

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

**RECORD OF EXPEDITIOUS PROCESS IN TERMS OF REGULATION 9
OF THE SOUTH AFRICAN POLICE SERVICE DISCIPLINE REGULATIONS, 2016**

CASE NO: 01/08/222

**PERSAL NO: 0527125-8 RANK: MAJOR GENERAL NAME: WP RHOODE
REPRESENTATIVE: LIEUTENANT COLONEL SAMPSON**

By Lieutenant General SJ Kwena the Provincial Commissioner of North West Province on 06 February at the Board Room of the Divisional Commissioner: PSS, Maupanaga Building, Pretoria on allegations of misconduct as per the Notice issued in terms of regulation 9(2)(b) (Annexure P).

RECORD OF PROCEEDINGS:

1. The employee was informed of the allegation(s) of misconduct as per the Notice issued in terms of Regulation 9(2)(b) of the South African Police Service Discipline Regulations, 2016 (Annexure P).
2. It was confirmed that the documents/statements as per Annexure Q were given to the employee.
3. The employee was charged for allegedly contravening the following:
 - 3.1 2020-02-09 at or near Phala Phala Game farm you contravened Reg 5(4)(h) of the South African Police Service Discipline Regulation 2016, in that you allegedly committed misconduct by failing to open a criminal case despite being informed of the serious security breach relating to the house breaking and theft which occurred in Phala phala Game Farm belonging to the State President of the Republic of South Africa; Mr. MC Ramaphosa, instead you decided to conduct an investigation yourself.
 - 3.2 2020-06-04 you contravened Reg 5(4)(h) of the South African Police Service Discipline Regulation, 2016 in that you allegedly committed misconduct by directing the police officers to do away with Occurrence Book where the second incident was reported and that the incident must not be reported.
 - 3.3 2020-06-26 to 2020-06-27 you contravened Reg 5(4)(k) of the South African Police Service Discipline Regulation, 2016 in that you allegedly committed misconduct by misrepresenting the facts to the National Commissioner when you indicated in terms of your itinerary that you where travelling to Namibia for protection duties of the President whereas in truth and reality the President did not travel to Namibia and has no plans of travelling to that country

4. ANALYSIS

I will firstly deal with charge 1 and 3 respectively against the member then charge 2

Charge 1:

The Farm Manager Hendrick Von Wielligh was woken up by Sylvester Ndlovu who is the farm's housekeeping manager and told him about the house breaking.

Sergeant Ramokgopa who was the night shift commander woke up Warrant Officer Molekwa and told him about the house breaking.

Mr Hendrick Von Wielligh, is the farm manager, he is responsible for the entire farm in the absence of the owner of the farm. He had a fiduciary duty over the farm and is bound both legally and ethically to act in the other's best interest. Mr Von Wielligh is the person who was responsible to have opened a case docket if there was any criminality at the farm.

The charged employee, Major General Rhooode was not the first member on the scene, there is no statement in the investigation file that indicates that he refused that criminal charges be opened, I fail to understand why the member was charged for failing to open a case docket of housebreaking and moreover that there is no evidence or statement in the investigation file suggesting that he ordered members not to open a case docket.

It is against this background that I withdraw this charge against the member.

Charge 3

The allegations against the member is that he lied to the National Commissioner saying he is going to Namibia with the President whereas the President never went there, before any member flies out of the country there are protocols that are followed and due diligence done before the itinerary and the financial authority are approved and signed by the relevant authority.

In his representation Major General Rhooode indicated that he never said that he was accompanying the President to Namibia, on the contrary the president ordered him to accompany a certain Dr B Chauke to Namibia

The statement of the President or Dr B Chauke were never obtained to verify this and there was neither corroboration nor disputer of General Rhooode's assessment in this charge.

The then National Commissioner General (Ret) Sitole approved the trip as well as the

Financial authority on 2020-07-07 there is no statement of the retired National Commissioner that Major General Rhoode misled him.

It is against this background that I withdraw this charge against Major General Rhoode.

Charge 2

The Chairperson felt that Major General Rhoode has a case to answer in so far this charge is concerned, the member pleaded not guilty and the matter was postponed for 2024-02-14

2024-02-14

4. The matter is resuming, the Chairperson highlights that the Occurrence Book was taken by Colonel Matlho to the house of Major General Rhoode after the driver Jonas brought it to him. The Chairperson relied on the provision of Standing Orders (General) 301 and 303 governing the handling and filing of the Occurrence Book.

