



**MINISTRY  
AGRICULTURE, LAND REFORM AND RURAL  
DEVELOPMENT REPUBLIC OF SOUTH AFRICA**

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Hon. A Steyn, MP  
Member of Portfolio Committee: Agriculture, Land Reform and Rural Development  
PARLIAMENT  
8000

Dear Hon. Steyn

**SUBJECT: INVESTIGATION REPORT INTO ALLEGATIONS OF UNFAIR TREATMENT  
AND CORRUPTION IN RELATION TO THE ALLOCATION OF SPIONKOP  
FARM BY THE DEPARTMENT, KWA ZULU-NATAL PROVINCE - MR  
VUYISILE ZIGANA**

Attached please find the above mentioned investigation report.

Whilst the department is processing recommendations tabled in the report, we have approved the caretakership allocation of farm Melville Park No 32 ES and remainder of portion 1 of the farm Beersheba No 38 to Mr Vuyisile Zigana.

He will be guided to follow the current land application process as advertised on 15 October 2020 for allocation on a 30 year lease agreement with an option to purchase.

I trust the above is in order.

Yours sincerely,

  
MS AT DIDIZA, MP

MINISTER OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT

DATE: 16.10.2020



**agriculture, land reform  
& rural development**

Department:  
Agriculture, Land Reform and Rural Development  
REPUBLIC OF SOUTH AFRICA

**DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT  
FORENSIC INVESTIGATIONS DIRECTORATE**

**INVESTIGATION INTO ALLEGATIONS OF UNFAIR TREATMENT AND CORRUPTION  
IN RELATION TO THE ALLOCATION OF SPIONKOP FARM BY THE DEPARTMENT OF  
AGRICULTURE, LAND REFORM RURAL DEVELOPMENT OFFICIALS, IN KWA-ZULU  
NATAL**

**Reference Number AU2/12/1/6/3/20-21 (651)**

**INVESTIGATING OFFICIALS:**

**Ms B Selebi**

**Mr M Rakololo**

**Mr T Molefe**

**STRICTLY PRIVATE AND CONFIDENTIAL**

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**A. ACRONYMS USED IN THE REPORT**

• BAS	Basic Accounting System
• CLCC	Chief Land Claims Commissioner
• DALRRD	Department of Agriculture, Rural Development and Land Reform
• DBSC	District Beneficiary Selection Committee
• DDG	Deputy Director-General;
• DG	Director-General
• DRDLR	Department of Rural Development and Land Reform
• FID	Forensic Investigations Directorate
• KZN	Kwa Zulu Natal
• LRD	Land Redistribution and Development
• NLAACC	National Land Acquisition and Allocation Control Committee
• NTC	National Technical Committee
• PLAF	Provincial Land Agricultural Forum
• PLAS	Proactive Land Acquisition Strategy
• PSSC	Provincial Shared Services Centre
• PTC	Provincial Technical Committee
• RLCC	Regional Land Claims Commissioner
• SAPS	South African Police Services
• SARS	South African Revenue Services
• SLRI	State Land Reform Interventions
• SPCA	Society for the Prevention of Cruelty to Animals

## **B. INVESTIGATION REPORT**

### **1. BACKGROUND**

#### **1.1 ALLEGATIONS RECEIVED**

1.1.1 On 4 August 2020, the Forensic Investigation Directorate (FID) received an instruction from the Office of the Director-General (DG), to investigate allegations of injustices and corruption by the Department of Agriculture, Land Reform and Rural Development (DALRRD) against a beneficiary known as Mr Vuyani Zigana (Mr Zigana), in relation to the allocation of portions 2 and 4 of Nooltgedacht farm number 309 and portion 0 of Dummy ES farm number 308, measuring 7411,0600 hectares, in the Port Shepstone area of Kwa-Zulu Natal (KZN).

1.1.2 The complainant alleged that:

- There were injustices and corruption against Mr Zigana in the allocation of the portions 2 and 4 of the Nooltgedacht farm number 309 and portion 0 of Dummy ES farm number 308, measuring 7411,0600 hectares; and
- As a result, Mr Zingana filed an application at the Pietermaritzburg High Court on the 2 July 2019, citing the Department of Rural Development and Land Reform (DRDLR) as the defendant.

1.2 This Report deals with the findings, conclusions and recommendations of the investigation conducted on the allegations reported to FID.

1.3 When the matter was referred to FID for investigation, the DG directed that Mr Tebogo Molefe from the Enterprise Project Management Office (EPMO), must be part of the investigating team

## **2. SCOPE**

### **2.1 Purpose of Report**

This document was prepared solely for the purpose of reporting on the investigation set out herein. The contents are confidential and should not be used for any other

purpose or be provided to third parties without the prior written consent of FID. It shall not form part of any court admissible evidence without the express authority by FID.

## **2.2 Engagement Objective**

### **2.2.1 The objective of the investigation was to establish:**

- Whether the investigation falls within the mandate of FID;
- Whether the process followed in identifying, selecting and allocating the farm to Mr Zigana as Caretaker, complied with the applicable policies;
- Whether there was any fraud or corruption during the allocation of the farm to Mr Zigana as caretaker and to Mr Makaula as the lessee;
- Whether there were any irregularities during the allocation of the farm to the lessee;
- Whether due process was followed during Mr Zigana's removal from the farm and the circumstances or the reasons which led thereto; and
- Whether there were any merits to Mr Zigana's allegations.

2.2.2 FID was not required to, nor did FID conduct an audit in accordance with the Generally Accepted Auditing Standards (GAAS) or Internationally Accepted Auditing Standards (IAAS).

2.2.3 FID's engagement was conducted in terms of the DRDLR Forensic Investigation Charter.

## **2.3 Time Period Reviewed**

FID reviewed and analysed documentation regarding the matter, from 06 July 2013 to 30 July 2020, being the period applicable to the allegations.

## **2.4 Restrictions / Limitations**

2.4.1 The scope of our investigation was limited to the objectives contained in paragraph 2.2 and paragraph 2.3.

- 2.4.2 The Investigation conducted by FID was restricted to interviews conducted and insofar as documentation was made available to it.
- 2.4.3 Although FID attempted to obtain all information relevant to the Investigation, it cannot at this stage guarantee that all the relevant documentation has been obtained.
- 2.4.4 FID has not verified the validity or authenticity of the relevant records and documentation subjected for analysis.
- 2.4.5 Although every attempt has been made to identify all apparent irregularities and all facts which led to such irregularities, FID however cannot guarantee that all of such instances have been identified.
- 2.4.6 Presentation of further information and documentation may influence the current conclusion and recommendations. FID reserves the right to supplement or amend its report upon the receipt of such additional information.
- 2.4.7 The Investigation is limited to the DALRRD's involvement in the matter being investigated, as FID has neither permission nor mandate to report matters external to the DALRRD, except where external parties volunteer information.

## **2.5 PROCEDURES FOLLOWED**

### **2.5.1 FID interviewed the following parties:**

- Mr Vuyani Zigana (Mr Zigana), Complainant;
- Mr Lennox Makaula (Mr Makaula), Current Farm Lessee;
- Mr Phakamile Nobula (Mr Nobula), Deputy Director: Land Redistribution and Development (LRD), Port Shepstone;
- Mr Nhlanhla Mndaweni (Mr Mndaweni), Chief Director: Provincial Shared Services Centre (PSSC) KZN;
- Mr Denver Ince (Mr Ince), Deputy Director: Property Management, Pietermaritzburg;
- Mr Isaiah Mahlangu (Mr Mahlangu), Director: Strategic Land Acquisition: PSSC KZN;

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- Mr Sukumani Zondi (Mr Zondi), Retired Agricultural Advisor, Department of Agriculture and Rural Development, Panel member;
- Ms Tamarai Pillay (Ms Pillay), Deputy Director: Legal: PSSC KZN;
- Ms Antionette Whyte (Ms Whyte), Manager: Local Economic Development: Greater Municipality Kokstad, Panel Member;
- Ms Nokubonga Radebe (Ms Radebe), Director: Regional Shared Service Centre: Port Shepstone;
- Mr Barry Levinrad (Mr Levinrad), Chief Land Reform Advisor: Strategic Land Reform Interventions: National Office; and
- Mr Terries Ndove (Mr Ndove), Deputy Director-General: Land Redistribution and Development: National Office.

**2.5.2 FID reviewed and analysed the following documentation:**

- Request for investigation, dated 4 August 2020;
- Mr Zigana's statement, dated 21 August 2020;
- Mr Makaula's statement, dated 26 August 2020;
- Mr Nobula's statement, dated 30 August 2020;
- Mr Ince's statement, dated 29 August 2020;
- Ms Whyte's statement, dated 27 August 2020;
- Mr Zondi's statement, dated 27 August 2020;
- Ms Pillay's statement, dated 27 August 2020;
- Mr Mahlangu's statement, dated 27 August 2020;
- Ms Radebe's statement, dated 8 September 2020;
- Mr Levinrad's statement, dated 9 September 2020;
- Mr Ndove's statement, dated 10 September 2020;
- Caretaker Agreement for Mr Osborn, dated 6 July 2013;
- Advertisement for interest to lease State Land, dated 15 September 2018;
- Minutes of the meeting for a potential lessee, dated 1 November 2018;
- Memorandum of Caretaker Agreement for Mr Makaula;
- Memorandum of Caretaker Agreement for Mr Zigana, dated 9 June 2014;
- Agricultural Agreement lease for Mr Makaula, dated 6 May 2019;
- Hand-over Reports by Mr Zigana and Mr Makaula;



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- Mr Zigana's Grievance Letter to the DRDLR, dated 1 July 2019;
- Agenda for the meeting on Mr Zigana's grievance, dated 18 July 2019;
- Notice of Motion by Mr Zigana, dated 2 July 2019;
- Opposing affidavit by Mr Nobula, dated 3 October 2019;
- Notice of Motion by Mr Makaula, dated 21 November 2019;
- Court Order number 8770/19 against Mr Zigana, dated 2 December 2019;
- Court Order number 1032/2020, in respect of Society for the Prevention of Cruelty to Animals (SPCA), dated 18 February 2020;
- National Land Acquisition and Allocation Control Committee (NLAACC) Minutes of the meeting, dated 18 February 2018; and
- Site Inspection and Asset Verification Report dated 28 March 2014.

### **3 INVESTIGATION FINDINGS**

#### **3.1 FID conducted an investigation regarding the following objectives:**

- 3.1.1** Whether the investigation falls within the mandate of FID;
- 3.1.2** Whether the process followed in identifying, selecting and allocating the farm to Mr Zigana as Caretaker, complied with the applicable policies;
- 3.1.3** Whether there was any fraud or corruption during the allocation of the farm to the Mr Zigana as caretaker and to Mr Makaula as the lessee;
- 3.1.4** Whether there were any irregularities during the allocation of the farm to the lessee;
- 3.1.5** Whether due process was followed during Mr Zigana's removal from the farm and the circumstances or the reasons which led thereto; and
- 3.1.6** Whether there were any merits to Mr Zigana's allegations.

