

02 March 2021

Hon M.P Mapulane, MP
Chairperson: Portfolio Committee of Higher Education,
Science and Technology

Dear: Hon Mapulane

1. In 2009 I took office as Chairperson of the University of Venda Council, and served my term which expired in 2014. I further served as an ordinary member of the University of Venda Council from 2014 to November 2019. I will respond to the allegations in my capacity as the former Chairperson and an ordinary member of the University of Venda Council respectively.

RESPONSE TO SEXUAL HARASSMENT ALLEGATIONS

2. During 2010, the Council received several allegations of corruption against certain individuals reported by the NEHAWU branch at the University for matters that NAHAWU believed were not properly addressed in the past. Since Council viewed these allegations in a serious light, management was instructed to investigate and take appropriate action. The internal auditors, PWC were appointed to investigate the allegations and recommended to management that a forensic audit should be conducted. Management did indeed engage a firm of forensic Audit, Deloitte to investigate the allegation made in the report.
3. The Vice Chancellor received a high level forensic report which implicated two senior managers, with a recommendation that disciplinary procedures should be instituted against these two managers namely, Prof Phendla, Dean School of Education and Mr Nemadzivhanani, the University Registrar. **Deloitte Forensic Investigation report is attached hereto and marked A.** The two senior managers were subsequently suspended pending the outcome of the disciplinary procedures.

DETAILS OF THE CASE

4. Prof. Thidziambi Phendla served as the Dean of the School of Education at the University of Venda between June 2008 and November 2011. Following the report of forensic audit into possible tender irregularities, she was subjected to a disciplinary process. The disciplinary hearing was held on 1, 2, 24 and 25 August 2011. For the first time, while under cross examination at the disciplinary hearing, Prof Phendla made an allegation that the Vice Chancellor had previously sexually harassed her.
5. On 14 September 2011, Prof Phendla lodged a complaint in writing after the University had invited her to lodge a grievance following the allegation which came to the University's attention regarding the alleged sexual harassment against the Vice Chancellor. **I have attached Prof Phendla's grievance dated 14 September 2011 marked B.**
6. In response, EXCO appointed Maserumula Attorneys to investigate these allegations in line with the University's Policy on Sexual Harassment. Because the policy provides for an informal mediation process first, Maserumule Attorneys suggested that Council should approach an experienced Mediator and as a result, Lavery Modise was appointed. **I have attached minutes dated 05 October 2011 marked C.**
7. The disciplinary hearing chairperson submitted disciplinary hearing findings and recommendations to the effect that Prof Phendla was found guilty of misconduct of corruption and recommended a sanction of dismissal which after confirmation by the Vice Chancellor, was implemented on 01 November 2011. Prof Phendla then lodged an appeal with the Appeal's committee of Council.
8. On 03 November 2011, the mediator Mr Modise sent a report stating that mediation was not successful and that clause 5.2 of the University policy should be applied. The process was accordingly not taken further as she had instituted criminal proceedings against the University's Vice Chancellor, and the Council was of the view that it was best to wait for the police investigation into the matter. **See attached minutes dated 04 November 2011 and Lavery Modise report dated 03 November 2011 respectively and marked D & E.**

9. On 24 April 2012, Prof Phendla's appeal was dismissed by the Appeal's Committee which confirmed the dismissal of Prof Phendla.
10. On 10 May 2012, SAPS issued a certificate declining to prosecute Prof Mbatl on the charge of Rape. **See attached the DPP outcome document dated 10 May 2012 marked F.**
11. On 11 May 2012, CGE received a complaint from Prof Phendla in which she claimed that the Vice Chancellor had sexually harassed her on several occasions between 2008 and 2010.
12. On 18 June 2012, the CGE sent a letter to the Vice Chancellor and an email to the Chairperson of Council requiring responses to the allegations made against the Vice Chancellor regarding Prof Phendla's complaint. Both the Vice Chancellor and the Chairperson of Council responded to CGE's request. I then reported this during the EXCO meeting. **See attached EXCO minutes dated 15 June 2012 marked G.**
13. On 22 May 2013, Prof Phendla referred her dismissal case to the Labour court as one of automatically unfair dismissal due to the alleged sexual harassment.
14. On 22 November 2011, I submitted report on behalf of the University of Venda Council to the minister Honorable Dr. Blade Nzimande on the status of Prof Phendla's disciplinary hearing and subsequent grievances she had submitted against Prof Mbatl. **See attached Gg.**
15. CGE conducted their own investigation and submitted a report to the University on 04 December 2014. On 30 January 2015, Mr Maja in his capacity as the interim chairperson of Council wrote a letter to Council members informing them of the CGE report and the gaps that were identified following a legal opinion, and further that if CGE does not address the concerns raised the University, the University would subject the CGE report to judicial review.

