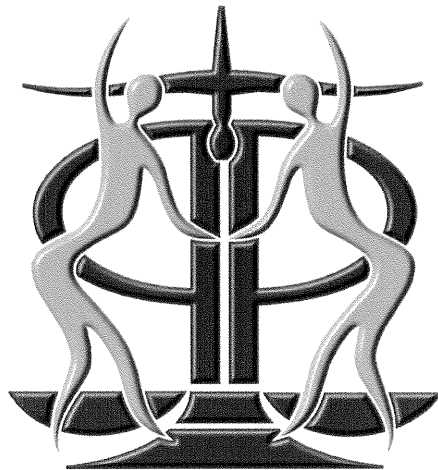


**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION
182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH
AFRICA; 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR
ACT, 1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO. 8 of 2009/10

**REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF THE
IMPROPER SALE OF LAND BY THE KAI! GARIB MUNICIPALITY, IN THE
NORTHERN CAPE PROVINCE**

INDEX

Executive Summary

1.	INTRODUCTION	5
2.	BACKGROUND	5
3.	THE COMPLAINT	6
4.	POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT	6
5.	THE INVESTIGATION	7
6.	EVALUATION OF EVIDENCE	8
7.	LEGISLATIVE AND OTHER FRAMEWORK	10
8.	OBSERVATIONS AND FINDINGS	11
9.	KEY FINDINGS	12
10.	RECOMMENDATIONS	13
11.	CONCLUSION	14

Executive Summary

- (i) Mr D Strauss (the Complainant), alleged that on 16 August 2004, he purchased an Erf 1697 (the Erf) from the Kailash Garib Municipality (Municipality).
- (ii) In June 2006, the Complainant approached Mr Becker, a municipal official, after he discovered that the Erf had been resold. The Municipality allegedly informed him that he followed an incorrect procedure when he purchased the Erf.
- (iii) The Complainant was allegedly offered Erf 1429 subject to the condition that he paid an additional R9 000.00, but he refused.
- (iv) From the investigation it was found that:
 - (a) The Complainant purchased the Erf and paid the amount of R3490.52 as the purchase price to the Municipality. The sale of Erf 1697 was recorded in an Instruction Book to prevent further sale thereof;
 - (b) On 12 June 2006, the Erf was resold to Mr and Mrs van der Byl. At the time of the sale a Municipal official who received the purchase price from the Complainant alerted Mr Becker that the Erf had already been sold, but he ignored her advice. The property was subsequently registered at the Deeds Office on 31 May 2007;
 - (c) It was irregular and improper for Mr Becker to have resold the Erf;
 - (d) The Complainant suffered financial prejudice as a result of the conduct of Mr Becker; and

- (e) The Municipality does not have a formal policy and procedure manual on the alienation of municipal land.

- (v) The Public Protector recommended that:
 - (a) The Municipal Manager should consider instituting disciplinary proceedings against Mr Becker for his conduct;

 - (b) The Municipality should refund the Complainant the purchase price with interest at the prescribed rate; and

 - (c) The Council should formulate a formal policy and procedure manual on the alienation of municipal land.

REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF THE IMPROPER SALE OF LAND BY THE KAI! GARIB MUNICIPALITY, IN THE NORTHERN CAPE PROVINCE

1. INTRODUCTION

- 1.1 This report is submitted to the Member of the Executive Council for Corporate and Government Affairs, Human Settlement and Traditional Affairs in the Northern Cape Province, the Head of Department for Corporate and Government Affairs, Human Settlement and Traditional Affairs, the Executive Mayor and the Municipal Manager of Kai! Garib Municipality 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.
- 1.2 It relates to an investigation by the Office of the Public Protector (OPP) into an allegation of improper sale of land by the Kai! Garib Municipality (Municipality).

2. BACKGROUND

- 2.1 Mr D Strauss (the Complainant) approached the Municipality on 16 August 2008 with the intention of purchasing land.
- 2.2 The land which was the subject of the sale was Erf 1697 and the amount that was paid by the Complainant to appropriate the aforesaid land was R3490.52.