#### **3.2 FID conducted the following interviews regarding the objectives defined in paragraph 3.1:**

##### **3.2.1 FID interviewed Mr Vuyani Zigana, the complaint, Kokstad - KZN, who indicated the following:**

- a) His main concern was the treatment he received from the Department. On 24 July 2012, he was permitted to occupy a state farm by Mr Nobula. At that time, the Caretaker of the farm was Mr Makaula, so he lodged at the farm called the



Grove-Park farm. Upon his arrival, there were about three hundred (300) cattle that belonged to Mr Makaula as the previous occupant.

- b) Mr Makaula's term as a caretaker ended in 2014 and that's when he (Mr Zigana) became the new caretaker.
- c) Later in the year 2014, he met the Department's Director-General, Mr Mduduzi Shabane, and requested a fence because his livestock was not protected. Mr Shabane allocated Ms Babalwa Magoda to assist him with the procuring of the fence. Mr Shabane informed him that the fence will remain on the farm in the event that he vacates the farm. He decided to discuss this with Mr Nobula, and from Mr Nobula's facial expression it was clear that he was not happy with the fact that Mr Zigana requested the fence from Mr Shabane and that Ms Magoda was allocated to assist him. He however stated that they will comply.
- d) When he called Ms Magoda to ask about the progress of procuring the fence, Ms Magoda stated that she was surprised that he was still occupying the farm, because Mr Nobula is planning to remove him from the farm. She also advised that he should refuse to vacate the farm unless an alternative farm was provided.
- e) There were miscommunications between himself, Mr Nobula and Ms Magoda about the fact that he was about to be removed from the farm. In many occasions, he tried to call Ms Magoda, who didn't answer his calls. When he called Mr Nobula, he mentioned that there's a "relevant person" who will be occupying the farm and that he needs to vacate the farm, since he refused to go to another farm called Arnold.
- f) He then called Mr Shabane for intervention. Thereafter, he received a long message from Ms Magoda who amongst other things mentioned that he will be removed from the farm since he refused to move to Arnold farm. He became frustrated and remained on the farm. Another farmer by the name of Mr Lizwi Mtumtum was brought in, to temporarily occupy the second portion of the farm called Traut-Waters, to which he agreed.
- g) Mr Mtumtum then enquired about Mr Makaula's livestock that was also in the farm. He told Mr Mtumtum that Mr Makaula was the owner of the livestock and that they have been on that farm since 2014.

- h) Mr Nobula had mentioned that they (he and Mr Makaula) had resolved their issues and that the livestock will be removed from that farm.
- i) Around 2015, he applied to become a caretaker for Grove Park farm where he was the occupant. He was only interested in the one portion of the farm being Grove Park where his livestock would graze. He was never told the outcome of the interview, but later on Mr Nobula mentioned that the process was withdrawn. At that time, his relationship with Mr Nobula had become strained.
- j) In 2018, he heard rumours of the advertisement by the DRDLR to search for a caretaker of the Grove farm. The rumours were true, the farm that he had occupied since 2012, was now being advertised without his knowledge, but he still applied. He went for the interviews but did not get the outcome.
- k) Around June 2019, he received a call from Mr Nobula, who stated that he is bringing a new beneficiary to the farm. On arrival, Mr Nobula brought Mr Makaula and a representative from Property Development and stated that he (Mr Zigana) did not get the farm, because the banking details he provided belonged to a member of a cooperative.
- l) He then told Mr Nobula that there was a supporting document that was attached to his application to clarify that part. He asked Mr Nobula what the plan in relation to his livestock was. Mr Nobula stated that there are other farms in Transkei, he will have to apply and maybe he will be successful.
- m) He asked Mr Nobula, where should he take his livestock (about 117 cattle) in the meantime? Mr Nobula stated that it is his livestock and he must plan.
- n) The focus was on Mr Makaula and he (Mr Zigana) was neglected by Mr Nobula and the Property Development representative. He decided to leave that meeting. This treatment affected him, and his health status deteriorated. He requested Mr Makaula to keep his livestock until he finds another farm to occupy, to which he agreed.
- o) Before he went to court, he communicated his frustrations to Dr Zwart, who then appointed Mr Mahlangu from the Pietermaritzburg office to assist him. Mr Mahlangu called him to a meeting in the Port Shepstone office. He explained his situation to Mr Mahlangu and requested a temporary farm where he can keep his livestock until he finds a permanent solution.

- p) Mr Mahlangu apologised on behalf of the DRDLR for how he was treated, and he requested Mr Nobula to withhold further proceedings and not allow Mr Makaula to occupy the Grove Park farm until there was an amicable solution to resolve this matter. He told Mr Mahlangu that he can place his livestock at any other farm even in Mpumalanga. At the end of the meeting he requested the minutes of the meeting; which he did not receive.
- q) The following day he received a call from Mr Makaula, stating that he has found a place for him to keep his livestock. He tried to explain that there was a meeting between himself and the DRDLR and Mr Nobula was supposed to inform him of the outcome. Mr Makaula stated that "meeting or no meeting" he must vacate the farm. He reported this to Mr Nobula and Ms Radebe at the Port Shepstone offices. Mr Nobula stated that Mr Makaula has a signed Lease Agreement and he has all the rights to be at the farm and he should take his livestock and vacate. After this confusion, he decided to go to court for help.
- r) His relationship with Mr Nobula had worsened and he could not take the frustration any longer. In 2016, Mr Nobula called him and requested that he send him an amount of R700.00 through Pep Store or Shoprite money market. He insisted that he needed money for the weekend entertainment and he (Mr Zigana) gave him R700.00. This tendency of expecting something in return, started before he could sign the Caretaker Agreement in 2014.
- s) After signing the Caretaker Agreement in 2014, Mr Nobula said that, it was time to celebrate and that he needed to make a plan, but Mr Zigana had no money to give him (Mr Nobula). When the farm was being advertised for occupation by a new lessee, he heard a rumour that he was "quiet" suggesting that he did not place money on the table. He had no money to give Mr Nobula anymore.
- t) On the 29 October 2019, at 11:23, he received a message from Mr Makaula warning and informing him that his livestock will be impounded by the Kokstad SPCA and Mr Makaula gave him their numbers. He called a Lawyer for assistance. At that time there was a court order to remove the livestock from the farm and he requested a neighbour farmer to accommodate the livestock until he finds a place.
- u) On 13 December 2019 at 9:30 his livestock was impounded by the Sherriff to the Kokstad SPCA. He had about 95 cattle because he had to sell most of them

to pay his lawyers to keep the livestock on that farm, but all those efforts failed. He had lost this battle, there is no records of how many livestock was impounded but he knows that he had 95 cattle, 44 ewes and rams and 5 horses. He lost a registered Bull Bonsmara. According to the SPCA records, only 3 cows died but he knows he lost more. After 20 February 2020, he received 32 ewes and rams, 4 horses and he cannot recall the number of cattle he received back.

- v) For the period of three months he owed the Kokstad SPCA an amount of R300 000.00 and they took him to court. They agreed to settle the matter outside Court, and the amount was reduced to R55 000.00. The SPCA took 9 Bonsmara Bulls to settle the debt.
- w) He is left with about 32 cattle at Berry Dale, sixteen (16) at David's farm and sixty-nine (69) at Mr Tshepe's farm. He has about hundred and seventeen (117) cattle left. The current situation is that he had vacated Grove Park farm and left some of his properties at that farm. Some of his cattle have died.
- x) In conclusion, Mr Zigana requested the investigators to please visit a farm called Brookside on the way to Kokstad and speak to the Caretakers and hear more of Mr Nobula's corrupt behaviour. His only request is for the DALRRD to give him grazing land for his livestock.

**3.2.2 FID interviewed Mr Makaula, the current Lessee of Grove Park Farm, Kokstad - KZN, who indicated the following:**

- a) He is a farmer and owns the farm called Rondefontein. Rondefontein is positioned between Trout Waters and Grove Park farm (what the DALRRD calls Spionkop Farm). Trout Waters which is Spionkop 1, is the front portion and Grove Park, which is known as Spionkop, is at the back.
- b) On his arrival at the farm, it was owned by Mr Mark Osborne who was his neighbour and farming on both farms. In 2013, the DRDLR purchased the farm and Mr Osborn had to move out, and at that time he had applied to the DRDLR to become a Caretaker. He had about 120 cattle at the time. The agreement was for 12 months. Mr Vuyani Zigana, arrived from Eastern Cape and enquired if he can bring his livestock to the farm.
- c) He directed Mr Zigana to the DRDLR and told him that he was a Caretaker and did not own the farm. He suggested that Mr Zigana obtain permission from the



Port Shepstone office to bring his livestock to the farm, to which he said that he did.

- d) Mr Zigana was not a stranger to him, thus he allowed Mr Zigana to bring his livestock to the farm. Mr Zigana had about sixty cattle when he joined him, and he awarded Mr Zigana Spionkop 2 to allow his cattle to graze. His servitude road to Rondefontein passes through Spionkop 1 and allowed him access to the farm and view of his livestock. He gave Mr Zigana portion 2 to utilise with the understanding that after his contract expires, they both had to look for another farm.
- e) He had to look for another farm because his cattle were growing, hence he became a Caretaker for Spionkop portions 1 and 2. When the DRDLR purchased this farm, it was supposed to be sold to a farmer called Mr Mcungwana, since he introduced the farm to the Department. This resulted in court cases between the DRDLR and Mr Mcungwana and placed him in a favourable position as a nearby black farmer.
- f) In May 2014 his contract was terminated in line with the signed agreement, and he was aware of the conditions of the agreement. At that time, there was a huge fire that started on Cider Valley to Kokstad where he leased another farm. He called Port Shepstone office to find out who was the Caretaker and he was informed that it was Mr Zigana.
- g) Mr Zigana denied that he had a Caretakers contract. The DRDLR brought other livestock from another state farm in Kokstad that was burned, to Spionkop 1. There were three farmers occupying the farm, Mr Makaula, Mr Zigana and the "new unknown group". The Spionkop 1 farm is about 1600 hectares, the new group occupied 600 hectors, he occupied another 600 hectare and Mr Zigana occupied 400 hectares and they were all happy.
- h) In 2015, the Grove Park farm burned down. He found white farmers on the premises. When he enquired from them what they were doing on the farm, they stated that they were subleasing the farm from Mr Zigana. Mr Sam Van Zyl was subleasing the Grove Park farm from Mr Zigana. Mr van Zyl subleased to Mr Biggs. The Grove Park farm was occupied by the white farmers and Mr Zigana did not stay on the farm.

