



**PUBLIC PROTECTOR
SOUTH AFRICA**

**PUBLIC PROTECTOR
MOSIRELETSI WA BATHO • MOSIRELETSI WA BATHO
MUSIRHELELI WA VANHU • MUTSIRELEDZI WA VHATHU
OPENBARE BESKERMER • UMKHUSELI WABANTU • UMWIKELI WABANTU**

NATIONAL OFFICE

**PRIVATE BAG X677 PRETORIA 0001 • HILLCREST OFFICE PARK, 175 LUNNON ROAD, PRETORIA
TEL: (012) 366 7000 • Fax: (012) 366 3473**

PUBLIC PROTECTOR COMPLAINTS FORM

FOR OFFICE USE

File number:

Date received:

Received by:

1. PLEASE READ THE ATTACHED TO THIS FORM BEFORE FILLING IN YOUR DETAILS.
2. PLEASE WRITE CLEARLY AND USE **CAPITAL LETTERS**.

YOUR DETAILS

1. Your name

PROF PHENDLA

Initials: TS

**2. If your complaint is about a
pension or ID document matter,
please provide your ID number.**

ID number

**3. Your address and telephone and
telephone number(s)**

The address where you live:

109 WINDSWAWEL STREET

MONUMENT PARK EXT, PRETORIA

Postal code: **0181**

The address we can send letters to: **P.O. BOX 11650**

CENTURION

Postal code: **0046**

Telephone number (home):

Code: **012** Number: **347 4170**

Telephone number (work):

Code **012** Number: **347 4170**

Is there any other telephone number we can call you at:

Code **082** Number: **295 2171**

Who's telephone number is this: **MR LISA PHENDLA**

Fax number: Code: **086** Number: **614 5636**

Cellphone number: **082 453 8146**

4. If this complaint is for someone else, please tell us about them.

Miss, Mrs, Mr? Surname:

Initials:

5. Their ID numbers, if the complaint is about pension or ID document matter.

ID number:

6. Their address and telephone Numbers.

The address where they live:

Postal code:

The address where we can send letters:

Postal code:

Telephone number: Code: Number:

Fax number: Code: Number:

7. If this complaint is for an organisation, please tell us the name of the organisation.

.....

What does it (e.g. Civic, NGO, business, retailer, factory)

.....

Who should we talk to there?
What is their position (e.g. Colleague, chairperson, etc.)

.....

The address we can send letters to:

Postal code:

Telephone number: Code: Number:

Fax number: Code:Number:

TELL US ABOUT THE COMPLAINT

8. Is the complaint still happening? Yes: **X** No:
8. If no, on what date did it happen? Day Month Year What time?
10. Where did it happen? Town: **THOHOYANDOU** Province: **LIMPOPO**
11. Which government agency is involved? **DEPARTMENT OF HIGHER EDUCATION & TRAINING**
12. Tell us the names of the officials that you contacted to try and solve the problem. **MR SEROBI MAJA**
13. Where can they be reached? Email Address: ceo@lgb.co.za
Cell number: **082 808 2488**
Telephone number: Code: **015** Number: **295 5581**
14. Have you reported this case to anyone else? Yes: **X** No:
If yes, who (e.g. police, a lawyer, etc.) **MINISTER OF EDUCATION, COMMISSION FOR GENDER EQUALITY**
15. Please tell us how you heard about the Public Protector (radio, newspaper, poster, friend)? **ONLINE WEBSITE**
16. In this space provided below and you need more space, please use a separate piece of paper that will be provided to you. Please attach copies of any relevant correspondence or documents. **THE SUPPORTING DOCUMENTS ARE VOLUMINOUS AND WILL BE AVAILABLE TO THE CASE INVESTIGATOR AFTER EVALUATING MY COMPLAINT. HOWEVER, I WILL SUBMIT THE FOLLOWING:**
1. Deloitte & Touché Report: no evidence of Council members influenced nor resolution from Council to charge or dismiss me.
 2. Enquiry 01/08/2010.
 3. Certificate Nolle Prosequi: No evidence of fraud and corruption committed by me.
 4. Mediator's Report with recommendation to Council to follow University Policy on Sexual Harassment Section 5.2 and formally charge Mbatlana for sexual harassment.
 5. CGE Findings on sexual harassment charges,

Mbati submitted a motion to High Court of Johannesburg against the findings, a set down is on 12 October 2015.

