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## COMPLAINT AGAINST EDWARD MOSUWE

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I, the undersigned,

**MONIQUE TAUTE**

do hereby make oath and state the following:

### 1. INTRODUCTION

1.1. I am a major female person, employed as a Head of Anti-corruption at civil rights organisation AfriForum NPC (non-profit company) with business address at AfriForum Building, 58 Union Avenue, Kloofsig Centurion. I am the complainant herein on behalf of AfriForum NPC.

1.2. This complaint is brought in terms of Section 86(1) of the Public Finance Management Act (1 of 1999) (“the **PFMA**”) and which I submit require further investigation given the facts set out in this affidavit.

1.3. Section 86(1) of the PFMA provides as follows:

*“An accounting officer is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting officer wilfully or in a grossly negligent way fails to comply with a provision of section 38, 39 or 40.”*

1.4 I shall return to this section later herein in order to motivate why I contend that a contravention of this sub-section requires further investigation and why I submit it has been contravened. From the outset it is be noted that the other sections referred to in section 86 are *inter alia* aimed at the taking of effective measures to prevent fruitless and wasteful expenditure and to prevent irregular expenditure.

- 1.5 The person against whom this complaint is made is Edward Mosuwe, the Head of the Gauteng Department of Education (“the Department”), with business address located at 17 Simmonds Street, Marshalltown, Johannesburg with telephone number 011 355 000.
- 1.6 Edward Mosuwe in his capacity as Head of the Department was also the accounting officer for the Department and is designated as such by virtue of Section 36 (1) and (2) of the PFMA.
- 1.7 In his capacity as accounting officer Edward Mosuwe is therefore the ultimate responsible person pertaining to the financial affairs of the Department in terms of the PFMA and ultimately accountable.
- 1.8 The person to whom this complaint is directed, I contend has wilfully or negligently in gross manner failed to comply with section 38 and section 40 of the Act which renders it a criminal offence in terms of section 86(1) of the **PFMA**.

## **2 SOURCE DOCUMENTS FROM WHICH THIS COMPLAINT ORIGINATES**

### **2.1. Public Finance Management Act**

2.1.1. The stated objects of the PFMA are *inter alia* in terms of section 2 thereof to secure accountability and sound management of all revenue, expenditure, assets and liabilities of *inter alia* National and Provincial Departments. The purpose of the PFMA is to regulate the financial management of National Government and Provincial Governments to ensure that revenue, expenditure, assets and liabilities are managed efficiently and effectively, and furthermore to provide for responsibilities

to the persons entrusted with the financial management in those governments.<sup>1</sup>

2.1.2. In order to protect the public finances, the PFMA contains various stringent provisions and places important obligations and responsibilities on officials with the sanction of disciplinary censure and criminal sanction in the event of non-compliance.

2.1.3. For purposes of this complaint it is necessary to refer to the applicable provisions, although this complaint should not for purposes of any investigation be limited to these provisions. The relevant sections are as follows:

**38. General responsibilities of accounting officers. —**

(1) *The accounting officer for a department, trading entity or constitutional institution—*

(a) *must ensure that that department, trading entity or constitutional institution has and maintains—*

(i) *effective, efficient and transparent systems of financial and risk management and internal control;*

(ii) *a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77;*

(iii) *an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;*

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<sup>1</sup> Preamble to the Public Finance Management Act 1 of 1999

(iv) .....

(b) *is responsible for the effective, efficient, economical and transparent use of the resources of the department, trading entity or constitutional institution;*

(c) *must take effective and appropriate steps to—*

(i)...

(ii) *prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct; and*

(iii) *manage available working capital efficiently and economically;*

(d) *is responsible for the management, including the safe-guarding and the maintenance of the assets, and for the management of the liabilities, of the department, trading entity or constitutional institution;*

(e)...

(e) ...

(f)...

(g) *on discovery of any unauthorised, irregular or fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to the relevant treasury and in the case of irregular expenditure involving the procurement of goods or services, also to the relevant tender board;*

(h) *must take effective and appropriate disciplinary steps against any official in the service of the department, trading entity or constitutional institution who—*

(i) *contravenes or fails to comply with a provision of this Act;*

- (ii) *commits an act which undermines the financial management and internal control system of the department, trading entity or constitutional institution;*  
*or*
- (iii) *makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure;*

**40. Accounting officers' reporting responsibilities. —**

- (1) *The accounting officer for a department, trading entity or constitutional institution—*
  - (a) *must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards;*
  - (b) *must prepare financial statements for each financial year in accordance with generally recognized accounting practice;*  
*.....*
- (5) *If an accounting officer is unable to comply with any of the responsibilities determined for accounting officers in this Part, the accounting officer must promptly report the inability, together with reasons, to the relevant executive authority and treasury.*

2.1.4. I would continue by referring to some relevant definitions in the PFMA in order to assist the investigating officer:

2.1.4.1. In terms of the Act and specifically section 1 thereof *fruitless and wasteful expenditure* is defined as expenditure which was made in vain and would have been avoided had reasonable care been exercised (emphasis inserted).<sup>2</sup>

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<sup>2</sup> Section 1 of the Public Finance Management Act 1 of 1999

2.1.4.2. *Irregular expenditure* is defined in this Act as expenditure, other than unauthorized expenditure incurred in contravention of or that it is not in accordance with a requirement of any applicable legislation listed in the definition which includes the PFMA.<sup>3</sup>

2.1.4.3. Unauthorized expenditure relates to overspending of the vote or a main division within a vote and expenditure not in accordance with a purpose of a vote or in the case of main division, not in accordance with the purpose of the main division.<sup>4</sup>

## 2.2. Gauteng Provincial Department Education: Annual Reports 2017/2018

2.2.1. The preparation of annual reports of provincial departments stems from a guide issued by National Treasury and is applicable to all Departments.<sup>5</sup>

2.2.2. Section 40 of the Act read with Chapter 18 of the Treasury Regulations sets out the legal requirements for Annual Reports. The report on which I base my claim is thus a report emanating from an existing legal requirement which exposed transgressions of the Act.