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- i) Mr Biggs was running the farm operations on Spionkop 2. Mr Zigana had a small number of cattle and his herd man was paid for by Mr Biggs. A farmer called Mr Barron, asked permission from Mr Zigana to occupy the pig sty to breed pigs.
- j) Around 2018, there was an advert to lease the Grove Park farm. The farm was now divided into two portions and the "new unknown group" returned to their state farm. The DRDLR brought another farmer called Mr Lizwi Mtumtum to occupy the 600 hectares of the Grove Park farm.
- k) The farm was now occupied by Mr Makaula, Mr Mtumtum and Mr Zigana who was represented by the white farmers (Mr van Zyl). The main farmer there was Mr Biggs.
- l) There was an open lease advert late 2018 or beginning of 2019 (he could not recall the exact period). The interviews were held at the Department's office in Kokstad and it consisted of panel members from the DRDLR and other external members.
- m) There was an advert around 2018 but the process was postponed or withdrawn. For the 2019 advert, there were many applications and the interviews were conducted over two days. After presentations and interviews, he was awarded the back portion of the farm and Mr Mancoya Gadalana was awarded the second portion of the farm. Mr Mtumtum and Mr Zigana did not get the farm.
- n) He wanted to create fire breaks and installed the fire lines on the farm and discussed Mr Biggs's exit from the farm. Within two weeks Mr Biggs moved out of the farm, he made this arrangement directly with Mr Biggs who was in charge and not with Mr Zigana.
- o) Mr Biggs moved his livestock, which was around 280 and Mr Zigana had around 90 cattle. The DRDLR had made a hand over and he arranged with Mr Zigana to move his cows in September and not in June. They (Mr Zigana and Mr Makaula) signed the hand over agreement. Before September 2019, he called Mr Zigana to find out what was his plan to move his livestock. Mr Zigana stated that he was fighting with the DRDLR and not with him.
- p) Mr Zigana was under the impression that the DRDLR was supposed to give him another farm when he could not get this farm, they cannot just kick him out. He told Mr Zigana that they were all in a caretaker agreement and there was no



clause that stated that if one is a caretaker, they automatically qualify to get another farm if their caretakership expires.

- q) If there was, he could have exercised the same principle in his case because he was the first caretaker and he had a lot of livestock.,
- r) He told Mr Zigana to fight the DRDLR outside his farm and that he would have understood if he was challenging the outcome of the interviews and the panel members. But Mr Zigana went through the whole process and also signed the handover agreement and now he is fighting the Department.
- s) He did not agree to this and this is where the confusion started. He then called the DRDLR to inform them about this challenge. He was told that when the caretaker agreement expired, he decided to give Mr Zigana an extension to September and now this was between him and Mr Zigana and that the DRDLR cannot be invited into their disagreement.
- t) The miscommunication carried on until he told Mr Zigana to vacate the farm and fight the DRDLR outside of the farm.
- u) Mr Zigana refused. He then had to move his cattle because Spionkop 1 was allocated to another farmer and then he moved his cattle to Spionkop 2. He still called Mr Zigana to discuss how they can control the camps since both their livestock were occupying the farm, but Mr Zigana refused to cooperate. By end of September 2019, he went to the SPCA to remove Mr Zigana's livestock from the farm. He went to Stock Theft for help, but after he shared his story, he was told that the livestock is not stolen, and they cannot intervene.
- v) He then went to the SPCA to report that he will be bringing the livestock that occupied his farm unlawfully. He hired four boys in town to help him remove Mr Zigana's livestock. He called Mr Zigana to inform him. Mr Zigana asked him if he had a court order to remove his livestock, to which he said no. He did not remove Mr Zigana's cattle because Mr Zigana's Lawyer also called him to find out about the court order.
- w) He then decided to approach the court to evict Mr Zigana from the farm since he had a legal document. He placed an urgent application at the court, which included that if Mr Zigana's livestock remained on the farm, his cattle were at risk due to the draught and he needed an immediate relief. The relief was granted in his favour, stating that Mr Zigana should remove his cattle with

immediate effect. He still did not exercise his rights to immediately remove Mr Zigana's livestock, he waited for two weeks after the judgment.

- x) Mr Zigana called whilst his livestock was been taken to the SPCA. At that time the only option was to take the livestock to the SPCA as he did not want to risk leaving Mr Zigana's cattle anywhere else. He registered Mr Zigana's 77 cows at the SPCA.
- y) The DRDLR was not part of this arrangements, it was a fight between Mr Zigana and himself as the owner. The DRDLR gave him thirty days and he extended the period to 90 days, so this was between him and Mr Zigana. There was also a pending case between Mr Zigana and the DRDLR whereby, if Mr Zigana wins the case, he will have to move back to the farm, and he (Mr Makaula) will have to vacate the farm.
- z) He knows that Mr Nobula works for the Department of Rural Development, but he is not sure of his position. Mr Nobula was leading the interviews and he thinks Mr Nobula is the man in charge and is running the show in the Department. He only knows Mr Nobula in his official capacity as an employee of the Department.
- aa) When he applied for his caretakership in 2012, Mr Nobula was the one assisting him. He also terminated his caretaker agreement in 2014, when he delivered the letter of termination to him.
- ab) Thereafter he met him during interviews in 2018/19. From 2015 to 2018 he had nothing to talk to Mr Nobula about. He was aware that his caretaker agreement was for one year. The person who was lucky to stay there for a long period was Mr Zigana, because he became a caretaker for four years. He was a caretaker for one year, then Mr Zigana, there after Mr Mtumtum.
- ac) Maybe they were supposed to be appointed as caretakers on a rotational basis on that farm, from him to Mr Zigana, then to Mr Mtumtum, then him again; but that did not happen. And he did not worry because they had their own arrangement of sharing the portions of the farm and the DRDLR was not part of it. Someone benefited for staying longer because this is a one-year caretakership agreement. If he had a relationship with anyone, he should have benefited but he did not.

- ad) At some stage, Mr Zigana mentioned that he should have chased him of the farm when he was a caretaker. He then asked Mr Zigana how he was going to do that, because he refused to disclose to him that he was a caretaker. Mr Nobula was not part of his arrangement with Mr Zigana; he does not even have the correspondence between them. He sends all his communication to Property Management.
- ae) It was public knowledge that the farm has been advertised and if he had influenced someone, he should have chosen the front portion of the farm since he has driving servitude on the front farm. He did not influence anyone during the interviews as there were too many people, some were observers from the Port Shepstone, Pietermaritzburg and Municipality offices. There were three components, the panel, the Municipality and other stakeholders, It would be difficult to influence everyone. As for Mr Zigana, he knew him from Matatiele Toyota, where he used to sell cars.

**3.2.3 FID interviewed Mr Phakamile Nobula, Deputy Director: Land Redistribution and Development, District Office: Port Shepstone, who indicated the following:**

- a) He joined the DRDLR in May 2012 and found that the Spionkop Farm was acquired in 2011/12 financial year for an amount of R22 119 768.00. Apparently, post-acquisition of the property, the District Beneficiary Selection Committee (DBSC) conducted the interviews on 06 October 2011 and recommended Daxicap CC and Themba Qha Agricultural Co-operative as the potential lessees for the two farms being portions 1 and 2 Spionkop.
- b) Upon the conclusion of the interview process, the DBSC erroneously informed the recommended potential lessees of outcomes of the interviews even before its (DBSC) recommendations were presented to the then Provincial Technical Committee (PTC) for further recommendation and the NLAACC for approval.
- c) The pronouncement of the outcomes of the interviews prompted one of the applicants who was not recommended to approach the court and interdict the DRDLR from allocating the farms to the recommended beneficiaries. Due to the court interdict, the submission to allocate was put in abeyance to allow the court processes to proceed until the matter is finalised.

- d) During 2012, the office entered into a 12 months caretakership agreement with the previous owner, Mr Michael Osborn. This agreement expired in 2013 and in terms of the State Land Lease and Disposal policy, the caretakership agreement cannot be renewed.
- e) Upon the expiry of the 12 months caretakership with the previous owner, the office appointed Mr Makaula as a caretaker of the farms whilst awaiting the outcomes of the court decision. Upon the expiry of the twelve months caretaker agreement with Mr Makaula, the office entered into another 12 months caretakership with Mr Zigana, which commenced on the 27th April 2014 and expired on the 26th April 2015.
- f) Upon the expiry of the agreement with Mr Zigana, the office could no longer enter into any other agreement due to the reviewing of the State Land Lease and Disposal policy by the DRDLR at the time. This being the case, Mr Zigana continued to remain on the farm until the time when the office advertised the farm. No formal communication was sent to Mr Zigana informing him about his continued stay on the farm.
- g) The challenge faced by the District Office is that there are no officials specifically designated to perform Property Management functions. Ordinarily, this is the responsibility of Property Management because the property is now purchased, and they are the ones who draft these agreements.
- h) Although the policy provides for appointment of a caretaker, it however does not stipulate the process that must be followed in doing so. The Office looked for someone who is a farmer and willing to take care of the farm. There was a database before, and the office would source farmers from the database, considering their location and the type of farms they require. Mr Makaula was identified by Mr Maswazi Motha (retired) who was the Project Manager on this farm.
- i) In the case of Mr Zigana, he was identified from the database. The District Office is no longer using the database system. Currently, the District is using a standard form that was developed by Head Office. The district office issued an advert which ran from the 02nd September 2018 to the 28th September 2018, advertising for the leasing of the farm. The office received 18 applications and



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invited all applicants for interviews, which were conducted on the 01st November 2018.

- j) He confirmed that he was the Chairperson of the District Beneficiary Selection Committee (DBSC) interviews in respect of the subject farm. The interviews were held at the DRDLR in Kokstad.
- k) The DBSC deliberated on each candidate, considering the following: the candidate's technical background and understanding of the commodities on the farm; previous and current experience of the candidate; state of readiness in terms of financial resources, equipment and machinery; locality of the candidate and the overall score of the candidate.
- l) After deliberating on each applicant's presentation, the DBSC recommended that Spionkop 2 be allocated to Mr Makaula and the other portion be allocated to Mr Gadalana.
- m) The reason why Mr Ndlazi who scored the highest points (81) during the interviews, was not allocated the lease, is that he was already recommended to be allocated one of the portions of Brookside Farm. Mr Zigana was unsuccessful according to the DBSC. Some of the reasons alluded to were that: he initially brought the application as an individual; at the interview, he then advised the committee that he was representing the Mpafane Primary Co Operative Limited of which he is a member; the profile and ID copies of the members of the co-op were presented but the Co-op certificate was not there; and the bank statement and the branding certificate does not belong to the co-op.
- n) At the time when Mr Makaula and Mr Gadalana were appointed, there was no physical verification of livestock conducted. It is only now that the office started doing physical verification because it is a prerequisite that when the approval memorandum is submitted, it must be accompanied by a verification report. Previously, as was the case in this instance, the office would rely on documents such as SARS good standing, bank statement, bank loan guarantee letters and the business profile. Unfortunately, there is no policy prescripts that dictates that such verification should be undertaken before a farm can be allocated.
- o) The reality is that we have not matched the farm with the farmers in most instances and this was as a result of not conducting verifications. This new process of verifying was introduced to circumvent this challenge.