6. Wasteful Expenditure and Atrocities at University of Venda Submitted to Public Protector around March 2014

1. THE NATURE OF MY COMPLAINT:

Unfair dismissal following alleged case of Fraud and Corruption at the University of Venda, a case which the senior State Advocate decline to prosecute 5 years after the Enquiry was opened.

On the 1st November 2011 I was dismissed from my position as Professor and Dean of School of Education by the Vice Chancellor and Principal of the University of Venda, Prof Peter Amunga Mbati. Following an alleged case of misconduct, knowingly, Mbati maliciously and falsely gave media information that I was charged for fraud and corruption. Furthermore, he lied to the High Court of Johannesburg and accused me of a crime I had never committed or found guilty of. In short, I was dismissed following an **open Enquiry 01/08/2010** on Tender fraud at the University of Venda. This Enquiry was only closed on 2nd September 2015 because the Senior State Advocate did not find any evidence to prosecute me, **after I had already been dismissed for four years.**

This is the worst form of injustice given that Mbati was aware of the fact that I had never sat nor served as a member of Tender committee where he alleged that I participated in the tender fraud. This is supported by the fact that prior my dismissal, Mbati had information which cleared me of any corruption, in that on 2nd September 2011, Thohoyandou Special Crime Unit submitted their final Report on Enq 01/08/2010 which indicated that the Enquiry on alleged fraud and corruption could not be investigated further without further evidence from the University.

I remain unemployed with no prospect of future employment because I have been defamed for a criminal act of fraud and corruption on newspapers and online media and social worldwide. Following this malpractice and improper prejudice, I would like to report the following:

- **Abuse of power:** Mbati dismissed me for Fraud and Corruption of Tenders at the University of Venda even when the Thohoyandou Special Crime Unit indicated that they did not have further evidence to prosecute me. He ordered the Enquiry to be escalated to the NPA in Pretoria. This enquiry was closed by the Senior State Advocate Sammy Mogoshi on 2nd September 2015 because there is no evidence of my corrupt conduct. I called the Chairperson of the Council on and wrote to all the members Council of the University of Venda, however, the Chairperson, Mr Maja refused to intervene and reinstate me back to my position as Professor and Dean of School of Education at the University of Venda.

- **Undue delay:** NPA took 4 years to close this Enquiry, even though the Investigating Officer from Thohoyandou Special Crime Unit had indicated to the University on 2 September 2011 that there was no further evidence to enable them to prosecute me. Furthermore, NPA sat on the matter until I reported it to the Minister in the Office of the President on 26th August 2015 before they acted on 2 September 2015.

- **Decisions taken by the authorities and Receipt of improper advantage:**

1. While the Deloitte and Touché Report recommended disciplinary action against seven members of the Tender Committee by University, only one member was taken to the DC (Mr KC Nemadzivhanani), while the former chair of the Tender committee, Mr R Madzhie continues to sit on the Council for over ten years without being reprimanded. The other staff members who were still employees at University at the time of my dismissal were not

charged, i.e., the late Dr Nanga Lidovho, the legal adviser to office of Mbatl and Mr Masiagwala who was the Acting Director of Physical Resources continues to serve the University as an employee.

2. Management and Council of the University decided to dismiss me even when there was clear evidence that I was being victimized by Mbatl following a case of sexual harassment I had laid against him. On 3rd November 2011, the Mediator of the sexual harassment case against Mbatl, Mr Lavery Modise recommended that Council should abide by the University Policy on Sexual Harassment apply section 5.2 of the policy to charge Mbatl, but nothing was done to date.

• **Maladministration and Dishonesty:** On 7th November 2011, Mbatl knowingly gave media information that I was charged for fraud and corruption. He used the same information to lie to High Court of Johannesburg still claiming that the Enquiry was evidence of a criminal charge, while the enquiry was still open and was recently finalised and a report was sent to University on 2nd September 2015. He lied about the reason for my dismissal to media as a result, destroyed my reputation and credibility.