3. THE COMPLAINT

- 3.1 On 30 July 2007 the Complainant approached the OPP alleging that on 16 August 2004 he purchased Erf 1697 (the Erf) from the Municipality.
- 3.2 Mr L Becker, a municipal official who allegedly conducted the administrative portion of the transaction, informed the Complainant that he would revert to him when the necessary documents were ready for signature, but never did.
- 3.3 In June 2006, the Complainant allegedly approached Mr Becker after he discovered that the Erf had been resold. Mr Becker allegedly referred the Complainant to Mr J Kotzee, the Municipal Director of Corporate Services, who responded that following an investigation the Municipality found that the Complainant followed an incorrect procedure when he purchased the Erf.
- 3.4 The Complainant raised the matter with Mr B Brand (the Municipal Manager). The Municipal Manager allegedly attempted to resolve the issue by offering the Complainant one of two options. The options were that the Complainant either identified an alternative piece of land or the Municipality would refund the purchase price of the Erf.
- 3.5 The Complainant was allegedly offered Erf 1429 subject to the condition that he paid an additional amount of R9 000.00, but he refused.

4. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT

- 4.1 The institution of the Public Protector was established in terms of Chapter 9 of the Constitution to strengthen constitutional democracy.

4.2 In terms of section 182 of the Constitution the Public Protector is empowered 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 an impropriety or prejudice, and to report on that conduct and to take appropriate remedial action.

4.3 The complaint therefore falls within the jurisdiction of the Public Protector to investigate.

5. THE INVESTIGATION

5.1 The investigation was conducted in terms of section 6 and 7 of the Public Protector Act, 1994 and mainly comprised:

5.1.1 An assessment of the complaint:

5.1.2 Consultation and correspondence with the Municipal Manager; Mr L Becker, the Municipal Administrative Officer; Mrs O Shelaba (the Municipal Cashier); and Mr T H Le Roux of Le Roux and Partners Inc. (the Municipal Attorneys);

5.1.3 A study of all the relevant documentation obtained during the course of the investigation; and

5.1.4 Consideration and application of the relevant provisions of the Alienation of Land Act, 1981 and Local Government Municipal Systems Act, 2000.

6. EVALUATION OF EVIDENCE

6.1 Upon consultation with the Municipal Cashier she confirmed the following:

6.1.1 She received the purchase amount of R3490.52 for the Erf from the Complainant; and

6.1.2 At the time of the re-sale of the Erf to Mr and Mrs van Byl, she informed Mr Becker that the Erf had already be been sold to the Complainant, but Mr Becker ignored her advice.

6.2 One of the documents requested for inspection was the instruction book for 2004; however it could not be availed. The Municipal Attorneys responded as follows in their faxed letter dated 21 April 2008:

“Die ‘instruksie boek’ vir die periode 2004 waarna u verwys is ‘n kommunikasie middel tussen die Departemente Finansies en Departemente Tegnies binne die Munisipaliteit. By navraag kon die bekrokke boek nie deur die Direkteur-Finansies voorsien word nie.”

6.3 The Sol Plaatje Municipality, having access to the Deeds Office information, was telephonically requested to provide the property enquiry results for Kakamas in the Deeds Registry. The document titled “Property Enquiry Details” was received and it indicated that the Erf was sold to Mr and Mrs van Byl for an amount of R468.00 on 12 June 2006 and further that the property was registered in their names on 31 May 2007.

6.4 Another document requested from the Municipality was the Municipal Policy dealing with the alienation of Municipal property, but the Municipality did not have one. The Municipal Attorneys responded as follows, in their faxed letter dated 21 April 2008:

“Die Munisipaliteit het geen formele beleid met betrekking tot die vervreemding van eiendom nie”

- 6.5 When asked why the Complainant was requested to pay an additional amount of R9000.00 for an alternative Erf, the Municipal attorneys stated in their letter dated 7 November 2007, that it was due to the fact that Erf 1429 is a serviced erf.
- 6.6 Seeing that Mr Becker was implicated in this matter and that such implication might be to his detriment, he was afforded an opportunity to respond in connection therewith, in a letter dated 19 September 2008, as provided by section 7(9)(a) of the Public Protector Act, 1994. However, he stood by the responses already received from the Municipal Attorneys.