- p) The District office went to the farm with the new lessee, Mr Makaula, on 14 June 2019. The office informed Mr Zigana of the new lessee and requested him to vacate the farm. Mr Zigana requested an extension of time to vacate the farm as he had cattle. Mr Makaula and Mr Zigana mutually agreed that Mr Zigana has 3 months to vacate the farm. After having agreed with Mr Makaula that he would vacate the farm at the end of September 2019, Mr Zigana in the interim brought an application in the Pietermaritzburg High Court, on the 2 July 2019, against the department.
- q) The application before the court was to declare the eviction or removal of Mr Zigana as unlawful and that Mr Nobula must refrain from harassing him on the farm. The DRDLR opposed the application and filed an opposing affidavit. On the day of the hearing the matter was struck off the court's roll as neither the applicant nor his attorney was present in court. The DRDLR was represented by Advocate Zondi from the Pietermaritzburg bar.
- r) Before the court date, Mr Zigana wrote to DDG Ndove. The DDG referred the matter to Mr Mahlangu in the province. A meeting was convened between Mr Nobula, Mr Mahlangu, Ms Radebe and Mr Zigana, who was accompanied by someone whom he said is a member of the Co-op. In the meeting, Mr Zigana refuted all the allegations he levelled against him (Mr Nobula) in his letter.
- s) What might have triggered Mr Zigana to level all these allegations against him might be that, on one instance, Property Management personnel were conducting asset verification in one of the state farms, Brookside. Sanele from Property Management phoned to tell him that a person by the name of Mr Zigana is on the farm with a certain lady purporting to have been sent by the Minister.
- t) The next day he went to the farm and was informed by the dwellers that Mr Zigana and the lady collected "documents" from them saying that they were sent by the Minister. He immediately phoned Mr Zigana to question him about the incident and he apologised for doing so.
- u) He was introduced to Mr Zigana in 2012 as someone who is a farmer and he advised him to apply to be placed on the database of DRDLR.
- v) In response to the allegation of corruption and injustices, he denies any allegation of injustice against Mr Zigana. He has never received any money from



anybody, including Mr Zigana, for anything. The DRDLR and him, as the official, have dealt with the matter in a professional and in a legal manner.

- w) Mr Nobula said it is obvious from the facts available that Mr Zigana failed in his court application and he is now using the political space to address his unhappiness and dissatisfaction with the outcome of the lease application.
- x) He did not know anything about the office offering Arnold farm to Mr Zigana, if anything, it could have been that the farm was part of the prioritised projects to be acquired, and perhaps Mr Zigana was informed about it.
- y) Mr Lizwi Mtumtum was recommended to lease portion 1 of Melville park farm; however, he could not immediately occupy the farm due to a pending court interdict against a certain Mr Madunandile Matomane, who has illegally occupied the farm. Mr Mtumtum was temporarily allowed to occupy Spionkop 1 farm, which at the time was under the caretakership of Mr Makaula.

**3.2.4 FID interviewed Mr Denver Ince, Deputy Director: Leases and State Land Manager – PSSC KZN, who indicated the following:**

- a) Mr Ince indicated that there are two categories of land, PLAS and non-PLAS. His role in as far as the appointment of the state farm caretakers and lessees is concerned is that when a PLAS caretaker has to be appointed, in most instances the caretaker would be someone who has been approved through the NLAACC structure for allocation.
- b) However, by the time the transfer process is completed, and they are in possession of the title deed, the DRDLR would ideally need a caretaker until the lease processes are finalised. The Regional Office would identify and submit the name of an interim caretaker to the Director: Property Management, who would process a submission to the Chief Director for approval.
- c) In the case of leases, the Beneficiary Selection Committee would conduct interviews and make recommendations. The second committee that support or not support the BSC recommendations, is the PTC. Thereafter the NLAACC structure approves the recommended candidates.
- d) Following such approval, his role is to generate a lease agreement. The agreement is first signed by the lessee who agrees to the terms and conditions

entailed in the contract, and thereafter it is submitted to the Chief Director (CD) for approval.

- e) Mr Makaula's caretaker agreement was for the period 27 April 2013 to 26 April 2014. Mr Zigana's agreement was for the period 27 April 2014 to 26 April 2015.
- f) The Inspections conducted should be able to indicate who occupied the farm during this period. The State Land Lease and Disposal Policy is used for appointment of both caretakers and lessees. However, the policy does not provide for a standard procedure to identify the caretaker.
- g) Each province follows their own processes, and in KwaZulu Natal's case, the Regional Office performs the allocation function and the identification of caretakers. Recently, they had a Property Management Forum meeting wherein such policy deficiencies were discussed.
- h) In relation to the interviews held on 01 November 2018, the interview questions were formulated by the panel members on the day. These are usually standard questions asked during interviews of selecting beneficiaries. He does not remember why Mr Ndlazi, who was scored 81, was not recommended despite being the highest scored candidate.
- i) The reasons should however have been captured in the minutes of the interview. Possibly, it could have been that he was not in good standing with SARS. The chairperson would verbally inform them upon convening a meeting, that background checks / verifications were done on the candidates' accounts at SARS. The panel did not receive any grievance or complaint from the interviewed candidates post that interviews.
- j) He is not aware that Mr Zigana has sub-leased the farm during his stay on the farm. Had the office been aware of that, the office would have terminated his contract as this conduct constitute a material breach of contract. The current lease with Mr Makaula is for 30 years.
- k) The policy provides for an option of 20 years extension and of purchasing the farm. Equally, the 30 years lease agreement is tantamount to notarial ownership in relation to the Deeds Office. It gives the farmer a right to register a notarial right against the Title Deed. However, the notarial ownership has more superior power than a lease agreement but less power as opposed to the Title Deed.

- l) The state remains the owner of the farm. In a case where the farmer intends to execute material changes to the farm, such as erecting a structure, such lessee will have to request permission from the CD.

**3.2.5 FID interviewed Ms Antionette Clarissa Ronnelle Whyte, Manager: Local Economic Development: Greater Kokstad Municipality – KZN, who indicated the following:**

- a) The participation of the Municipality in consideration for farm leases / allocations is based on the premises that the Municipality is a sphere of government and the farm falls within the municipality jurisdiction. Also, to ensure increased participation by all sectors, departments or public bodies;
- b) In specific to the lease of Spionkop farm at the end of 2018, either Mr Nobula or Mr Ince invited her, the DRDLR was the lead department;
- c) The role of the Municipality post allocation of the farm includes facilitation and access to opportunities. Above all, the main role during the interview was to ensure that the proceedings are conducted in a fair and transparent manner. It was also to ensure that the farm remains economically active or brought into economic activity and that the priority objectives of government are realised;
- d) The interview process followed on 01 November 2018 for the lease of a farm located in Kokstad was as follows: They were appraised of the farm details which also included the processes of advertisement in term of the lease. The interview questions were developed and agreed to. The questions enabled the committee to identify suitable candidates. These questions revolved around the candidates' technical and financial skills, previous and marketing experience.
- e) It was the role of the committee to make recommendations on the preferred candidates. In all intents and purposes, the recommendations are based on the highest scorers. In relation to why Khaya Ndlazi / Vusi Buthelezi, a candidate who scored 81, was not recommended, she was not entirely certain. Based on her score sheet, she indicated that *"the candidate appears to have limited practical farming experience..."*
- f) However, there might have been other issues such as the technical content and understanding together with the issue of locality of the candidate. The Municipality, in terms of the objects of local economic development, is mandated

by the Constitution to ensure socio-economic development. This mandates strategies such as the retention of local spend and access to opportunities such as the retention of existing business activities and the expansion thereof.

- g) Subsequent to the interviews, she could not recall if any of the candidates lodged a complaint or grievance relating to the leasing of the farm. The DRDLR would normally notify the municipality who the successful lessee is. This outcome is normally reported at the respective Integrated Development Plan meetings.
- h) Post the appointment of a lessee, if there will be any services required from the Municipality, then the DRDLR or the concerned farmer would make such a request. In this case, she could not recall having received any direct request for assistance for the farm in question.

**3.2.6 FID interviewed Mr Bekizizwe Zondi, Retired Agricultural Advisor: DRDLR: Kokstad, KZN, who indicated the following:**

- a) In 2018 before his retirement, he was invited by the District Office of the DRDLR to attend a briefing in the Greater Kokstad Municipality. All the candidates who attended the briefing were then invited for interviews which were held in his office in Kokstad on 01 November 2018. There was no formal process of shortlisting the candidates.
- b) He worked with Mr Zigana before the interviews were conducted. Mr Zigana was the caretaker on one of the Spionkop farms in Kokstad. His office assisted Mr Zigana with some farming activities, but they (his office) knew that Mr Zigana was not operating on his farm.
- c) Mr Zigana was one of the candidates who attended the interviews, unfortunately he did not make it. If he remembers well, the farm was allocated to Mr Makaula and the other portions was allocated to Beka Ngcoya. The Spionkop farm, as the principal farm, was divided into three portions, Groove Park, Nooitgedacht and Trout Waters.
- d) Grove Park and Nooitgedacht were given to Mr Makaula because these were the small portions and Trout Waters was given to Mr Beka.
- e) In regard to the candidate, Mr Ndlazi / Buthelezi who scored 81 points in terms of the minutes; he could not remember what led to the candidate not being



recommended. Usually, the highest scored candidate would be recommended. However, what he noticed on the minutes is that the candidate is not from within the location of Kokstad. He stays far away, and this poses a challenge to Agricultural Advisors of people who do not stay on the farm because they do not perform.

- f) Someone who has other businesses like Mr Ndlazi, might have been the reason why he was not considered. Apart from the interviews held on 01 November 2018, he previously formed part of other interviews in Kokstad as there are many land reform farmers in Kokstad.
- g) In relation to the interviews held in November 2018, the panel did not receive any grievance from the candidates who were interviewed. Unless if such was submitted to his office, because very soon after the interviews he retired.
- h) He did not work with Mr Makaula however, he worked with Mr Zigana as he was part of their (Mr Zondi's Office) mechanisation programme where emerging farmers were assisted.
- i) Mr Zigana has been on the farm for about three years. He only met Mr Makaula on the day of the interviews. No one amongst the panel members attempted to influence the outcome of the interview. The interview questions were submitted to the panellist by officials from the District Office on the day of the interview. He was not involved in the formulation of these questions. In this case, the Chairperson provided them with questions.
- j) One of the concerns that were raised to him by Mr Zigana before the interviews was that he did not know where he was going to take his livestock should he not pass the interview. At the time, he had about 150 herd of cattle.
- k) He does not know what actually happened after the interviews since he retired shortly afterwards. He concluded by stating that he is not an Advocate and has never represented the DRDLR in a court matter.

**3.2.7 FID interviewed Mr Mthobeni Ndlovu, Assistant Director: Client Liaison and Communication – District Office: Port Shepstone, KZN, who indicated the following:**

- a) He was part of the District Beneficiary Selection Committee (DBSC) for the interviews held on 01 November 2018 at the Department's Office in Kokstad.

