

From: Mr Serobi Maja
Former: Chairperson: University of Venda Council

To: Hon MP Mapulane, MP
Chairperson of Portfolio Committee on Higher Education,
Science & Technology
National Assembly

I acknowledge receipt of your letter dated 18 August 2020 regarding an inquiry into fitness of Prof Peter Mbatlali to be appointed as Vice Chancellor at Sefako Makgatho University despite allegations of sexual harassment and mismanagement relating to infrastructure projects.

I joined the University of Venda Council in 2009 as Chairperson of Finance Committee and in 2014 I was elected as Chairperson of Council.

Although I will not provide answers to your letter as per each paragraph, I will however attempt to deal with two allegations separately.

1. PROF PHENDLA SEXUAL HARASSMENT ALLEGATIONS AGAINST THE VICE CHANCELLOR AND PRINCIPAL, PROF MBATLALI

- 1.1. The whole saga started when the University of Venda NEHAWU Union brought to the attention of the University Management, the allegations of corruption which resulted in the appointment of Clean Shop to provide cleaning services in the University campus.
- 1.2. Deloitte was appointed to conduct forensic investigations and provided a report which found that there was no compliance with procurement processes and that Prof Phendla was paid money to influence the appointment of Clean Shop. Forensic report further recommended that Prof Phendla and another senior manager be subjected to disciplinary processes.

- 1.3. Prof Phendla was facing charges of corruption and subjected to disciplinary processes.
- 1.4. When the disciplinary processes were still underway, Prof Phendla submitted a grievance to the Chairperson of Council Mrs. Shirley Mabusela, indicating that she was sexually harassed by the then Vice Chancellor and Principal of the University of Venda Prof Mbatlana.
- 1.5. On 05 October 2011, the Chairperson of Council (Mrs. Shirley Mabusela), convened EXCO meeting to consider Prof Phendla's grievance. EXCO took a resolution to abide by the University grievance procedures and policy on sexual harassment. The meeting further agreed that Labour experts should be employed in the matter.
- 1.6. Consequent to the above meeting, Lavery Modise was appointed to mediate over the dispute of sexual harassment between Prof Mbatlana and Prof Phendla.
- 1.7. On 04 November 2011, the Chairperson of Council convened another meeting in which EXCO noted that the disciplinary hearing of Prof Phendla was finalized by way of dismissal outcome. Lavery Modise mediation report was tabled and accepted by EXCO. The report indicated that the mediation process failed to resolve sexual harassment dispute between Prof Phendla and Prof Mbatlana. EXCO was also informed that the allegations against Prof Mbatlana were also reported to the SAPS. As a result, EXCO resolved to allow SAPS to complete their investigation of the matter without any interferences.
- 1.8. On 05 May 2012, the Director Public Prosecution issued a certificate indicating that there was no case to answer against Prof Mbatlana.
- 1.9. During the meeting of 15 June 2012, the chairperson of Council reported that she received communication in the form of an email from Commission of Gender Equality (CGE) requesting information about Prof

Phendla's sexual harassment complaint and that she responded to them that she would respond when she get more information regarding Prof Phendla's complaint.

- 1.10. I took over the office as the Chairperson University of Venda Council in November 2014. On or around 26 March 2015 I received a letter from the office of the Minister of Higher Education and training, Honorable Dr BE Nzimande indicating that he received a report from Commission for Gender Equality about Prof Phendla sexual harassment against the then Prof Mbatlana, and requested Council to deal with the matter transparently and fairly applying the University rules and laws of the Country.
- 1.11. On 1 April 2015 I responded to the minister's letter assuring his office that the Council of the University will do everything within its power to ensure that the matter is fairly and transparently dealt with in the interest of the University and the affected parties.
- 1.12. I then constituted a task team to look into the matter and the task team advised that the matter is before the court and it will not be appropriate for Council to constitute another forum to look in the matter, and that it will be better to wait the outcome of the courts.
- 1.13. The Council noted that CGE conducted its investigation and made the findings against the University. CGE report was taken for review by the University. Council further noted that during the proceedings of the review application before the court, the legal representative of the CGE requested for adjournment and approached the University representatives with a settlement proposal. Both the University and the CGE agreed that certain parts of the report be removed and that the University will implement Modise mediation report and this was made an order of the court.