Lieutenant Colonel Samson representing Major General Rhoode highlights that the member cannot be found guilty on this charge due to the fact that the Occurrence Book in question is that of February 2020 and further that this Occurrence Book was already in storage at the Union Building when Colonel Matlho ensured that it was fetched and brought to him to take it to Major General Rhoode so that he can prepare for his defence after the media frenzy that he was going to be charged. This happened in 2022 and this Occurrence Book was also availed to the Public Protector, the Hawks and the internal Departmental investigator Major General Dladla.

The very same Occurrence book was brought to this hearing after it was taken from the storage with the same original entries being in existence, clear, visible and not destroyed or tampered with.

There is no statement or anyone in the investigation bundle that suggest that Major General Rhoode did away with the occurrence book, however there is a concession by both Colon Matlho and Jonas that he did take the 2020 Occurrence Book also an admission by him that he took it however that happened in 2022 and not in 2020 as the impression is created.

FINDING: Not Guilty

DATE OF FINDING: 2024-02-14

REASONS FOR FINDING:

1. The impression created from this charge is that the Occurrence Book was taken by Major General Rhooode in 2020 after the incident of House Breaking at Phala Phala farm was reported in it, however from the documentary evidence, he requested the Occurrence Book and other documents to prepare for his defense in 2022 after this appeared in the media and Jonas the driver fetched it from the storage at the Union Building as it was full and stored, gave it to Colonel Matlho who took it to the General


.....LT GEN
SJ KWENA

DELEGATED OFFICIAL

Date: 2024-02-14



**RECORD OF EXPEDITIOUS PROCESS IN TERMS OF REGULATION 9 OF THE
SOUTH AFRICAN POLICE SERVICE DISCIPLINARY REGULATION, 2016**

CASE 01/08/2022

PERSAL NO 7150340-4 SEGEANT HH REKHOTO

REPESANTATIVE: WARRANT OFFICER TM SITHOLE

By Brigadier NA Mathebula, the Section Head: Specialised Uniform Protection: Presidential Protection on 2024-03-11 Boardroom GP45 Maupa-Naga Building, Pretoria on the allegation of misconduct as per notice issued in terms of regulation 9(2)(b) (Annexure P)

RECORD OF PROCEEDINGS:

1. The employee was informed of the allegation(s) of misconduct as per the referred notice above and it was confirmed that the documents as per Annexure P were served to the employee.
2. The employee was charged for allegedly contravening the following:
 - 2.1 That at near or Phala-Phala Game farm on/or approximately 2020-03-03 and 2020-03-04 at/between allegedly: Sergeant HH Rekhoto conducted an interview for purpose of investigation with Mr David Joseph and Ms Floriana regarding the break-in crime that happened at Phala-Phala Game Farm without SAPS Cas number. During the interview between Major General Rhooode, Sergeant HH Rekhoto, Mr David Joseph and Ms Florina it was clear that crime was committed and Mr Joseph is a possible suspect in the serious security breach incident relating to the State President of the Republic of South Africa, Mr MC Ramaphosa, instead Sergeant Rekhoto decided to proceed with investigation. Sergeant Rekhoto was reading the rights of the suspects/s to both Flourina and David.
3. The employee representative made a submission to the chairperson/ functionary on both procedural fairness and point(s) in *limine* to which the chairperson committed to the consideration of such submission, herewith referred to as Annexure W, Annexure X, Annexure Y, and Annexure Z.

**RECORD OF EXPEDITIOUS PROCESS IN TERMS OF REGULATION 9 OF THE
SOUTH AFRICAN POLICE SERVICE DISCIPLINARY REGULATION, 2016**

ANALYSIS:

Charge 1:

In consideration of the submission made by the employee's representative, Mr Sithole, it was pointed that the statement of the employee was obtained under duress as he, the employee pointed that Lieutenant Colonel Mokwatlo initially called him on 2023-08-22 to submit a statement since the Divisional Commissioner Lieutenant General Mohlala appointed him as an Investigating Officer into the matter. According to the employee, Sergeant Rekhoto, he informed Lieutenant Colonel Mokwatlo that he needed some time to consult before he could submit a statement however, Lieutenant Colonel Mokwatlo insisted that he needed the statement on that day.