His role as Secretariat was to record the proceedings and produce written minutes to the DBSC. This was the overall role played by all other secretaries on the day.

- b) After the interviews, the secretariat consolidated the minutes and submitted a copy to the DBSC for validation. He confirmed that the minutes presented to him with the title *"Minutes for Potential Lessee Screening for Spionkop held on the 1st of November 2018 at the DRDLR of Agriculture Office in Kokstad"*, are the minutes of the interviews submitted to the Committee by Secretariat members.
- c) Apart from the interviews held on 01 November 2018, his overall duty in relation to the leasing of farms is that he is responsible for putting out the advert and briefing the applicants about the advert.
- d) In relation to the appointment of Mr Zigana as the caretaker of the farm in Kokstad, he was not involved in the process of his appointment. What he knows is that during the process of appointing a caretaker, no interviews are held, and the period is mostly up to 12 months.
- e) However, in a case of appointing a Lessee, interviews are held, and the period of occupation is 30 years or more.
- f) He indicated that there was a dispute lodged by one of the beneficiaries, Mr Ngcingwana, in relation to the leasing of the farm in Kokstad. The matter was in court.
- g) During this time, Mr Zigana was appointed as the caretaker of the farm. The DRDLR advertised the leasing of the farm which Mr Zigana occupied at the time, because the court proceedings relating to the lease of the farm was not finalised/completed.
- h) He was not knowledgeable of what the court's verdict was but based on the fact that Mr Ngcingwana did not occupy the farm, it is only logical that the court did not rule in his favour, hence the advertisement. Likewise, Mr Zigana applied, hence he formed part of the interviews held on 01 November 2020.
- i) Except the minutes provided, the other record he could provide was the scoresheets of the candidates.



**3.2.8 FID interviewed Ms Babalwa Magoda, Chief Director – DALRRD National Office, who indicated the following:**

- a) In 2014 she occupied the position of Chief Director: Recapitalisation and Development, within the Land Reform Branch.
- b) Based on further information and some specifics given by the Investigator, she thinks she remembers who Mr Zigana may be. Her recollection was triggered by the mentioning of the allegation made by Mr Zigana against Mr Nobula. She remembers because she knows where Mr Nobula works. But she doesn't understand Mr Zigana's allegation that she told him she was surprised he was still occupying the farm.
- c) She thinks she has met him (Mr Zigana) in person, if he is indeed who she thinks he is. They were in the Eastern Cape, around Mthatha area, attending the Minister's event of launching a Mantusini Recapitalisation project. The Director-General was in attendance and she was invited because it was a Recapitalisation project which was launched. Two or three people came to DG and she thinks they were asking for recapitalisation assistance, maybe fencing or something else.
- d) The DG said she must assist them. By virtue of being based at National Office and being unable to assist, she asked them which province they are coming from and they said KwaZulu Natal. She realised that the area they mentioned is the district which Mr Nobula is responsible for. She then referred them to Mr Nobula and at a later stage she met Mr Nobula at Pietermaritzburg and explained that there are people who met the DG and they need assistance.
- e) The briefing she got from Mr Nobula was that the farm was not yet allocated in terms of a lease arrangement, but it was occupied on a caretaker basis. She wouldn't know the reasons it was not allocated at the time. As a result of the farm being occupied through the caretaker arrangements (by Mr Zigana or other people), she doesn't know how many people were on the farm.
- f) They (Nobula's office) were still engaging in the process of allocating or leasing the farm. As a result, all the recapitalisation related things like fencing will wait until the project is allocated to them (Mr Zigana) or any other person identified through the established allocation processes.

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- g) For recapitalisation money to be released, there must be a business plan, and there must be a permanent person occupying the farm in terms of a lease agreement. At that time, she thinks there were caretakers and she didn't know why there were caretakers. This is what she can remember.
- h) The gentleman (Mr Zigana) is correct that he was referred to her by the DG, but it was not telephonically. She was at the Mantusini Recapitalisation project event and they came to the event as well. As to why they came to the event while they are from KwaZulu Natal, she won't know but maybe they wanted to see the Minister or the DG to talk about the project.
- i) In response to the allegation that she told him (Mr Zigana) that she was surprised that he was still occupying the farm because Mr Nobula is planning to remove him, her response is that he is lying. She did not. After she met him in Eastern Cape, she may have spoken to him to give progress, but she never said that Nobula said he is going to remove him from the farm.
- j) On the allegation that she advised him to refuse to vacate the farm unless an alternative farm was provided, she denies having said that. He was a caretaker on the farm, and she didn't know the reasons he was a caretaker in the first place. How could she suggest that he be provided an alternative farm, as what?
- k) Her involvement in this matter was not about him being allocated the farm, but it was about the fencing of the property, which is part of recapitalisation. Her interest was to develop the property, to fence it so that it does not get damaged, which could not be done until a lease agreement was concluded. She has nothing to do with the allocation of the farm.
- l) She doesn't remember anything about sending a message to him indicating that he will be removed from the farm since he refused to move to the farm called Arnold. Maybe Mr Nobula may know something about the Arnold farm but as for her, she doesn't remember anything of that sort. Why did Mr Zigana keep quiet for so long, because it would have been better if he lodged a complaint earlier. Now she is struggling to recall something that happened in 2014.

- m) For two and a half years she was out of the Department, maybe if she sees the message, she allegedly sent to him, she will be able to remember. Mr Zigana could not provide the investigators with the messages.

**3.2.9 FID interviewed Mr Mahlangu, Director: Strategic Land Acquisition – PSSC, KZN, who indicated the following:**

- a) He is also Acting Director: Recapitalisation. When he joined the DRDLR in October 2017, the State Land Lease and Disposal policy was under review. At the time, there were a number of agreements which might have expired, and reallocation could not happen considering that the policy was still under review.
- b) Later in 2019, the policy was approved and the process of allocation of farms and in some instances, conversion of the previous 5 years lease, as was the case before the policy was reviewed, then started.
- c) In relation to his involvement in Mr Zigana's concerns or complaint, he received a letter from the Office of the DDG: LRD in Head Office, Mr Ndove. The letter is dated 01 July 2019. In short, the letter raises two issues, namely that Mr Zigana complained that he has been on the farm from 2012 until 2014 and therefore he should have been given the priority to lease the farm and that Mr Nobula has abused his power and harassed Mr Zigana.
- d) On 18 July 2019, he convened a meeting between himself, Mr Nobula and Mr Zigana. This meeting was held at the Port Shepstone District office.
- e) In regard to the allegation that Mr Zigana was astonished when Mr Nobula phoned to inform him about the new lessee, Mr Zigana's response in that meeting was that he knew that the farm was advertised, although he did not get this information from the department.
- f) He saw the advert and then applied to be considered. Then he noted two contradictions in Mr Zigana's response. Firstly, that he was surprised when he was informed about the new lessee, considering that he saw the advert, applied and attended the interviews.
- g) Secondly, contrary to what is entailed in his letter, Mr Zigana withdrew all the allegations entirely. He stated that the allegations were not correct. He made

those allegations out of frustration and that he did not want to paint Mr Nobula in a bad light.

- h) He considered the contradictions to be so material that he could not proceed with the matter. He then wrote to the office of the DDG to seek the way forward. He submitted that the office of the DDG request the author of the letter to confirm or not confirm the contents of the letter. Because Mr Zigana who was in the meeting, and Mr Zigana the author of the letter, gave contradictory versions.
- i) While waiting for the response, Mr Nobula informed him that Mr Zigana has filed court papers against the department. He since stopped with his intervention considering that the matter was now in court. He did not write a formal report considering that the matter was in court.

**3.2.10 FID interviewed Ms Tammy Pillay, Deputy Director: Legal Services – PSSC, KZN: who indicated the following:**

- a) On 02 July 2019, Mr Zigana took the DRDLR to the Pietermaritzburg High Court. He brought an application against the Department, the Chief Director, Mr Mndaweni, and Mr Nobula. He stated that he was evicted from the farm unlawfully and that Mr Nobula was harassing him.
- b) Mr Zigana also stated that he was an extra occupier of the farm since he had a caretaker agreement which expired, and that the DRDLR should find him an alternative farm since he had about 100 cattle on the farm. The DRDLR defended the matter and filed an Opposing Affidavit.
- c) In defence, the DRDLR stated that Mr Zigana was not an extra occupier, otherwise he would not have signed a caretaker agreement with the department. The DRDLR accepted that there was a caretaker agreement that was entered into between the DRDLR and Mr Zigana.
- d) It was also highlighted that there were about three other caretakers whom the DRDLR had entered into caretaker agreements with on the same farm. At some stage the DRDLR convened a process of regularising all the farms where there were only caretakers appointed and appointed lessees. The farm occupied by Mr Zigana at the time, formed part of these farms. There was an advertisement



and interviews were held and Mr Zigana was not successful in that interview. Mr Makaula was the successful candidate.

- e) Apparently, the DRDLR did a handover of the farm and Mr Zigana agreed with the new lessee, Mr Makaula, that he will vacate the farm with his livestock within 90 days. Before the lapse of this period, Mr Zigana filed an application against the Department. On the day of the Court hearing, neither Mr Zigana nor his legal representative appeared before the court and the matter was struck off the roll.
- f) Mr Zigana refused to remove his livestock from the farm and Mr Makaula obtained a court order against Mr Zigana to remove his livestock from the farm. Mr Zigana then filed an application against the Sherriff of the High Court in Kokstad and the SPCA. He lost the matter, and he was ordered to pay costs and remove his livestock from the farm.

**3.2.11 FID interviewed Ms Radebe, Director: RSSC- Port Shepstone, who indicated the following:**

- a) Her only involvement in signing the Allocation Memo was based on the fact that she is the District Director, and it was resolved at the Provincial Land Agricultural Forum (PLAF) that District Directors should be part of the signatories for Memos generated at the District to ensure proper planning and coordination of project plans within the District. Also, to ensure that comments raised by the committee were addressed.
- b) She signed based on the contents of the Memo specifically the summary on why the DBSC recommended the proposed lessees (see summary on 8.2 of the Allocation Memo) for allocations. She does not recall if the issue of the farmer that scored higher was discussed at PLAF as it was not disclosed in the Memo, but she picked it up recently when the complainant has gone to the papers. She then queried this with Mr Nobula who was the Chairperson of the DBSC, and he indicated that, that particular applicant was not prepared to share the farm as he wanted a bigger farm for his proposed Feedlot establishment.
- c) Mr Mahlangu received the enquiry from Ms Nkabinde on 10 July 2019 from the Office of the DDG: LRD and was requested to arrange a meeting with the

Complainant (Mr Zigana) within 14 days and report back to the office of the DDG. Mr Mahlangu then asked the Office to arrange the meeting with Mr Zigana, which was held on the 18 July 2019 in the Port Shepstone Office. This was the first time she met Mr Zigana.

