



PUBLIC PROTECTOR
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MUSIRHELELI WA VANHU • MUTSIRELEDZI WA VHATHU
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14 June 2010

Ms N.I. Mashiga
M159 Matakata Street
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7655

Dear Ms Mashiga

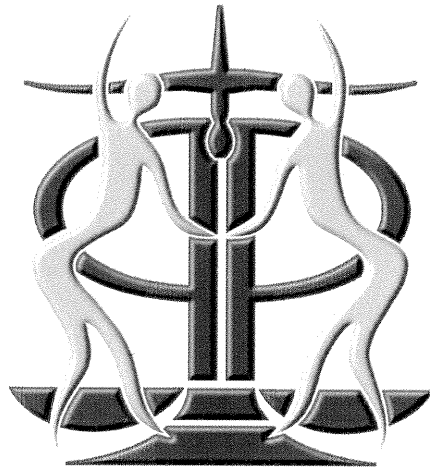
REPORT NO. 4 OF 2010/11: REPORT ON A NEGOTIATED SETTLEMENT OF A DISPUTE INVOLVING THE DRAKENSTEIN MUNICIPALITY AND MRS N I MASHIQA PERTAINING TO THE DAMAGE CAUSED TO HER PROPERTY BY A MUNICIPAL VEHICLE DRIVEN BY A MUNICIPAL EMPLOYEE

Attached hereto is my report on an investigation leading to a negotiated settlement agreement of a dispute involving the Drakenstein Municipality and yourself relating to an accident caused by a municipal vehicle which damaged your house, for your information.

Best wishes

ADV T.N. MADONSELA
PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA

**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. 4 OF 2010/11

**REPORT ON A NEGOTIATED SETTLEMENT OF A DISPUTE INVOLVING THE
DRAKENSTEIN MUNICIPALITY AND MS N I MASHIQA PERTAINING TO THE
DAMAGE CAUSED TO HER PROPERTY BY A MUNICIPAL VEHICLE DRIVEN BY A
MUNICIPAL EMPLOYEE**

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Executive Summary

- (i) On 23 April 2009, the Public Protector received a complaint from Ms N T Mashiqua (the Complainant) against the Drakenstein Municipality (the Municipality).
- (ii) The Complainant alleged that during November 2008 a municipal vehicle driven by a municipal employee crashed onto her boundary wall and severely damaged her home. The Complainant approached the Municipality to claim compensation for repairing her damaged home. The Municipality denied liability claiming that the driver was not acting within the scope of his employment with the Municipality at the time of the accident and advised the Complainant to proceed against the driver in his personal capacity.
- (iii) The investigation revealed that the initial stance taken by the Municipality when it denied liability was not supported by evidence. It also appears that the Municipality in its initial stance had abdicated its responsibilities of acting justly and fairly towards its citizens. To its credit, the Municipality changed its mind and decided not to contest the claim. The investigations also revealed that the municipal driver was charged in terms of the disciplinary code. He was however acquitted of the charges.
- (iv) Following the intervention of the Public Protector, the Municipality offered to settle the matter with the Complainant. A settlement agreement was subsequently entered into and signed between the Complainant and the Municipality. An amount of R37 000.00 was paid into the bank account of the Complainant in settlement of her claim.

- (v) It is recommended in terms of section 182(1)(c) of the Constitution:
- (a) The Municipality Manager must comply with section 62(1)(d) of the Local Government: Municipal Finance Management Act, 2003, and take all reasonable steps to ensure that its Vehicle Policy properly deals with any claims, expenditures or losses arising from motor vehicle accidents.
 - (b) The Municipal Manager must report to the Public Protector on the progress in the implementation of the above recommendation within 30 days of the date of the report.

**REPORT ON A NEGOTIATED SETTLEMENT OF A DISPUTE INVOLVING THE
DRAKENSTEIN MUNICIPALITY AND MS N I MASHIQA PERTAINING TO THE
DAMAGE CAUSED TO HER PROPERTY BY A MUNICIPAL VEHICLE DRIVEN BY A
MUNICIPAL EMPLOYEE**

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 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act) to Ms N I Mashiqua (the Complainant) and the Municipal Manager, Drakenstein Municipality in Paarl.
- 1.2 It deals with a negotiated settlement of a dispute regarding the claim for compensation for losses and damages suffered by the Complainant following an incident in which a municipal vehicle driven by a municipal employee crashed into and caused extensive damage to the Complainant's home.

2. THE COMPLAINT

- 2.1 On 23 April 2009 the Complainant approached the Public Protector to lodge a complaint against the Drakenstein Municipality. The Complainant stated that-
- 2.1.1 During November 2008, a municipal vehicle (bakkie), driven by a municipal employee at the time, crashed into the Complainant's boundary wall demolishing same before causing extensive damage to the house.