16. The University took a decision to file a review application to set aside the CGE report on the basis that the report was one sided as it did not take into account the University's responses. The CGE matter was resolved by way of an out of court settlement in terms of which certain provisions in the report were expunged. The University was directed to comply with its own sexual harassment policy by pursuing Modise mediation report. **See attached document titled Consent judgement marked H.**
17. Council went on to request Lavery Modise to provide a detailed mediation report and the finding was that there was no sexual harassment, and that Prof Phendla and Prof Mbatlana had a consensual sexual relationship. **See attached Lavery Modise report dated 24 June 2016 marked I.** Upon receipt of the Modise report, Council sought legal opinion from Mike Mashego who advised that given the Modise's report which cleared Prof Mbatlana of sexual harassment, there would be no basis to pursue disciplinary process against Prof Mbatlana. **See attached Mashego's legal opinion dated 05 July 2016 marked J.**
18. Based on Lavery Modise report and Mike Mashego's legal opinion, Council resolved that there was no reason to pursue the sexual harassment claims against Prof Mbatlana. **See Council minutes dated 08 July 2016 marked K.**
19. On the other hand, as already indicated in para 18 above, Prof Phendla was dismissed from the University of Venda on account of misconduct of corruption. Prof Phendla pursued her dismissal with the CCMA where she raised the issue of allegation of sexual harassment against the Vice Chancellor and as a result, the CCMA ruled that it did not have jurisdiction to entertain the matter, and advised her to approach the Labour court. Prof Phendla did refer the case of sexual harassment to the Labour court. The Labour court ruled that Prof Phendla's dismissal was both procedurally and substantively fair (she was not sexually harassed). **See attached court judgement dated 12 October 2017 marked L.** Prof Phendla approached Labour court for leave to appeal which was denied as per the Labour Court ruling dated 29 November 2017. **See attached labour court ruling marked M.** Prof Phendla approached Labour Appeal

court with a petition for leave to appeal which was also denied as per the ruling dated 15 February 2018. **See attached labour court petition ruling marked N.**

20. In dealing with the allegation of sexual harassment against Prof Mbati, Council considered the decision of the Director Public Prosecution to decline prosecuting Prof Mbati, the Lavery Modise mediation report and Mike Mashego's legal opinion as well as the court's rulings which were up to the Labour Appeals Court which all cleared Prof Mbati of sexual harassment, hence Council resolution to close the matter.
21. I had an opportunity to listen to the previous sittings in which members were raising a number of concerns in the manner in which council has dealt with this matter. This relate to an indication that council was reluctant to deal with Prof Phendla's sexual harassment complaint.

21.1. The complaint of Prof Phendla did not emerge as stand alone complaint but a matter which was attached to the corruption case against Prof Phendla. Prof Phendla was charged for corruption and subjected to the disciplinary hearing. For the first time during cross examination, she then raised a sexual harassment allegation as a defense for her corruption case, and in the event that she would not have been satisfied with the outcome of the disciplinary hearing, she had a remedy to refer the matter to the CCMA and Labour courts wherein a determination would be made whether the dismissal was due to corruption or sexual harassment as she alleged.

21.2. I wish to indicate that council was eager to deal with Prof Phendla's sexual harassment complaint and even went to the extent of committing mistakes in the process. As Prof Phendla's disciplinary process was a labour dispute, there was nothing council should have done until the labour dispute of Prof Phendla's dismissal conclude because the outcome of that process would have informed council whether the dismissal was for corruption case or was due to sexual harassment. If the outcome of the court would have been to the effect that the dismissal was due to sexual harassment, only then council would have been expected to take action against Prof Mbati. To put it in simple terms, the

existence of the alleged sexual harassment was dependent of the outcome of the labour court or any subsequent court.

- 21.3. Chairperson, it was no longer possible for council to revert to its sexual harassment policy in a matter that was already a subject of determination by the courts. The implementation of clause 5.2 of the sexual harassment policy was already overtaken by the fact that this matter was the subject of the court's determination.
- 21.4. If council was to revert to its sexual harassment policy, it would have tantamount to running two parallel processes in respect of a similar matter which was the subject of the labour dispute, the merits and demerits of which were the same, and if council had this observation, the mediator in the person of Lavery Modise would not have been appointed.
- 21.5. Council was supposed to have received Prof Phendla's complaint and note it, and take a resolution to wait for the disciplinary processes to conclude including any subsequent process i.e labour court process wherein unfair dismissal dispute was going to be decided upon.
22. Regarding the judicial review of the CGE report, I wish to indicate that upon receipt of the CGE report in December 2014, the interim chairperson of council Mr Maja wrote a letter to all members of council in which he raised the legal gaps identified on the report and that the University has written a letter to the CGE for the CGE to address the concerns raised by the University. Finally, the letter stated that if CGE does not address the concerns, the University will take the report on judicial review, as the report was one sided because it never took into account the University's submissions.
23. Another concern raised by the Portfolio Committee relate to the review of Modise report by Prof Mbatlali. I wish to indicate that upon receipt of Modise second report which stated that there was no sexual harassment but a consensual sexual relationship, which was also supported by the legal opinion, council took a decision to

close the matter. I accept that it was an oversight on the part of the University to not have defended the report.

RESPONSE TO INFRASTRUCTURE PROJECTS

24. During my tenure as the Chairperson of Council and ordinary member of Council, the Council never received any allegations Prof Mbatia relating to mismanagement of infrastructure projects, that Prof Mbatia committed acts of misconduct or he abused his position for personal gain. The only allegations which came to the attention of Council emanated from audit findings as a result of which SAB&T were appointed to conduct forensic investigation. The forensic investigation was not directed to Prof Mbatia. **See investigation report marked O.**
25. Forensic Investigation revealed that there was non-compliance with procurement processes of the University by certain staff members. The recommendations of the forensic investigations were that some identified staff members should be disciplined and that certain service providers who contributed to the weaknesses should be terminated. The University managed to terminate the services of certain service providers, and when it comes to the issue of disciplining, it came to light that the identified staff members had already left the University and it was no longer possible to discipline them. The University could not open criminal cases against them as they were not found to have committed fraud or involved in criminal activities.
26. The forensic investigation report never mentioned Prof Mbatia as one of the identified staff members who were to be disciplined. Apart from the forensic report referred to above, there is no any other forensic investigation relating to the infrastructure projects that I know off.
27. I believe that the Council which I led and serve had complied with all legal requirements in addressing both the allegations of corruptions against Prof Phendla and the grievance she had lodged including the sexual harassment claim.

Yours Faithfully

Mrs Shirley Mabusela