- d) From what she gathered from that meeting was that Mr Zigana was complaining that he was not advised when the farm was being advertised by the Department, when he was a Caretaker of the farm. He only saw the Advert/Notice around the area and decided to apply.
- e) The Office indicated that at a time his caretaker agreement had expired, but they did invite him for interviews/assessments. He also mentioned that he was not made aware of the outcome of the interviews/assessments, of which the office indicated that they sent emails to all applicants and his was not reachable. Further to that, the office sent a letter to Mr Zigana on the 03 April 2019 advising him of the outcome of the assessment.
- f) Mr Zigana was also asked about the allegations levelled against Mr Nobula, which he had made in the letter dated 01 July 2020. Mr Zigana indicated that he was making all those accusations out of frustration. He indicated that he withdraws the allegations of victimization levelled against Mr Nobula in the letter.
- g) Mr Mahlangu was then supposed to prepare a report to DDG: LRD after the meeting with Mr Zigana. Mr Mahlangu wrote to Ms Nkabinde requesting her to ask the complainant (Mr Zigana) to confirm if the contents of the letter still stand as some of the facts in the letter were contradictory to what was gathered from Mr Zigana during the consultation.
- h) This included dates of his caretakership and allegations against Mr Nobula. Her understanding was that Mr Mahlangu did forward the report to the DDG as requested. However soon after, Mr Zigana had taken the matter to court which might have hindered Mr Mahlangu to continue with his complaint.

**3.2.12 FID interviewed Mr Levinrad, Chief Land Reform Advisor: Strategic Land Reform Interventions (SLRI), who indicated the following:**

- a) Late in 2018, there was a structure called the National Technical Committee (NTC), which was tasked amongst others, to quality assure the submissions of



provinces before they could be tabled at the NLAACC. Around August 2018, the NTC was abandoned and the provinces made their submissions directly to NLAACC. Meeting packs will be circulated to NLAACC members days before the meeting. This pack includes the agenda, the previous minutes, schedule and the Memoranda of various provinces.

- b) However, the Committee does not receive all the attachments referred to in the Memoranda. These supporting documents are taken to the meeting in different files so that it could be easier for the committee to refer to these documents should they request to do so. NLAACC is the highest approval structure in matters of land acquisition and allocation.
- c) In relation to the Spionkop Farm, it appears on the Memorandum that the DBSC did recommend to the PTC, which eventually submitted the Memo to the NLAACC for approval. The Chief Directorate: SLRI would go through the minutes and other attachments submitted by the Province, and if we note any irregularity, we would then engage the province concerned for clarity and/or rectification.
- d) In this case, the Chief Directorate: SLRI did not notice any irregularities in the minutes submitted by the KZN PSSC office, in particular, the case of the highest scored candidate, (Mr Ndlazi), who was not recommended. This may be so as a result of the minutes not indicating the reasons for such exclusion. He is not sure if this issue was discussed during the meeting on 18 February 2019. Above all, the committee relies on the credibility of the concerned Chief Director that the information presented at the NLAACC is truthful.

**3.2.13 FID interviewed Mr Ndove, Deputy Director-General: DRDLR: Land Redistribution and Development, who indicated the following:**

- a) NLAACC is the approval structure that adjudicate on issues/matters discussed mainly in the respective provinces. These are matters concerning the acquisition and allocation of farms.
- b) There are two structures at the provincial level that deals with the acquisition and allocation matters, that is, the DBSC and the PTC, headed by the Chief

- Directors in the provinces. Once the provincial approval structure is satisfied with what is submitted by the DBSC, then the matter is submitted to NLAACC.
- c) When matters are submitted to NLAACC for consideration, such would be accompanied by supporting documents attached to the main memorandum. However, the memorandum becomes the main source of information upon which the NLAACC makes its decision.
  - d) In essence, the information entailed in the memorandum is expected to be detailed in way that all material facts are presented to the members of NLAACC for them to apply their minds appropriately.
  - e) It is practically not possible to attach all the supporting documents to the memoranda of each member of each province owing to the complexity of the matters NLAACC deals with in a meeting, but the main submission does contain the attachments. However, should NLAACC further require supporting documents necessary to take a decision, such will be made available by the province concerned.
  - f) In a case where there is/was a material discrepancy during the interview, the PTC is expected to at least indicate for instance, the reasons why it carries a different view as opposed to the recommendation of the DBSC. These reasons should be entailed in the memorandum to be submitted to the NLAACC so that NLAACC can assess the fairness of such recommendation / reason given by the PTC.
  - g) It must be noted that NLAACC does not have a direct engagement with the DBSC, however, it engages with the PTC through the Chief Director or a delegate who will be representing particular province. In the event the PTC does not bring such discrepancy to the NLAACC's attention, the Committee members would not be informed about such.
  - h) In relation to a specific case of Mr Ndlazi, that he was the highest scored candidate with 81 points and therefore not recommended, he (Mr Ndove) would like to state that this is for the first time he heard this information from the investigators. The information and/ or reasons thereof, were not brought to his attention or incorporated in the memorandum. And if this is the case, he can only conclude that the NLAACC was misled. In conclusion, he would like to

state that during his tenure as the DDG, he has never been made aware of a structure called National Technical Committee (NTC).

**3.3 FID reviewed the following documentation regarding the objectives defined in paragraph 3.1:**

**3.3.1 FID noted the Memorandum of Agreement for the appointment of a Caretaker entered into by and between the DRDLR as the owner and Mr Williams Osborn as the Caretaker. The Memorandum was only signed by the Caretaker on 6 July 2013. The duration of the Caretaker Agreement was from 27 October 2012 to 26 April 2013.**

**3.3.2 FID noted the Advertisement for the expression of interest to lease State Land, with the closing date for applications being 15 September 2018.**

**3.3.3 FID noted the Minutes of the meeting for a potential lessee screening for Spionkop farm as held on 1 November 2018 and finalised on 12 November 2018. The following panel members were present and participated as panel members:**

- a) Mr Phakamile Nobula as the DRDLR Chairperson;**
- b) Mr Bheki Zondi as the KZN Department of Agriculture and Rural Development representative;**
- c) Ms. Antionette Whyte as the Greater Kokstad Municipality LED representative;**
- d) Mr Denver Ince as the DRDLR Property Management representative; and**
- e) Mr Mthobeni Ndlovu as the DRDLR Secretary.**

**3.3.4 FID noted the Memorandum of Agreement for the appointment of a Caretaker entered into by and between the DRDLR as the owner and Mr Makaula as the Caretaker. The Memorandum was signed by the parties on 6 August 2013 and 24 June 2014 respectively. The duration of the Caretaker Agreement was from 27 April 2013 to 26 April 2014, and the portions of land in agreement were:**

- Portion 15 of the farm Spionkop No.283-ES measuring 630,8055 ha, T34708/2011;**
- Portion 1 of the farm Ronde-Fontein No.307-ES measuring 188,4370 ha, T34708/2011;**
- The farm Kroom Draai No.306-ES measuring 539,6152 ha, T34708/2011;**
- The farm Dummy No.308-ES measuring 539,0270 ha, T34709/2011;**
- Portion 4 (of 3) of the farm Nooitgedacht No.309-ES measuring 6,6410 ha, T34709/2011; and**

- Portion 2 of the farm Nooitgedacht No.309-ES measuring 6,6410 ha, T34709/2011.

3.3.5 FID noted the Memorandum of Agreement for the appointment of a Caretaker entered into by and between the DRDLR as the owner and Mr Zigana as the Caretaker. The Memorandum was signed by both parties on 4 August 2014 and 9 June 2014 respectively. The duration of the Caretaker Agreement was effective from 27 April 2014 to 26 April 2015.

3.3.6 FID noted the long-term Agricultural Agreement of Lease between the lessor DRDLR and the lessee Mr Makaula. The agreement was signed on 6 May 2019 by the lessee and 21 May 2019 by the lessor. The duration of the agreement was for 30-years effective from 1 April 2019 to 30 May 2049.

3.3.7 FID noted the Hand-Over Report of PLAS Project Spionkop 2 from Mr Zigana to the DRDLR, dated 14 June 2019. Attached thereto, was another Hand-over Report of PLAS Project Spionkop 2 from the DRDLR to Mr Makaula, signed on 14 June 2019. Both reports recorded the conditions of the immovable structures at the time of handing over.

3.3.8 FID noted a Letter from Mr Zigana addressed to the DRDLR, dated 1 July 2019. The subject of the letter was "Victimisation and unfair allocation of the Groove farm in Kokstad".

3.3.9 FID noted the Agenda for the Groove farm meeting that was held on 18 July 2019 at the Port Shepstone Boardroom. The purpose of the meeting was to address the complaint raised by Mr Zigana. FID could not obtain the minutes of this meeting. This meeting was attended by the following members:

- a) Mr Zigana;
- b) Ms Hadebe;
- c) Ms Mndaweni;
- d) Mr Nobula; and
- e) Mr Mahlangu.

3.3.10 FID noted the Notice of Motion, dated 2 July 2019, by Mr Zigana as the applicant, the DRDLR as the first respondent, Mr Mndaweni as the second respondent and Mr Nobula as the third respondent. The notice was placed at the Pietermaritzburg High Court with case number 4582/19P. The notice bared the following terms and conditions:

- a) The decision of the third respondent to evict the applicant from the farm be declared unlawful and set aside;
- b) Pending the finalisation of this application, the third respondent is interdicted from harassing the applicant; and
- c) The cost of this application be borne by any party opposing the relief sought herein, jointly and severally.

3.3.11 FID noted that the DRDLR responded to the Notice of Motion in respect of case number 4582/19P and filed the respondent's opposing affidavit as follows:

- a) Opposing affidavit by Mr Nobula, dated 3 October 2019.

3.3.12 FID noted the Notice of Motion, dated 21 November 2019, initiated by Mr Makaula as the applicant, Mr Zigana as the first respondent and Minister of Agriculture and Land Reform as the second respondent. The notice was placed at the Pietermaritzburg High Court with case number 8770/19P and was scheduled to sit on 2 December 2019. The notice bared the following conditions:

- a) Pending the finalisation of the case between the first and second respondent under case number 4582/19, the first respondent be ordered and directed to remove all his livestock from portion four (4) of the farm Nooitgedacht No.309, portion two (2) of the farm Nooitgedacht No.309 and the farm Dummy No.308;
- b) In the event of the first respondent failing to forthwith remove his livestock from the farm, the Sherriff of the Court and the South African Police, be authorised and directed to take all steps necessary to affect such removal of livestock forthwith; and
- c) The first respondent is ordered to pay the costs of this application.