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- 2.1.2 The Complainant maintained that the collision was caused solely by the negligence of the municipal driver who failed to keep a proper look out while driving.
- 2.1.3 In, and as a result of the collision her boundary wall was demolished and her house severely damaged.
- 2.1.4 The cost of repairing the damages was estimated at R40 000.00.
- 2.1.5 The Complainant held the Municipality vicariously liable for the damages she suffered as a result of the collision.
- 2.1.6 The Municipality denied liability claiming that the municipal employee was not acting within the scope of his employment when the collision occurred.
- 2.1.7 The Municipality suggested that the Complainant should proceed against the municipal employee in his personal capacity.
- 2.1.8 The Complainant decided to approach the Public Protector for assistance.

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

- 3.1 The Public Protector is established in terms of Chapter 9 of the Constitution and its operations governed by the Public Protector Act. The Public Protector was established to strengthen constitutional democracy.
- 3.2 Section 182 (1) of the Constitution provides:

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

5. ACTIONS TAKEN BY THE PUBLIC PROTECTOR TO RESOLVE THE COMPLAINT

- 5.1 Following a letter of enquiry from the Public Protector, in which it was made clear to the Municipality that given the fact that it was common cause that a municipal employee at the time had crashed into and damaged the Complainants' house with a municipal vehicle, the Municipality had to show good cause why an adverse finding could not be made against it;
- 5.2 The Municipality, to its credit, made a decision to no longer contest the claim and decided to settle the matter;
- 5.3 The Municipality made an offer of R37,000.00 in full and final settlement of the Complainants' claim which the latter accepted;
- 5.4 The said amount was transferred into the Complainant's bank account after the latter had signed the standard discharge form;
- 5.5 A formal settlement agreement was prepared by the Public Protector and signed by the parties; and
- 5.6 The said settlement agreement is attached hereto as Annexure "A". Its terms and conditions are self explanatory and confirm that the matter is now settled and finalised.

6. ADDITIONAL OBSERVATIONS

- 6.1 The investigation revealed that the initial stance taken by the Municipality when it denied liability was not supported by evidence. It also appears that the Municipality in its initial stance had abdicated its responsibilities of acting justly and fairly towards its citizens.

- 6.2 To its credit, the Municipality changed its mind and decided not to contest the claim but sought to settle. The subsequent course of action is commendable.
- 6.3 The investigations revealed that the municipal driver was charged in terms of the disciplinary code. He was however acquitted of the charges.
- 6.4 The Public Protector considered the Municipality's Vehicle Policy which encapsulates, among others, general control measures regarding municipal vehicles. However, with regard to accidents or incidents with municipal vehicles where another party is involved, paragraph D1.16 of the Policy only provides that "the incident must be reported in writing to the Financial Services (Insurance)". The Policy is silent on procedures to be followed by the Municipality to consider requests, claims or representations by other parties involved in accidents with municipal vehicles.
- 6.5 The Municipality's Vehicle Policy does not provide for procedures to be followed to consider requests, claims or representations by other parties involved in accidents with municipal vehicles. The fact that such vehicles might be insured does not abrogate the Municipality's responsibility to act fairly and justly.

7. **RECOMMENDATION**

It is recommended in terms of section 182(1)(c) of the Constitution that:

- 7.1 The Municipal Manager must comply with section 62(1)(d) of the Local Government: Municipal Finance Management Act, 2003, and take all reasonable steps to ensure that its Vehicle Policy properly deals with any claims, expenditures or losses arising from motor vehicle accidents.

- 7.2 The Municipal Manager must report to the Public Protector on the progress in the implementation of the above recommendation, within 30 days of the date of the report.



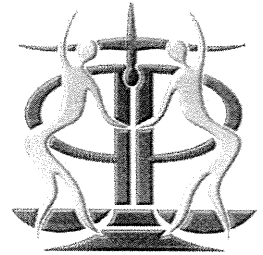
ADV T N MADONSELA

**PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA**

DATE: 04/06/2010

Assisted by: Mr A Lose, Senior Investigator, Western Cape Provincial Office

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PUBLIC PROTECTOR
SOUTH AFRICA

SETTLEMENT AGREEMENT

between

NOBESUTHU IVY XEGWANA

and

DRAKENSTEIN MUNICIPALITY

Settlement Agreement

File no: 7/2-12450/09

1. Whereas, I the undersigned, Nobesuthu Ivy Xegwana, Id No 700114 065 4089 had lodged a complaint with the Office of the Public Protector (Western Cape Provincial Office) against the Drakenstein Municipality for unfair treatment in refusing to compensate me in respect of my house which was damaged when a municipal vehicle driven by a municipal employee crashed and extensively damaged my garden wall and my house.
2. And, Whereas the said municipality has now made a financial compensation offer of R37,000,00 (thirty seven thousand rand) in full and final settlement of my claim.
3. And, Whereas I have now accepted the same and signed an offer of settlement of the aforesaid amount which has since been paid into my banking account.
4. This agreement serves to confirm that my claim against the said Municipality has since been extinguished in full and the matter must be regarded as finalized.

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