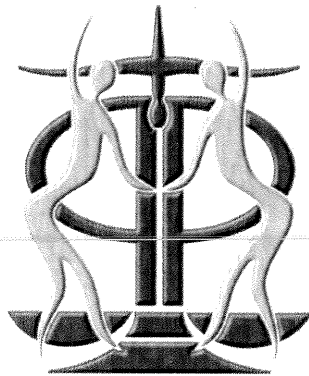


**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF  
SECTION 182(1)(b) OF THE CONSTITUTION OF THE  
REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF  
THE PUBLIC PROTECTOR ACT, 1994**

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**PUBLIC PROTECTOR  
SOUTH AFRICA**

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**REPORT NO. 27 OF 2009/10**

**REPORT ON A NEGOTIATED SETTLEMENT OF A DISPUTE INVOLVING  
THE DEPARTMENT OF PUBLIC WORKS AND MR G N LAWRENCE  
REGARDING THE SALE OF A PORTION OF ERF 634, SIMON'S TOWN  
AND OTHER RELATED MATTERS**

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## Executive Summary

- (i) On 15 May 2007 the Office of the Public Protector (OPP) received a complaint from Mr G N Lawrence (the Complainant), against the Department of Public Works (Department).

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- (ii) The Complainant alleged that during November 2005 the Department agreed to sell him a portion of erf 634, Simon's Town for an amount of R545 000.00 as approved by the Land Affairs Board, but there was undue delay on the part of the Department in ensuring that the sale was finalised.

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- (iii) The investigation revealed that there was clearly an undue delay on the part of the Department in dealing with the Complainant's matter.

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- (iv) It appears that the aforementioned delay was caused by a number of factors, including staff shortages and resignations.

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- (v) Following intervention by the OPP a settlement agreement was entered into between the Complainant and the Department.

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- (vi) There are difficulties regarding implementation of the mediation agreement because the property in question is a heritage site and the Surveyor has to acquire a letter of approval from the South African Heritage Resources Agency (SAHRA) before the Surveyor-General can approve the diagrams relating to the property. However, it appears that it will be possible to effect transfer of the relevant property during 2009.

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- (vii) It is recommended that:
  - (a) The Regional Manager of the Department, Cape Town should increase its capacity and provide training to staff in order to improve



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**REPORT ON A NEGOTIATED SETTLEMENT OF A DISPUTE INVOLVING  
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**1. INTRODUCTION**

- 1.1 This report is submitted in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution), and section 8(1) of the Public Protector Act, 1994 to the Director-General of the Department of Public Works and the Cape Town Regional Manager of the Department of Public Works.
- 1.2 It deals with a mediated settlement of a dispute regarding the alleged undue delay involving the sale of a portion of erf 634, Simon's Town.

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**2. THE COMPLAINT**

- 2.1 On 15 May 2007 Mr G N Lawrence (the Complainant) approached the Office of the Public Protector (OPP) to lodge a complaint against the Department of Public Works (Department). The Complainant alleged that:
- 2.1.1 During 1998 the Department agreed to sell him a portion of erf 634 situated in Simon's Town on which his family home was erected;
- 2.1.2 During 2005 the Department fixed a selling price of R545 000,00 for the above property. Proof was furnished to the OPP;
- 2.1.3 The Department has unduly delayed, since 2005, to finalise the sale of the property;

- 2.1.4 He contacted the departmental officials, including the relevant manager of the Department, on several occasions and has also engaged the services of a lawyer to resolve the matter, to no avail.

### **3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT**

- 3.1 The institution of the Public Protector is established in terms of Chapter 9 of the Constitution and its operational requirements are governed by the Public Protector Act, 1994 (Public Protector Act). The OPP is one of the institutions strengthening constitutional democracy.

- 3.2 Section 182(1) of the Constitution provides:

*“(1) The Public Protector has the power, as regulated by national legislation –*

*(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*

*(b) to report on that conduct; and*

*(c) to take appropriate remedial action.”*

- 3.3 In terms of the Public Protector Act, “appropriate remedial action” includes mediation, negotiation, conciliation, and the making of recommendations to the affected government agency on how any shortcomings found should be rectified and a recurrence of similar deficiencies could be prevented.

3.4 In terms of section 7(1)(b)(i) of the Public Protector Act, the format and procedure to be followed in conducting any investigation are determined by the Public Protector with due regard to the circumstances of each case.