3.3.13 FID noted the High Court Order number 8770/19 against Mr Zigana, dated 2 December 2019, in response to the Notice of Motion dated 21 November 2019, which bared the following orders:

- a) The first respondent is ordered and directed to remove all his livestock from portion four (4) of the farm Nooitgedacht No.309, portion two (2) of the farm Nooitgedacht No.309 and the farm Dummy No.308;
- b) In the event of the first respondent failing to forthwith remove his livestock from the farm, the Sherriff of the Court and the South African Police, are authorised and directed to take all steps necessary to effect such removal of livestock forthwith; and



- c) The first respondent is ordered to pay the costs of this application.

3.3.14 FID further noted the Court Order number 1032/2020, dated 18 February 2020, where Mr Zigana was the applicant, the Sherriff of the High Court was the first respondent, Mr Makaula was the second respondent, Mc Leod & Associates as the third respondent, Society for the Prevention of Cruelty to Animals (SPCA) as the fourth respondent and the Minister of Agriculture and Land Reform was the fifth respondent. The following orders were declared against Mr Zigana:

- a) The livestock to the value of R55 000.00 of the applicant which are currently being cared for by the SPCA be sold on or before the 18 February 2020, by the farmer's livestock agent by way of private treaty to pay the cost of R45 000.00 to the SPCA for taking care of Mr Zigana's livestock;
- b) Legal cost to the value of R10 000.00 be paid to the SPCA;
- c) The amount of R55 000.00 be paid by the farmers livestock agent to the SPCA's attorneys Elliot & Walker Attorneys in Kokstad in respect of the amount due to the SPCA for taking care of the aforesaid livestock and legal cost in this matter;
- d) The balance of the animals not sold in the sale of the aforesaid are to be released to Mr Zigana after the aforesaid sale has been concluded; and
- e) The balance of the relief in this matter is postponed *sine die* (indefinitely) and the further costs of this matter are reserved.

3.3.15 FID noted the Site Inspection and Asset Verification Report, dated 28 March 2014, and observed the following:

- a) There are about 120 cows, of which the official was told that they belong to Mr Zigana; and
- b) There were about 300 cows, that belonged to the previous owner and the caretaker was not available to give clarity.

3.3.16 FID noted the minutes of the meeting of NLAACC, dated 18 February 2019, as chaired by Mr T Ndove. In the meeting, the Spionkop farm project was presented, discussed and approved. FID noted that the minutes of the meeting did not include any deliberation on why the highest scored candidate (Mr Ndlazi) was not recommended.

**3.4 FID reviewed relevant legislative and policy requirements regarding the objectives defined in paragraph 3.1:**

**3.4.1 FID noted the Extension of Security of Tenure Act 62 of 1997:**

**CHAPTER IV: Termination of right of residence and eviction**

**Section 8(1)** provides that: *"Subject to the provisions of this section, an occupier's right of residence maybe terminated on any lawful ground, provided that such termination is just and equitable, having regard to all relevant factors and in particular:*

*(a) the fairness of any agreement, provision in an agreement, or provision of law on which the owner or person in charge relies;..."*

**Section 9(1)** explicitly states: *"Notwithstanding the provisions of any other law, an occupier may be evicted only in terms of an order of court issued under this Act."*

**3.4.2 FID noted the State Land Lease and Disposal Policy, 2013:**

**"Chapter 4: Caretaker Arrangements**

**38.1** *Caretaker agreements shall be used sparingly and mainly on land referred to in Chapter 2 above (Investigators' emphasis: This includes agricultural land).*

**38.2** *Caretaker agreements shall always be treated as temporary measures to ensure that the property is looked after, whilst a lessee has not yet been selected.*

**38.3** ...

**38.4** *As caretaker arrangements may result in the deterioration of the property, such arrangements shall therefore be limited to a maximum period of 12 months.*

**38.5** *No caretaker agreement may be extended for any period beyond 12 months.*

**38.6** *No caretaker agreement shall contain any provision for any form of payment by the caretaker to the DRDLR."*

**3.4.3 FID noted the following paragraph and clauses as entrenched in the State Land Lease and Disposal Policy, 2019:**

**Paragraph 1.2: The Constitution**

*"Section 25(5) provides that, "The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis". In a context wherein the majority of citizens still do not have equitable access to land, this constitutional promise still remains an imperative. This policy therefore constitutes "other measures" referred to in the Constitution."*

***"Clause 4: Categories of farmers in the agriculture space***

The Policy provides for the different categories of farmers which are defined below:

- (i) Category 1: Households with no or very limited access to land, even for subsistence production.*
- (ii) Category 2: Small-scale farmers who are farming or intend to farm for subsistence purposes. They may be or may not be selling some of their produce in local markets.*
- (iii) Category 3: Small-scale farmers who have been farming at a subsistence level, selling part of their produce in local markets, have gained reasonable experience to farm commercially and/or who intend to graduate to Category 3; Medium to large-scale commercial farmers who have already been or intend farming commercially at various scales, but are disadvantaged by location, size of land and other resources or circumstances, and with real potential to grow as determined by Beneficiary Selection Policy.*

***Clause 10: Lease Period***

*The initial lease period for any lease shall not be longer than 30 years and may be renewable for another 20 years.*

***Clause 19: Option to purchase***

*Only Category 3 shall qualify for long term leases with option to purchase, which can only be exercised after 5 years from the effective date of the lease."*

#### **4. CONCLUSIONS**

##### **4.1 With regard to the objective of whether the request falls within the mandate of the FID:**

**4.1.1** The purpose of FID is to investigate reported allegations of fraud, corruption, financial misconduct and other irregularities and to provide independent, objective findings and recommendation to the Director-General and the DALRRD.

**4.1.2** The allegations fall within the mandate of FID as it relates to the allegations of corruption.

##### **4.2 With regard to the objective of whether the process followed in identifying, selecting and allocating the farm to Mr Zigana as Caretaker, complied with the applicable policies, FID concludes as follows:**

**4.2.1** The process to be followed when allocating Caretakers to farms is provided for in the State Land Lease and Disposal (SLLD) Policy. Section 38 of the SLLD Policy of 2013, states amongst others that:

- *Caretaker agreements shall always be treated as temporary measures to ensure that the property is looked after, whilst a lessee has not yet been selected.*
- *As caretaker arrangements may result in the deterioration of the property, such arrangements shall therefore be limited to a maximum period of 12 months.*
- *No caretaker agreement may be extended for any period beyond 12 months.*
- *No caretaker agreement shall contain any provision for any form of payment by the caretaker to the DALRRD.*

**4.2.2** In terms of the approval process, Section 39 of the 2013 SLLD Policy dictates that:

- *The Chief Director: PSSC shall approve and sign the caretaker agreement after being provided with a written motivation regarding why such agreement is necessary.*
- *The appointed caretaker should have been recommended by the District Beneficiary Selection Committee and Provincial Technical Committee, so as to ensure that such a caretaker has reasonable capacity to take care the relevant property.*

**4.2.3 In light of paragraph 4.2.1 and 4.2.2 above, FID found the following with regard to the caretaker agreement, which was signed with Mr Zigana as caretaker of the farm:**

- 4.2.3.1 In 2014, Mr Zigana was appointed as caretaker from 27 April 2014 to 26 April 2015. His appointment was done under the regime of the SLLD Policy of 2013. During the process of identifying Mr Zigana as the Caretaker, there was non-compliance with the SLLD policy in that the DBSC did not recommend the appointment. FID requested evidence to support that the DBSC meeting was convened, discussed and recommend the appointment. The only information available is the broad response by Mr Nobula, which refers to identifying a potential farmer and obtaining their "non-negotiable documents".**
- 4.2.3.2 FID noted in all of the three occasions of appointing Messrs Osborne, Makaula and Zigana as the Caretakers, there was a gap between the date of signing the agreement and the commencement date of the agreement. That is, the commencement date of the agreement comes before the agreements could be signed. Mr Nobula explained that there are instances when the Memorandum of Agreement is signed after the farmer has occupied the farm, in that case, the memorandum will be signed retrospectively. This raises a discrepancy whereby farmers are allowed to occupy the farms without proper authorisation.**
- 4.2.3.3 The SLLD 2013 Policy specifies that "no caretaker agreement may be extended for any period beyond 12 months".**
- 4.2.3.4 Between 2014 and 2019, the SLLD policy was under review. This is further confirmed by the document titled "Report on Challenges relating to the conclusion of Agricultural Lease Agreements", which was compiled and signed by Adv Mngwengwe. The document is dated 20 July 2018 and highlights the challenges experienced during the process of getting the review of the SLLD policy finalised. According to officials at the KZN PSSC Office, including Mr. Mdaweni, this policy review process was the reason why Mr Zigana remained on the farm, even after the expiry of his caretakership. FID is of the view that even though the 2013 policy was under review, it remained valid until it was replaced with the 2019 policy, which came into effect on 26 March 2019. This implies that towards the expiry of the caretakership signed with Mr Zigana, the province ought to have engaged in the process of identifying a new Caretaker to occupy the farm, at least with effect**



from 27 April 2015. The process of identifying a new Caretaker should have continued on an annual basis up until the approval of the new policy. In any event, the 2019 policy did not amend the period of caretakership in respect of agricultural properties. Allowing Mr Zigana to remain on the farm after the expiry of his caretaker agreement, and without any form of authorisation, contravened the provisions of the SLLD policy.

- 4.2.3.5 FID concludes that the caretaker agreement entered into with Mr Zigana did not comply with the SLLD Policy of 2013, as explained in par. 4.2.3.1 and paragraph 4.2.3.4 above.

#### **4.2.4 Gaps identified with regard to the applicable SLLD Policy**

- 4.2.4.1 During the interviews with officials in relation to the requirements of the SLLD Policy, it was mentioned that the policy is silent on how potential Caretakers should be identified. FID also performed an analysis of the relevant provisions as stated in the SLLD Policy and found that the policy indeed does not provide for a procedure to be followed when identifying caretakers but is rather very explicit on the requirement for the recommendation and approval of a caretaker. There is therefore a policy deficiency in that the District Office uses its discretion to identify potential caretakers. This deficiency presents an opportunity for abuse by officials.

#### **4.3 With regard to the objective of whether there was any fraud or corruption during the allocation of the farm to Mr Zigana as caretaker and to Mr Makaula as the lessee, FID concludes as follows:**

- 4.3.1 FID could not identify any evidence of fraud or corruption in the allocation of the farm to Mr Zigana as the caretaker and to the current lessee. The inherent challenge with the crime of corruption is that it happens between at least two people, mostly with no witness present. It is crucial that whoever alleges acts of corruption should at least have witnesses or evidence to back up the allegations. In this matter, Mr Zigana did not provide any evidence or witnesses.
- 4.3.2 Following a meeting, which was held on 18 July 2019 in the Port Shepstone Office, and convened after Mr Zigana complained to Mr Ndove, Mr Zigana withdrew the

allegations of corruption levelled against Mr Nobula. The meeting was attended by Messrs Zigana, Mahlangu, Nobula and Ms Radebe.