• **Improper dealing with respect to public money:** Following fabricated charges of misconduct by Mbatl when he knew clearly that I was never a part of the Tender Committee at the University and that the Tender in question was awarded when I was no longer a member of Council of the University, he went ahead charged and dismissed me. The Deloitte and Touché Forensic Report which was used as a basis for my misconduct was never availed to me during the process of my Disciplinary Hearing. When I got a copy after 2 years following my unfair dismissal, the Report had not recommended my dismissal by the University. Moreover and surprisingly, the Director responsible for the Report stated that his Report never recommended my DC hearing or my dismissal. A fact which was ignored by the Chair of the Appeals Committee, where the current Chairperson of Council sat as an invited guest by Mbatl.

WASTEFUL EXPENSES

My case is a clear personal vendetta by Mbatl after I terminated the pro que sexual relationship with him around December 2010. When I refused to take his personal calls from January 2011, as a result, Mbatl charged me. I instituted a charge of sexual harassment against Mbatl during the hearing of an alleged misconduct which was later mysteriously escalated to Fraud and Corruption. At face value, on my case alone, the University knowingly incurred more than **R2 million** in legal expenditures using **Bowman Gilfillan (BG) Law Firm to defend Mbatl on his personal capacity and the University at large, while there is a legal Department dedicated for such matters and a School of Law with experts who can assist the University on such matters at no cost to the University.**

1. 21 May 2011: Drafting of 4 charges.
2. 27 July 2011: Changing of 1st charge and removal of 4th charge.
3. DC Hearing at BG in Sandton:
 - a. 1 – 2 August 2011: Flights and transportation of 6 witnesses from Thohoyandou to Sandton, 3 nights' accommodation, subsistence allowances, etc.
 - b. 24 – 25 August 2011: Flights and transportation of 4 witnesses from Thohoyandou to Sandton, 3 nights' accommodation, subsistence allowances, etc.
 - c. Hiring of 3 different companies to compile same DC Hearing, hence 3 different versions used for appeal hearing.
 - d. 24 April 2012 Appeal: Flights and transportation of 3 Committee members plus one and 3 members of Secretariat of Council from Thohoyandou to Sandton, 2 nights' accommodation for 7 people, subsistence allowances for 7 people, etc.
4. CCMA & Arbitration in Pretoria, Labour Court in Johannesburg
 - a. 4 June 2012 CCMA: Flights and transportation of 2 witnesses from Thohoyandou to Pretoria, 2 nights' accommodation, subsistence allowances, etc.

- b. 29- 31 October Arbitration: Flights and transportation of 12 witnesses from Thohoyandou to Pretoria (including VC, DVC-Operations, Head of Security, Legal office, Director HR, Dean of Education, Secretariat), 4 nights' accommodation, subsistence allowances, etc.
- c. September 2013, BG opposing late condonation at Johannesburg Labour Court but he did not pay for my defence which were fruitless expenditure.
- d. 28 October 2014, where BG forced to signed the pre-trial minutes
- e. Labour Court set down on 9 November 2015.
- 5. BG representing Prof Mbatl on his personal account
 - a. 3 November 2011: Threatening me with an interdict if I insist on charges of sexual harassment at the Thohoyandou Police Station.
 - b. 14 January 2012: Swartberg Forensic investigation hired to investigate me without Council Resolution (There are 3 different edited versions of same Report).
 - c. 27 August 2012: Charges of harassment against me by Mbatl.
 - d. 30 May 2013: Withdrawal of charges against me by Mbatl but he did not pay for my defence which were fruitless expenditure.
 - e. 21 January 2015: BG representing Mbatl, Council and Univen to direct CGE to withdraw its Report.
 - f. 27 February 2015: Motion to the High Court to oppose CGE Report.
 - g. CGE opposes motion, set down date on 12 October 2015 (Wasteful expenditure for CGE).

OTHER WASTEFUL EXPENSES: Exorbitant legal fees paid to Bowman and Gilfillan Law Firm while there is a capable legal unit and a school of law at the University of Venda. While Mr Nemadzivhanani was not found guilty in 2013, Mbatl continues to refuse to reinstate him to date.