Accordingly, the employee, Sergeant Rekhoto emphasised the need to consult for a legal opinion but still Lieutenant Colonel Mokwatlo insisted on the statement failing which he will be charged. Following the conversation between Lieutenant Colonel Mokwatlo and Sergeant Rekhoto, he (Sergeant Rekhoto) had received a telephone call on the same day(2023-08-22) from the Divisional Commissioner Lieutenant General Mohlala demanding his statement on the same day, Annexure Y refers.

According to Sergeant Rekhoto, he would not have submitted the statement on 2023-08-22.

The above reason leaves the chairperson/ functionary with no choice but to disregard the statement of the employee referred to as Annexure A1 and proceed with the version of events on 2020-02-03 to 2020-02-04 as articulated by the employee himself.

According to Sergeant Rekhoto, he was at no situational space to conduct an investigation since Major General Rhooode was leading the interview on 2020-02-03 to 2020-02-04 to the suspect(s) in the alleged break-in.

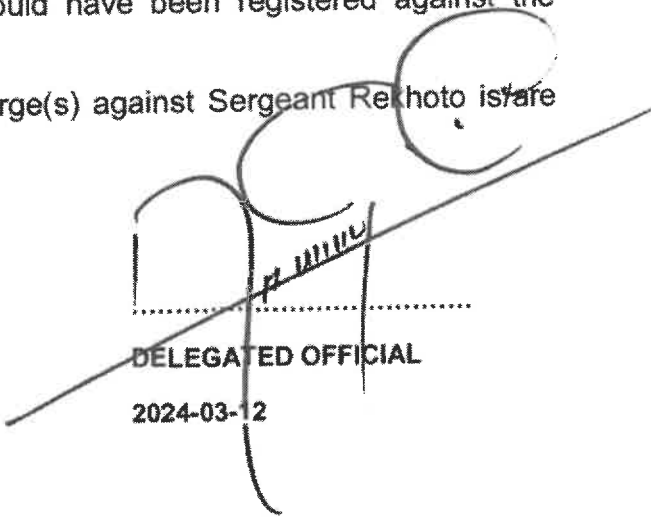
The charged employee, Sergeant Rekhoto was neither the most senior nor the first member on the scene. Accordingly, there is no statement insinuating or suggesting otherwise that he refused to register a criminal charge.

It remains prudent that if the allegations were to be substantiated, the most senior person to Sergeant Rekhoto would have instructed him to register a criminal case failing which a misconduct in terms of Regulation 5(j)(t)(u) of South African Police Service Disciplinary Regulation of 2016 would have been registered against the employee, Annexure R refers.

It is on the basis of the above that the charge(s) against Sergeant Rekhoto is/are unfounded and thus withdrawn.

FINDING(S): NOT GUILTY

Date of finding(s): 2024-03-12


DELEGATED OFFICIAL

2024-03-12

5. IPID RECOMMENDATION

- 5.1 Based on the above information contained in the case file, IPID recommends that disciplinary steps be taken against **Major General WP Rhoo**de and **Constable HH Rekhoto**.
- 5.2 The following provisions Regulation 5(3) of the SAPS 2016 Disciplinary Regulations have relevance in the merits of this case:
- 5.2.1 Regulation 5(3)(a)- fails to comply with, or contravenes an Act, regulation or legal obligation; Contravention of section 13 (2) of SAPS Act 68 of 1995 which states that: “**Where a**

member becomes aware that a prescribed offence has been committed he/she shall inform his commanding officer thereof as soon as possible”. Contravention of Presidential Protection Service Policy No 03/2018 which states that the “**Component Head is accountable to the National Commissioner**”, and SAPS Approved National and Provincial Organization Structures 2020/2021- 2023/2024 which stipulates that: **The Component Head of PPS reports directly to National Commissioner.**

5.2.2 Regulation 5(3)(b) - performs any act or fails to perform any act with the intention:

- i. To cause harm to or prejudice the interest of the service be it financial or otherwise; **Conduct investigations which is not part of his mandate and using state resources in conducting these unlawful investigations.**
- ii. To undermine the policy of the service; or **Contravenes Policy no 03/2018 of Presidential Protection Service by reporting the breach of security to Lieutenant General Mfazi instead of General Sitole (National Commissioner) as prescribed.**
- iii. Not to comply with his or her duties or responsibilities: **Conduct Investigations which is outside his scope of work and not part of his daily duties.**

5.2.3 Regulation 5 (3) (c) wilfully or negligently mismanages the finances of the state:

On 2020-03-07 he instructed Constable Rekhoto and Mr Mahlangu to travel to Cape Town to conduct an unlawful investigations and performs driving duties that could have been done by any other person in Cape Town.