4.3.3 FID could not identify any evidence to confirm Mr Zigana's allegation that he gave Mr Nobula an amount of R700.00 through the Pep Store money transactions. During his interview, Mr Zigana was uncertain whether he transferred the money to Mr Nobula through Pep Store or Shoprite. He did not provide a receipt for the transaction or the cell phone number or ID number of the person he sent the money to, in order to support his statement. In the absence of clarity in respect of these issues, the FID has no ground to compile an affidavit to enlist the services of the South African Police Services to probe this matter further.

4.3.4 FID could not find evidence of corruption which led to the appointment of Mr Makaula as the lessee. The closing date for the Advertisement on the Lease Agreement was on 15 September 2018. The interviews were held on 01 November 2018 and there were 18 applicants who attended the interviews, including Mr Zigana. This is in compliance with the SLLD policy.

**4.4 With regard to the objective whether there were any irregularities during the allocation process of the farm to the lessee, FID conclude as follows:**

4.4.1 When seeking clarity from the panel members on the formulation of the questions of the interview, FID received contradictory information from the panellists, in which one of them indicated that he did not formulate the interview questions, but rather received them from the Chairperson of the Selection Committee. The other three panellist stated that they formulated the questions for the interview.

4.4.2 From the Minutes of the meeting reviewed, the FID found a discrepancy in the selection process wherein, one of the candidates, Mr Ndlazi obtained an overall score of 81. This score declared him the best candidate. However, he was not recommended for the appointment as a lessee.

4.4.3 During his interview, Mr Nobula stated that the reason Mr Ndlazi was not recommended for this farm, was because he was already recommended to be allocated one of the portions of Brookside Farm. On 2 September 2020, the FID made a follow-up telephonic interview and Mr Ndlazi then stated that after review of

his project file, the reason for Mr Ndlazi not being recommended was due to non-compliance but this was not recorded in the minutes of the meeting.

- 4.4.4 The explanation by Ms Whytes during her interview was that she was not certain as to why Mr Ndlazi was not appointed as the highest scored candidate however, in her scoring sheet she indicated that *"the candidate appears to have limited practical farming experience"*.
- 4.4.5 The explanation by Mr Zondi during his interview was that although he recommended Mr Ndlazi during the interview process, he had reservations that Mr Ndlazi's location was far from Kokstad and this posed a challenge to Agricultural Advisors of beneficiaries who do not stay on the farm, because they do not perform due to proximity to the farm.
- 4.4.6 The explanation by Mr Mndaweni during his interview was that the matter of Mr Ndlazi not being recommended as the highest scored candidate, was never brought to his attention.
- 4.4.7 FID concludes that, the minutes of the meeting as approved by the Chairperson, Mr Nobula, did not capture the explanation as to why Mr Ndlazi as the highest scored candidate was not appointed. Therefore, Mr Nobula's actions constitutes misrepresentation by omission.
- 4.4.8 Mr Mndaweni, Mr Mahlangu and Mr Radebe received the submission which included amongst others, the minutes of the selection committee meeting and failed to identify the irregularity of the DBSC recommending the second-best candidate, being Mr Makaula. They ought to have identified that, Mr Ndlazi was the highest scored candidate but was not recommended. The submission that was submitted by the DBSC, was also presented to the NLAACC for approval and the appointment of a lessee.
- 4.4.9 FID reviewed the minutes of the NLAACC meeting which was held on 18 February 2019. The minutes reflect that the reallocation of the Spionkop farm was part of the presented projects. The decision of NLAACC in respect of the project was recorded as "approved". From the minutes, there is no indication that the issue of recommending the second-best candidate instead of the best candidate, was discussed.

4.4.10 Based on the discrepancies above, FID concludes that there were irregularities during the appointment of the lessee in that the best performing candidate was not recommended nor appointed. In addition, the reasons for not recommending or appointing the best candidate were not disclosed.

**4.5 With regard to the objective of whether due process was followed during Mr Zigana's removal from the farm and the circumstances or the reasons which led thereto, FID concludes as follows:**

4.5.1 From Mr Zigana's Notice of Motion, he stated he was evicted from the farm.

In terms of Section 1 of ESTA, the term "evict" means, to deprive a person against his / her will of residence on land or the use of land or access to water which is linked to a right of residents. In terms of the Act, "eviction" has the corresponding meaning.

4.5.2 Mr Zigana's caretaker agreement expired on 26 April 2015, however, he remained at the farm until 21 May 2019 when the new lessee was appointed. Between 2014 and 2019, as confirmed by Property Management, the SLLD policy was under review. According to the KZN PSSC Office, the Policy review process was the reason why Mr Zigana remained on the farm for that period without a caretaker agreement.

4.5.3 The DRDLR advertised the leasing of the farm with the closing date of 15 September 2018. The interviews were held on 01 November 2018 and there were 18 applicants who attended the interviews, including Mr Zigana.

4.5.4 Mr Makaula was recommended as lessee for portion 1 of the Spionkop farm, being the farm, which was occupied by Mr Zigana at the time. On 21 May 2019, the DRDLR, through the CD, Mr Mndaweni, entered into a 30 years Agricultural Lease Agreement with Mr Makaula.

4.5.5 On 14 June 2019, Mr Zigana handed over the farm to the DRDLR. On the same date, the DRDLR handed over the farm to Mr Makaula.

4.5.6 Mr Makaula and Mr Zigana agreed that the latter should remove his livestock from the farm within 90 days. It must be noted that the SLLD policy makes provision for 30 days' notice. Mr Zigana failed to honour this agreement and Mr Makaula successfully obtained a court order against Mr Zigana to remove the livestock from the farm.

4.5.7 Due process was followed which resulted in Mr Zigana being removed from the farm. The caretaker agreement he has signed, lapsed. After the lapse of the caretaker's agreement, interested parties were invited to apply to lease the farm. Mr Zigana



applied. He was interviewed and his candidature was not successful. He thereafter signed the handover documents of the farm to the Department who in turn handed the farm over to the identified lessee, Mr Makaula. Mr Makaula allowed him to stay on the farm while he (Mr Zigana) was searching for another farm to relocate to. Following the disagreements between Messrs. Zigana and Makaula, the latter approached the court to have Mr Zigana removed from the farm, and a court order was granted in this regard. FID therefore concludes that Mr Zigana's removal from the farm, does not constitute an eviction. His caretaker contract had expired and therefore he had no right to occupy the farm. He was unsuccessful in his application to be appointed as a lessee. Furthermore, Mr Zigana signed the handover documents to hand the farm over to the Department and thereby agreed to leave the farm.

**4.6 With regard to the objective whether there were any merits to Mr Zigana's allegations, FID concludes as follows:**

- 4.6.1 On allegations of corruption, the FID could not find any evidence linking the officials of the DRDLR and/or any other third party, to acts of corruption. Therefore, Mr Zigana's allegations of corruption cannot be substantiated.
- 4.6.2 On the allegations of unfair treatment, the FID found that Mr Zigana was not unfairly treated in being removed from the farm as that happened after the expiry of his caretakership and therefore in compliance with the SLLD policy, as well as after he signed the handover documents, handing the farm back to the Department. His eventual removal from the farm was as a result of a court order initiated by Mr Makaula, who was appointed as lessee of the farm.

**4.7 Control deficiencies identified in respect of the NLAACC process**

- 4.7.1 The memorandums submitted to the NLAACC by the provinces in respect of acquisition and reallocation projects they seek approval for, are submitted along with the annexures. However, given the volume of projects presented on the day, these annexures are mostly not perused. The NLAACC relies on the contents of the memorandums presented by the Chief Directors or representatives of the respective provinces. The supporting documentations are not always reviewed.



4.7.2 Previously, the NTC was tasked with the responsibility of providing quality assurance on the documents before they could be presented to NLAACC, and liaise with the provinces, should they need clarity or further information regarding the project. The structure was responsible to ensure compliance on all the projects before they are presented to NLAACC. The NTC was disbanded and as a result the provinces submit their project to NLAACC, without being quality assured.

## **5 RECOMMENDATIONS**

### **5.1 FID recommends that the Director-General:**

- 5.1.1 Instructs Labour Relations to institute appropriate disciplinary action against Mr Nobula for initiating and Mr Mndaweni for approving the caretaker agreement of Mr Zigana in 2014, which was not presented to the DBSC and PTC in compliance to the SLLD policy of 2013 and therefore irregular.
- 5.1.2 Instructs Labour Relations to take appropriate disciplinary action against Mr Nobula and Mr Mndaweni for allowing Mr Zigana to remain on the farm after the expiry of his caretaker agreement without any formal agreement, which is in contravention of the SLLD policy of 2013 and therefore irregular.
- 5.1.3 Instructs Labour Relations to take appropriate disciplinary action against Mr Nobula for misrepresentation by omission, in that in the minutes of the DBSC, he failed to inform the PTC about the reason for recommending the second-best candidate as lessee of Spionkop, instead of the highest scoring candidate. Despite the minutes of the DBSC being attached to the submission for approval, the PTC and NLAACC did not discuss the recommendation to approve the second-best candidate instead of the highest scoring candidate, which may open DRDLR to litigation.
- 5.1.4 Instructs Labour Relations to take appropriate disciplinary action against Mr Mndaweni, Ms Radebe, Mr Mahlangu and Ms Mzila for negligence in that they failed to identify the irregularities in the DBCS minutes of the meeting wherein the second-best candidate was recommended for the lease agreement, without giving reasons for not recommending the best candidate .
- 5.1.5 Instructs Legal Services to advise on the validity / legality of the lease agreement between DRDLR and Mr Makaula.

- 5.1.6 Instructs Legal Services to advise on the legal implications / exposures of allowing Mr Zigana to continue occupying the farm for at least four years after the expiry of the caretaker agreement, without any formal authorisation.
- 5.1.7 Directs all the Chief Directors of all the Provincial Shared Services Centres, in consultation with the Deputy Director-General: Land Redistribution and Tenure Reform to ensure that physical verification of agricultural assets by potential Caretakers and lessees is conducted before any appointments can be made.
- 5.1.8 Directs a sample-based audit / assessment of the leased farms in all provinces to ascertain the extent to which farms were leased to beneficiaries who demonstrated to have capacity in terms of livestock and equipment during interviews and yet the DRDLR did not do verification.
- 5.1.9 Instructs the Chief Directors: PSSCs to ensure that no farmer occupies a farm as Caretaker without an approved Caretaker Agreement.
- 5.1.10 Instructs that all the Chief Directors: Provincial Shared Services Centres, in consultation with the Deputy Director-General: Land Redistribution and Tenure Reforms, develop Standard Operating Procedures in relation to the identification and appointment of farm Caretakers.
- 5.2 With regard to the control deficiency identified in respect of the NLAACC process, FID recommends that the Director-General approves the reinstatement of the NTC or another structure that would perform the quality assurance prior to the documents being send to NLAACC for consideration and approval.

## **6 RESTRICTIONS**

The report is for DRDLR purposes only and may not be used or distributed for any other purposes or to any other party without FID's prior written consent. FID reserves the right to supplement or amend the report upon receipt of additional information,