1. Mr Khuliso Nemadzivhanani's case of misconduct following the same allegation of fraud and corruption, we were suspended on the same day on 12 April 2011, thus the following expenses were incurred:
 - a. Drafting of charges
 - b. Prosecution in Johannesburg with several witnesses' expenses paid from University (Public) funds, at least 20 witnesses were transported from Thohoyandou to Sandton, all expenses paid from public funds
 - c. CCMA processes which lasted for more than five day, with people being transported by minibuses at times from Thohoyandou to Polokwane
 - d. Arbitration, same as above
2. Advocate Maredi Mphahlele's case of sexual harassment against female students, he was not found guilty and Mbatl continues to refuse to reinstate him. Also, he was not given an opportunity for mediation. He was supposed to be reinstated July 2012.
3. Advocate Life Maluleke's case of sexual harassment, treated as above.
4. Prof Mbhenyane's unfair dismissal following a fabricated case of misconduct.
5. Prof Abiodun Olukoga's unfair dismissal as above.
6. Several Administrative staff unfairly dismissed to date.
7. Several students expelled when they raise issues of corruption by Management.
8. Several staff members are currently on suspension.
9. Several staff members were pushed out of the University for fear of victimisation.
10. Several irregular appointments of Emeritus Professors.
11. Hearsay of a R 70 million Smart Campus IT project awarded to Microsoft without following due tender procurement processes.

NB: SUPPORTING DOCUMENTS FOR OTHERS WILL BE AVAILED WHEN REQUIRED

3. THE BACKGROUND TO MY COMPLAINT IS BASED ON:

MATERIAL FACTS

1. On 1 January 2001 I was employed by the University of Pretoria and later as a Senior

Lecturer and Director of the International Institute for Capacity Building in Africa (UNESCO-IICBA).

2. During 2005, while employed by the University of Pretoria, I was appointed to the Council of the University of Venda (University).
3. On 6 December 2006 I was offered employment and appointed by the University as Professor in Educational Management in the Department of Teacher Education.
4. On or about 1 February 2007 I was employed by the University in the faculty of Human and Social Sciences, in the Department of Education, in terms of my contract of employment.
5. The Vice Chancellor, Prof Peter Amunga Mbatl (Mbatl) was appointed in January 2008 at the University, from the commencement of Mbatl's employment with the University, he started making sexual suggestions and conducting himself as such towards me
6. Mbatl and I entered into a relationship on or around May 2008.
7. During August 2010 I was contacted via email by Deloitte and Touché (Deloitte) requesting a meeting regarding my knowledge around the appointment of a Clean Shop as subcontractors for the cleaning of the University premises.
8. In or about September 2010 I was interviewed by two gentlemen from Deloitte. I was not given an agenda nor expected that it was part of an investigation.
9. I learnt from the Deloitte interviewers that the reason behind their visit was due to allegations that I received a bribe from the Clean Shop to obtain the Deep Clean Project at the University. I categorically at this time, during the disciplinary hearing and thereafter denied such allegations.
10. On 5 October 2010 Deloitte submitted its report to the University. This is the Report I requested when Mbatl charged me with allegations of misconduct in preparation for my disciplinary hearing but same was refused. This refusal is further indicative of the unfair procedure that was followed by the University.
11. In or about December 2010, I terminated the relationship between Prof Mbatl and myself.
12. From January 2011, I refused to take any of Mbatl's private calls.
13. On 7 February 2011 Mbatl summoned me to his office and made me aware that he was acting in his course and scope of employment and might need to charge me with misconduct following the allegations that I influenced the University Council to award a tender to Clean Shop.
14. It was never proven on a balance of probabilities that I attempted to influence council to award the tender to Clean Shop. The minutes of the council confirm same and no witnesses were called to indicate any attempt to influence council or any member of council.
15. The University's case is that I accepted an amount of R1000.00 for influence of a multi-million Rand tender of Clean Shop. This fact alone indicates the absurdity of the University's charges. The University also had the Deloitte Report for over 8 months and did not act on it. Mbatl only decided to act on the report after it became clear that I will not take any of his personal calls.
16. On 14 September 2011 I lodged a sexual harassment complaint to the Council. Mr Modise a senior highly knowledgeable and experienced Mediator was appointed by the University.
17. On 2 November 2011, I received a letter of termination without reason from the University stating that my services were terminated as of 1 November 2011.
18. On or about 10 November 2011, I received outcome of the disciplinary hearing (which was supposedly handed down on 31 October 2011), with the findings that I was found guilty by the chairperson, Mr Haffregee. It goes without saying I was not present on 31 October 2011 when the verdict was handed down. This is a further indication of the irregularities of the process.
19. On 3 November 2011 the mediator, Mr Modise sent a letter stating that mediation was not successful and that 5.2 of the University policy should be applied. The University never followed the process against the Vice-Chancellor Mbatl, clearly in violation of the