7. LEGISLATIVE AND OTHER FRAMEWORK

7.1 Alienation of Land Act, 1998

7.1.1 Definitions

Section 1 defines 'contract' as:

- "(a) ... a deed of alienation under which land is sold against payment by the purchaser to, or to any person on behalf of, the seller of an amount of money in more than two instalments over a period exceeding one year;*
- (b) includes any agreement or agreements which together have the same import, whatever form the agreement or agreements may take;"*

Section 1 defines 'deed of alienation' as: "a document or documents under which land is alienated;"

7.1.2 Formalities in respect of alienation of land

Section 2(1) provides that:

“No alienation of land after the commencement of this section shall, subject to the provisions of section 28, be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority.”

7.2 Local Government Municipal Systems Act, 2000

7.2.1 Code of Conduct for municipal staff members

Section 69 provides that:

“The Code of Conduct contained in Schedule 2 applies to every staff member of a municipality.”

7.2.2 General Conduct

Item 2 provides that:

“A staff member of a municipality must at all times-

- (a) loyally execute the lawful policies of the municipal council;*
- (b) perform the functions of the office in good faith, diligently, honestly and in a transparent manner;*
- (c) act in such a way that the spirit, purport and objects of section 50 are promoted;*
- (d) act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised;*
and
- (e) act impartially and treat all people, including other staff members, equally without favour or prejudice.”*

7.3.3 Breaches of Code

Item 14 provides that:

“Breaches of this Code must be dealt with in terms of the disciplinary procedures of the municipality envisaged in section 67 (1)(h) of this Act.”

8. OBSERVATIONS AND FINDINGS

- 8.1 On 16 August 2004, the Complainant paid the purchase price in respect of the Erf in the amount of R3 490.52 to the Municipality.
- 8.2 The sale of the Erf was recorded in an Instruction Book to prevent further sales. The Instruction Book is the communication mechanism between the Finance Section and the Technical Services Section. The Instruction Book for the year 2004 could not be availed for inspection.
- 8.3 On 12 June 2006, the Erf was sold to Mr and Mrs van der Byl. At the time of the sale the Municipal Cashier informed Mr Becker that the erf had already been sold. He ignored her advice.
- 8.4 The Erf was sold to Mr and Mrs van der Byl for an amount of R468.00 and the property was subsequently registered at the Deeds Office on 31 May 2007.
- 8.5 The Municipality does not have a formal policy and procedure manual on the alienation of municipal land.

9. KEY FINDINGS

The following key findings were made:

- 9.1 The Complainant purchased the Erf and paid the amount of R3 490.52 as the purchase price to the Municipality. The sale of the Erf was recorded in an Instruction Book to prevent the further sale thereof.
- 9.2 At the time of the resale of the Erf to the van der Byls, the Municipal Cashier who initially received the purchase price from the Complainant

alerted Mr Becker that the Erf had already been sold, however he, for whatever reason chose to ignore her advice. The Erf was then sold to Mr and Mrs van der Byl for an amount of R468.00 (an amount significantly lower than what the Complainant had already paid) and the property was subsequently registered at the Deeds Office on 31 May 2007.

9.3 It was irregular, improper and illegal for Mr Becker to have sold the Erf after he was informed that the property had already been sold to the Complainant.

9.4 The Complainant has suffered financial prejudice as a result of the conduct of Mr Becker as described herein.

9.5 The Municipality does not have a formal policy and procedure manual on the alienation of municipal land.

10. RECOMMENDATIONS

In terms of the provisions of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, 1994, it is recommended that:

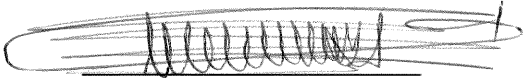
10.1 The Municipal Manager should consider instituting disciplinary proceedings against Mr Becker for his conduct;

10.2 The Municipality should refund the Complainant the purchase price with interest at the prescribed rate; and

10.3 The Council should formulate a formal policy and procedure manual on the alienation of municipal land.

11. CONCLUSION

11.1 The Public Protector will monitor the implementation of the recommendations on a quarterly basis.



ADV M.L. MUSHWANA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 30/07/08

Assisted by: B.G Sithole, Provincial Representative, Northern Cape
Mr E.B. Minnaar, Investigator, Northern Cape