- 1.14. When Council was to implement the Lavery Modise report, it came to light that the report was vague and hence a need for Modise to clarify himself by providing more light to the report.
- 1.15. On 24 June 2016, Lavery Modise submitted a supplementary report which indicated that Prof Phendla and Prof Mbatlana had a consensual sexual relationship and that there was no sexual harassment. Council then decided to get second opinion in a form of legal opinion from Mike Mashego who provided an opinion that, based on Modise mediation report, the University cannot charge Prof Mbatlana for sexual harassment.
- 1.16. Council resolved to close the matter and allow the court processes to be completed.
- 1.17. The previous Council dealt with dismissal of Prof Phendla until the dismissal was confirmed by the appeal's committee of Council and also ratified by Council.
- 1.18. Prof Phendla declared a dispute of unfair dismissal with CCMA, unfortunately CCMA did not deal with the matter as Prof Phendla raised sexual harassment allegation. The matter was finally heard by the labour court and judgment was delivered on 12 October 2017. There were other subsequent processes in the form of leave to appeal to the labour court which was declined, as well as the petition for leave to appeal to the labour appeal court which was also refused.
- 1.19. According to my knowledge and understanding of processes including all legal processes followed on the matter, Council of the University of Venda dealt with Prof Phendla's allegation of sexual harassment against Prof Mbatlana fairly and transparently and that no further intervention was required from the University Council, more so because the matter was also presented before the legal institutions such as SAPS, CGE, Labour Court, Labour Appeal Court where the matter was properly ventilated and decisions were made.

2. MISMANAGEMENT OF THE UNIVERSITY IN AS FAR AS HE FAILED TO PROPERLY MANAGE INFRASTRUCTURE PROJECTS, COMMITTED ACTS OF FINANCIAL MISCONDUCT AND MISMANAGEMENT AND ABUSED HIS POSITION FOR PERSONAL GAIN.

- 2.1. During 2016 the University external auditors raised issues with the procurement processes relating to awarding of certain tenders. The auditors recommended that the University should appoint forensic investigators to investigate the non-compliance with the Supply chain management policy and other procurement processes of the University.
- 2.2. SAB&T were appointed to conduct forensic investigations and their findings were that there was breach of the procurement policies by some staff members and service providers. SAB&T recommended disciplinary hearing for the internal staff of the University as well as termination of services in respect of certain identified consultants who were assisting the University at the time.
- 2.3. Council noted that at the time of implementing the recommendations of the forensic investigators, the affected University internal staff members were no longer employees of the University and as a result the University had no jurisdiction over them. This was also supported by the legal opinion. The University terminated the services of the affected consultants who had faltered the University procurement processes.
- 2.4. The forensic report did not reveal any wrongdoing on the part of the vice chancellor Prof Mbatlana. If I may put it in simple terms, forensic report never fingered to Prof Mbatlana.
- 2.5. Finally, during my time as the Chairperson of University of Venda Finance Committee and the Chairperson of the University of Venda Council, no allegation were brought to the attention of Council relating to Prof Mbatlana's failure to manage infrastructure projects. Neither did Council receive allegations against Prof Prof Mbatlana that he committed acts of

financial misconduct nor allegations of abusing his position for personal gain.

CONCLUSION

I want to assure the Portfolio Committee that the University of Venda Council had dealt with Prof Phendla allegations of sexual harassment against Prof Mbatl. Based on the findings of Modise report, the legal outcomes of CGE case, SAPS, labour court and labour appeal court where this matter was further interrogated, there is no legal grounds on which the University of Venda Council could be held to have acted inappropriately or delinquently in relation to the matter. Resultantly, there was no further intervention required from the Council.

Council also believed that on the allegations of mismanagement and financial misconduct on the infrastructure projects, Council dealt with the matter as best as it could and that no further intervention was required from Council.



Mr Serobi Maja