3.5 This matter falls within the Public Protector's mandate to investigate.

#### **4. THE INVESTIGATION**

The complaint was investigated in terms of sections 6 and 7 of the Public Protector Act, 1994 as follows:

##### **4.1 Communication and consultation with the Department of Public Works**

4.1.1 Numerous written and telephonic communications were exchanged between the OPP and the Department. On 31 July 2008 a meeting was held with the Regional Manager of the Department. The information obtained in this regard revealed that:

4.1.1.1 The land in question is a provincial heritage site in terms of the National Heritage Resources Act, 1999;

4.1.1.2 Certain procedures have to be followed in respect of property governed by the National Heritage Resources Act;

4.1.1.3 The Land Surveyor together with all the relevant stakeholders had to execute an inspection *in loco* in order to determine the exact size which could be disposed to the Complainant; and

4.1.1.4 The land in question had to be re-surveyed because the Complainant objected to the extent of the land offered to him. The land was re-surveyed on 30 September 2008 and the Complainant was satisfied with the survey.

## 4.2 Mediation

4.2.1 On 10 September 2008, a meeting was held between the OPP, the Complainant, the Complainant's attorney and the Departmental officials in order to facilitate an amicable resolution of the complaint.

4.2.2 During the above-mentioned meeting, the Department indicated, among other things, that:

4.2.2.1 The delay in finalising the matter was caused by staff shortages and resignations; and

4.2.2.2 Some of the Departmental officials that handled the Complainant's case were under the impression that the Complainant also wanted part of the sea front to be included in the offer.

4.2.3 During the above meeting, it emerged that the Complainant did not, at any stage, request part of the sea front to be included in the offer.

4.2.4 During October 2008, the Complainant and the Department signed a mediation agreement, which provides that:

*"...Terms of the agreement:*

2.1 *The complainant is satisfied with the extent of the land (erf 634, Simonstown) offered to him by the Department.*

2.2 *The initial sale price of the above piece of land is subject to negotiation between the Department and the Complainant.*

2.3 *The Office can close the file in this matter. However, the complainant can revert to the Office, if the Department fails to finalise the sale within a reasonable date from the date of this agreement." (A copy of the agreement is attached).*

### **4.3 Further consultation with the Department of Public Works**

4.3.1 Following the mediation agreement signed between the Department and the Complainant, and the assurance by the Department to expedite the sale, the Complainant subsequently informed the OPP that:

4.3.1.1 On 8 October 2008 he was telephonically advised by another Departmental official, that the survey diagrams agreed upon on 30 September 2008, would not be submitted to the Surveyor-General before the Department paid for the surveys. As the amount involved was very high, the Department expected further delays on the part of the auditors; and

4.3.1.2 The above is not relevant to him and should not affect what has already been agreed upon between the Department and himself.

4.3.2 After further intervention by the OPP, the Department indicated that:

4.3.2.1 One of the Departmental officials had indeed telephonically contacted the Complainant after the signing of the above mediation agreement,

4.3.2.2 There was a delay in the registration of the survey diagrams;

4.3.2.3 The Surveyor was paid by the Department; and

4.3.2.4 As the property in question is a heritage site, the Surveyor has to acquire a letter of approval from the SAHRA before the Surveyor-General can approve the diagrams relating to the property. The transfer will take place during 2009, soon after the approval of the diagrams by the Surveyor-General.

4.3.3 The Complainant indicated that he is satisfied if the transfer will take place during 2009.

## **5. OBSERVATIONS AND FINDINGS**

- 5.1 The investigation revealed that there was clearly an undue delay on the part of the Department in dealing with the Complainant's matter.
- 5.2 It appears that the aforementioned delay was caused by a number of factors, including staff shortages and/or resignations.
- 5.3 Following intervention by the OPP a settlement agreement was entered into between the Complainant and the Department.
- 5.4 There are difficulties regarding implementation of the mediation agreement because the property in question is a heritage site and the Surveyor has to acquire a letter of approval from SAHRA before the Surveyor-General can approve the diagrams relating to the property. However, it appears that it will be possible to effect transfer of the relevant property during 2009.

## **6. RECOMMENDATIONS**

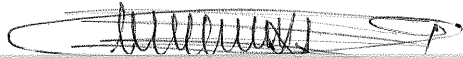
- 6.1 In view of the above, the Public Protector recommends in terms of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, that:
- 6.1.1 The Regional Manager of the Department, Cape Town should increase its capacity and provide training to staff in order to improve service delivery to its customers and stakeholders and to prevent a recurrence of delays of this nature in future.
- 6.1.2 The Regional Manager should ensure that the mediation agreement entered into with the Complainant is implemented during 2009, soon after the approval of the diagrams by the Surveyor-General.

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**7. CONCLUSION**

- 7.1 The OPP will monitor the implementation of the recommendations referred to in paragraph 6 above.

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**ADV ML MUSHWANA  
PUBLIC PROTECTOR OF THE  
REPUBLIC OF SOUTH AFRICA**

**DATE:** 28/09/09.

Assisted by: Adv M Lebeko, Investigator: Western Cape

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