- University's policies and procedure, in a clear attempt to sweep the allegations under the carpet and trample on my rights as an employee, woman and citizen of South Africa.
20. That same day, the University's attorney of record now out of the blue acting for Mbatl in his private capacity addressed a letter to me in relation to the sexual harassment claims alleged against Mbatl.
 21. I appealed the outcome of the disciplinary matter. The appeal was set down for the 24 March 2012.
 22. The Appeal record was clearly altered. This was brought to the Chairperson's attention and was disregarded. This is further evidence that the University went to extreme circumstances to ensure that even on appeal, I did not receive a fair and objective hearing. For example, the current Chairperson of Council (who was not a member of the committee) was invited by Mbatl to sit at the hearing, thus disregarding the Appeal's Policy which stated that only three members of committee can adjudicate.
 23. I referred my matter to the CCMA in an attempt to being resolved. The CCMA was unsuccessful because the presiding chairperson indicated that he did not have jurisdiction to rule on the automatic unfair dismissal following sexual harassment matter.
 24. I filed the matter and a condonation application with the Labour Court under case number JS1145/12, and claimed –
 - 24.1 Declaring that my dismissal by the University on 1 November was automatically unfair;
 - 24.2 Ordering the University to reinstate me from the date of dismissal without any loss of earnings and benefits; and
 - 24.3 The University to pay all costs.
 25. Subsequently condonation was granted.
 26. This is a clear indication that the court believed that the University now has a case to answer.
 27. My legal team tried to attend a Pre-Trial conference with Bowman Gilfillan (acting on behalf of the University) which was postponed on numerous occasions and/or not attended by Bowman Gilfillan, consequently frustrating me to obtain a trial date. This action is again indicative of an employer that will frustrate the employee to the extent that the employee run out of money and give up her fight against Goliath.
 28. At long last the Pre-Trial was held in front of a judge at unnecessary expenses to me. Then, Pre-Trial minute was compiled and signed-off at court.
 29. The set down is for 9 November 2015.
 30. On 18 February 2015 my legal team requested an urgent intervention and meeting with council to discuss the above, however, the request was ignored.
 31. On 25 February, the Chairperson of Council confirmed in wrote to inform me that Council had appointed a committee which was investigating the issues I had raised and indicated that the recommendation were going to be discussed on 17 April 2015.
 32. After waiting for seven months with no feedback from the Chairperson, I called him on 11 September 2015 and it was clear that he was not interested in discussing my matter.
 33. On 27 February 2015, I received a copy of Motion to the High Court of Johannesburg instituted by Mbatl on behalf of Council and University against the Commission on Gender Equality, the Chairperson and myself.
 34. It was through the documents Mbatl submitted as evidence to High Court that I discovered he was using Enquiry 01/08/2010 as concrete evidence of a conviction on Fraud and Corruption.
 35. University and Mbatl knew all along that I have neither been a member of Tender Committee at the University nor charged for fraud and corruption.
 36. Even after the Thohoyandou Special Crime Unit closed the case as a result of lack of evidence to prosecute me, Mbatl and University demanded the enquiry to be escalated to Polokwane ultimately to the NPA in Pretoria.
 37. On 10 April I drove to Polokwane to request outcomes of the 5yrs enquiry from the Investigation Officer Mafalala, he referred me to in Pretoria.
 38. After 5yrs, Adv Mogoshi, the senior State Advocate made a decision not to prosecute and

closed his case. The decision was sent to the University a 2 September 2015.

