that he even knows her ex-husband. Who was also part of the ANC.

According to Annexure D(Mr Moloto's response to the allegations on the sexual assault charge):

Mr Moloto states that the post of Field Worker had been vacant since March 2020 due to the fact that the previous Field worker had received a promotional post in the Eastern Cape. A submission was made to Mrs Jonkers on 25 February 2020 to advertise the post but no response was received.

Mr Moloto had made numerous follow ups with regards to this vacant post to HR officials and was informed that there was a moratorium place of vacant posts in 2020.

There was consistent engagement with the late Mrs Jonkers, and after the resignation of Mr Mbula on 12 February 2020, the post was only approved in September/October 2020.

Ms Line Fredericks was only appointed 01 December 2021. Mr Moloto says that at no given time in between that time, when Ms Line-Fredericks would visit her sister in De Aar, where they would meet,had he ever given her the impression that he would secure her a job as he did not possess the power to hire someone. There were also two other candidates that were taken into consideration.

Ms Line-Fredericks was appointment based on her previous experience in the department before she was deployed to the National Parliament. It was thus because of this prior experience that she was seen as the best candidate. The other two candidates had only had prior experience in the South African Police Services.

Mr Moloto admits that whilst Ms Line-Fredericks had been employed with the department, they had still continued with their affair. 15 days after Ms Line-Fredericks had been appointed, Mr Moloto had initiated a disciplinary enquiry into her conduct while a lawful instruction was given to her as part of a mandate. Mr Moloto indicates that the messages exchanged between the two of them is proof of the fact that consent had been given prior and after she was employed.

Mr Moloto feels that the allegations against him is purely a smear campaign against his name and brings the Departments name into disrepute. He feels that this was



done to spite him for the mere fact that consequence management was instituted to correct officials' behaviour. In particular the cases reported to his supervisor.

Mr Moloto says that prior and after her employment with the department that Ms Line-Fredericks had been his lover. He also says that she had not been his only lover. Ms Line-Fredericks had known that he had a girlfriend. That had the agreement that they would still see each other from time to time.

Mrs Line-Fredericks had stated that when she had visited her sister and Mr Moloto would come visit, he would try to kiss her but Mr Moloto says that he hadn't tried to kiss her but in actual fact had kissed her due to the fact that she had been his lover. He would pick her up from her sister's place and they would go to his flat.

Mr Moloto agrees to the fact that on the night that he had gone over to Ms Line-Frederick's flat, he had indeed gotten undressed, however he say that he had spent the night with her and only left the following day.

Mr Moloto says that they had agreed to keep their affair private because they didn't want his girlfriend or the office finding out.

Mr Moloto says the fact that Ms Line-Fredericks had initiated a lot of the messages between them is testament to the fact that there was consent on her part.

Mr Moloto says that when she had messaged him to say that sleeping alone isn't a plan he got the impression that she wanted him to come over, spent time together and have sex.

Although in that instance it was Ms Line-Fredericks that initiated contact, Mr Moloto also admits to have initiated it himself at times.

On the second count that Mr Moloto was accused of, he admits to using those words based on the fact that they were in a relationship.

Says that the sex was always consensual, she had never turned him down or said no to his propositions.

He says they never had any fights or breakups. Their sexual relationship finally stopped just after June when they got back from their training session in Upington. He admits to still having sex numerous times with her even after the final written warning was issued. Ms Line-Fredericks had felt that her final written warning was unfair but she never appealed this.

Mr Moloto says that he never had any sex with her after her contract finished. States that Ms Line-Fredericks had even blocked him on whatsapp and that there is no communication between them now whatsoever.

He states that he had seen her after her contract ended in De Aar at an ANC event. There was no bad blood between them.

In the submission Ms Line-Fredericks was mentioned by name to be recommended for the position. There is no mention of the other two candidates. This alludes to the fact that Mr Moloto knew what he was doing, knowing that the other officials who recommended and approved, would trust his recommendation. In his submission he makes mention of her experience which would suggest him discriminating against the other two candidates and that he influenced the other officials. Mr Moloto disputes this by saying that Ms Line-Fredericks experience had spoken for itself.

It would suggest that Mr Moloto knew that with the information that he had provided HR and with his training on the code of Conduct that Nepotism is not allowed.

Mr Moloto was under no obligation to provide a declaration of no conflict in making a recommendation of Ms Line-Fredericks, thus the appointment is considered legal when the MEC signed off on the appointment. Mr Moloto is also not being charged with nepotism thus, this has no bearing on his sexual harassment charge.

He indicated that all previous contract appointments same process was followed, and there has never been an instance whereby interviews are held for contract workers.

### **Conclusion**

In cases of this nature, a Presiding officer has to weigh the evidence provided and make a termination of guilty or not guilty based on a balance of probabilities.

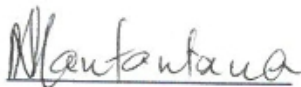
In the Labour Court matter of *Ocelli Francke Aubouinn Klaasen v CCMA & 2 others* (Case No C260/2003), the judge stated that *employees cannot afford to leave opposing adverse evidence unanswered, as such evidence is unlikely to be rejected if the employee has not denied or contradicted it.*

In this regard, the employee accused of misconduct has substantively rebutted the allegations against him through his *viva voce* evidence. The text messages evidence have shown no elements of a quid pro quo sexual demands in exchange for a post. The evidence presented by the employer party also falls short in terms of substantiating the allegation of any form of sexual harassment.

It is rather worrying that after an official announces to another in the presence that her contract will not be renewed, then allegations of this nature arises. Write hereof is of the view that the evidence presented by the official who laid the complaint is not substantive and when one weighs all the evidence presented, writer hereof is more inclined to belief the version of Mr. Moloto.

Consequently, based on the provisions of the law of evidence, Mr. Moloto is absolved of all charges in this regard.

Regards,



**PRESIDING OFFICER**

**NOMZI MANTANTANA**