On 2020-03-24 he again instructed Warrant Officer NA Ruiters to fly from Cape Town to Pretoria, stay in a hotel and to drive him to Upington. While his driver or other personnel were available to perform such function in Pretoria. This actions amounts to Fruitless and Wasteful expenditure.

5.2.4 Regulation 5(3)(j)- fails to carry out a lawful order or routine instruction without just or reasonable cause; **The prescripts are clear that the Component Head PPS reports directly to National Commissioner, but in this case the matter was allegedly reported to the late Lieutenant General Mfazi.**

5.2.5 Regulation 5(3)(t)-conducts himself or herself in an improper, disgraceful and unacceptable manner; **Conduct unlawful investigation without any case docket or Inquiry file registered on CAS with a case number of a specific police station.**

- 5.2.6 Regulation 5(3)(u)- contravenes any prescribed Code of Conduct of the Service or the Public Service, whichever may be applicable to him or her
- 5.2.7 Regulation 5(3) (z) (bb) Falsifies records or any other documentation: **When completing Itineraries, the two officers falsified the purposes of their trips. The breach of security at the President's farm was also not recorded in the SAPS Annual Report 2020/2021.**
- 5.2.8 Regulation 5(4)(x) **Any misconduct which is detrimentally affects the image of the Service or brings the Service into disrepute or which involves an element of dishonesty**, this SAPS Disciplinary Regulations is also applicable and warrants the institution of an expeditious procedure as provided for in Regulation 9.

6. Conclusion

IPID awaits your report relating to when the disciplinary action was instituted and how the matter was finalised to enable the institution to comply with the provisions of Section 30(c) of the IPID Act.

Compiled by:

Mr JW Baloyi

Deputy Director

National Office (NSIT)

8. REMEDIAL ACTION

8.1 The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action with a view of redressing the conduct highlighted in this report finalisation of an investigation where adverse findings are made.

8.2 In the matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others*⁹⁷ the Constitutional Court held that the remedial action taken by the Public Protector has a binding effect.

8.3 Having regard to the evidence, the regulatory framework determining the standard that members of the PPS namely, Gen. Rhooode and Sgt Rekhoto should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Minister of the South African Police Service

8.4 Must take note of the findings of maladministration and improper conduct against the SAPS as highlighted in this report, in connection with the allegation that the members of the SAPS attached to PPS acted improperly by investigating the crime of housebreaking with the intent to steal and theft, which took place on or about 09 February 2020 at Phala Phala farm, in line with the authority vested on the Minister of Police, in terms of section 206 of the Constitution.

The National Commissioner of the South African Police Service

8.5 Within sixty (60) calendar days from the date of receipt of this report ensure that appropriate action is initiated against Gen. Rhooode and Sgt

⁹⁷ Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 1 at para 76 and 105.

Rekhoto for contraventions of the SAPS prescripts as highlighted in this report, in line with the provisions of section 40 of the SAPS Act and Regulation 6 of the SAPS Discipline Regulations, 2016.

- 8.6 Within ninety (90) calendar days from the date of receipt of this report, develop an appropriate PPS directive, instruction, policy or such other prescript within the statutory powers vested to the National Commissioner in terms of section 11 of the SAPS Act and section 207(2) of the Constitution, directing how the PPS members must manage crimes reported directly to them by the VIP's under their protection.

9. MONITORING

- 9.1 The SAPS to provide a report to the Public Protector on the implementation of the remedial action within sixty (60) calendar days from the date of this report.



ADV Kholeka Gcaleka
ACTING PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA
DATE: 30 JUNE 2023

Assisted by: Mr VX Dlamini

Acting Executive Manager: Investigations