2.2.3. The relevant extracts from the Annual Report for 2017/2018 is attached hereto as annexure “**MT 1**”. The full report is available on the website of the Department. This report should also for purposes of further investigation be read with the relevant annual financial statements of the Department which also forms part of the Annual Report and contained from p.201 onwards. It is being noted that the Annual Financial Statements of the Department are audited by the Auditor – General and what is consequently reported in the Annual Report of the

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<sup>3</sup> Section 1 of the Public Finance Management Act 1 of 1999

<sup>4</sup> Section 1 of the Public Finance Management Act 1 of 1999

<sup>5</sup><https://provincialgovernment.co.za/departments/annual/643/2018-gauteng-education-annual-report.pdf> visited on 1 October 2019.

Department follows from the audited Annual Financial Statements and report of the Auditor – General. The report of the AG is also included in the Annual Report.

2.2.4. For purposes of further investigation, the Management report of the Auditor-General to the Department would likely provide further information on the fruitless and wasteful expenditure and irregular expenditure and the question whether effective measures were implemented to prevent such.

### **3. TRANSGRESSIONS OF PUBLIC FINANCE MANAGEMENT ACT**

- 3.1. The attached document refers to three separate instances where financial incongruity occurred.
- 3.2. The Annual Report and notes to the financial statements of 2017/2018 refers to an amount of R913 781 000 recorded as **irregular expenditure** relating to current and prior years. This is evident from page 315 of the Annual report of the department which refers also to the notes to the financial statements.
- 3.3. With reference to the irregular expenditure the notes to the financial statements reflect that effective disciplinary steps or criminal proceedings were **not** instituted against persons responsible for the irregular expenditure.
- 3.4. The Annual Report and notes to the financial statements of 2017/2018 refers to an amount of R250 000 recorded as **fruitless and wasteful expenditure** relating to current and prior years. This is evident from page 315 of the Annual report of the department which refers also to the notes to the financial statements.

- 3.5. With reference to the unauthorised expenditure the notes to the financial statements reflect that no disciplinary steps or criminal proceedings were instituted against persons responsible for the fruitless and wasteful expenditure.
- 3.6. Such disciplinary steps and recovery are some of the measures to be taken in order to prevent fruitless and wasteful expenditure, irregular expenditure and unauthorised expenditure which is the responsibility of the accounting officer.<sup>6</sup> It is not only prescribed by the Guidelines of National Treasury but specifically also required by section 38 (1)(h) of the PFMA already referred to above.
- 3.7. In the report of the Auditor-General on page 204 the following significant comments are made. I underline some of the relevant portions:

***Annual financial statements***

The financial statements submitted for auditing were not prepared in accordance with the prescribed financial reporting framework and as required by section 40(1) (b) of the PFMA.

***Expenditure management***

Effective steps were not taken to prevent irregular expenditure amounting to R 907 281 000 as disclosed in note 25 to the annual financial statements, as required by section 38(1)(c)(ii) of the PFMA and treasury regulation 9.1.1.

Payments were not made within 30 days or on an agreed period after receipt of an invoice, as required by treasury regulation 8.2.3.

***Leadership***

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<sup>6</sup> This is so prescribed in the Guidelines on Fruitless and Wasteful Expenditure and on Irregular Expenditure issued by National Treasury.



The accounting officer did not exercise adequate oversight over the preparation of financial statements, performance information and compliance with laws and regulations.

***Financial and performance management***

Management did not prepare regular, accurate and complete financial and performance reports that are supported and evidenced by reliable information. Management did not review and monitor compliance with applicable laws and regulations.

- 3.9 Considering the report of the AG and the astronomic amounts involved one cannot avoid the inference that there has been non-compliance with section 38 of the PFMA in several respects especially a serious failure to take effective and appropriate steps to prevent fruitless and wasteful expenditure, irregular expenditure and unauthorised expenditure.

It would appear that there has been a serious and gross deviation of the duty of care which the PFMA requires from the accounting officer and that she has contravened section 86(1) of the PFMA.

**4. CONCLUSION**

As is evident when applying the annual report to the relevant provisions of the Act, Edward Mosuwe as the accounting officer and responsible person regarding the financial affairs and sound financial management of the Department as required by the PFMA, has contravened the aforesaid provisions of the PFMA and is in my view liable to criminal sanction as envisaged by Section 86(1) of the Act.

It is therefore specifically requested that the abovementioned criminal complaint be fully further investigated.

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**Monique Taute**

Signed and sworn to before me at ..... on this ..... day of .....2019 after the deponent acknowledged that he understood the contents of this affidavit, that he had no objections to the taking of the prescribed oath, that he regarded the prescribed oath as binding on his conscience and after the regulations contained in Government notice no R1258 of 21 July 1972 were complied with.

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COMMISSIONER OF OATHS