39. I would like to reiterate on the following –

- 39.1 Procedural irregularities on withholding the Deloitte Report.
- 39.2 The procedural irregularity to submit an altered record for the appeal.
- 39.3 The Vice-Chancellor is represented by the same legal representatives who act for the University which I find peculiar. Bowman Gilfillan is further supporting Mbatl on his personal capacity on a Motion to the High Court of Johannesburg against the Findings of a sexual harassment investigated by the Commission on Gender Equality (CGE)
- 39.4 Pre-Trial conference was postponed on numerous occasions owing to absence by Bowman Gilfillan, consequently frustrating me to obtain a court date.
- 39.5 Mr Modise sent a letter stating that mediation as not successful and that 5.2 of the policy should be applied. However, University and Council blatantly ignored Mr Modise's recommendations.
- 39.6 It is imperative that the report from the Commission for Gender Equality be taken very seriously by all parties concerned, also, as a Chapter 9 institution in South Africa.
- 39.7 The absurdity of the allegations of fraud and corruption against me.

4. REASONS WHY YOU FEEL YOUR COMPLAINT SHOULD BE INVESTIGATED BY THE PUBLIC PROTECTOR:

I have exhausted all human and financial resources. I requested the Council of the University of Venda to address this unjust act and reinstate me because Mbatl dismissed me fraudulently and I have been unemployed without a salary for four years. Because national newspapers and online media has published these malicious allegations as if they were true, I continue to be unemployed, without a salary or subsistence, with no prospects of future employment as the result of this malicious defamation. So far, I have lost five employment opportunities, having interviewed successfully, offered contracts which were withdrawn when I reveal status of my dismissal. In my defence, I have so far wasted more than R320, 000.00 in legal cost, more than R100, 000.00 on medical cost and immeasurable emotional pain and suffering, social standing and shame. **I request an interview with the Public Protector and request her to urgently intervene as I am left with no other option to get my life back.**

5. STEPS YOU HAVE TAKEN TO SOLVE THE PROBLEM YOURSELF.

Since my dismissal in November 2011,


- I wrote several communiques the then Chairperson of Council who was aware of the recommendations to charge Mbatl for sexual harassment,
- Wrote to Minister of Higher Education and Training, Dr Blade Nzimande requesting him to intervene on this clear victimisation in vain.
- Around March 2014, a Complaint was sent to the Public Protector in Polokwane titled "SUMMARY OF ATROCITIES AT THE UNIVERSITY OF VENDA: FLAGRANT ABUSE OF PUBLIC FUNDS AND HUMAN RESOURCES (2009-to the present) compile by seven staff members of the University (dismissed and currently serving) providing a summary of legal matters that the University of Venda has been involved in since the dawn of Mbatl era as Vice Chancellor and Principal of the University of Venda. This complaint provided clear evidence of governance failure at the University of Venda since the Council (both former and current) refuse to mandate accountability from Management. There is no separation of duties between Council and Management. Corruption is clear and no one wants to take responsibility. However, the Public Protector did acknowledgment of receipt of this complaint to date.

- On 1 August 2014 I reported a complaint to the Public Protector of Unfair and unjust listing as a criminal offender on google and several newspapers. But I was directed to the Law society.
- Around June 2015 I met the Legal Advisor to the Minister of DHET who indicated that it was beyond his control since my case was sub judi care, while he maintained that he did not foresee the University defending the matter at the Labour Court of Johannesburg, he will monitor the process.
- I had written to the former Chairperson of University, Mrs Shirley Mabusela who ignored my requests.
- Since the beginning of this year, I have communicated with the current Chairperson Mr Serobi Maja, who indicated that Council had appointed an HR committee to investigate my matter. Although there were several hearsay into the matter of my reinstatement, after seven months of silence into my matter, on the 11th September, even after providing evidence of my innocence, Mr Maja literally refused to resolve my unfair dismissal, although Council has powers to reinstate me back to my position with the evidence at hand.

6. A TELEPHONE NUMBER WHERE I CAN BE CONTACTED: 0824538146

7. IN SOME INSTANCES THE PUBLIC PROTECTOR MAY REQUIRE A STATEMENT UNDER OATH BEFORE INVESTIGATING:

I am willing to make the statement under oath.

Signature: 

Date: **21 SEPTEMBER 2015**