Please quote this reference in your reply: Report No. 15 of 2010/11

19 July 2010

Enquiries: Mr. S Dube
Tel 013 752 8543
Fax 013 7527883

The Head of Department
Department of Education
Private Bag X 11341
NELSPRUIT
1200

Attention: Mrs M.O.C. Mhlabane

Dear Mrs Mhlabane


Attached hereto is my report on an investigation into allegations of maladministration relating to the allocation of rented accommodation by the Mpumalanga Provincial Department of Education.

Your attention is directed to the remedial action required in terms of section 182(1)(c) of the Constitution and dealt with in paragraph 10 of the report. Please keep me informed of the progress made with regard to the implementation of the said remedial action.

Best wishes

[Signature]

ADV T N MADONSELA
PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA
Please quote this reference in your reply: Report no. 15 of 2010/11

Enquiries: Mr. S Dube
Tel 013 752 8543
Fax 013 7527883

Mrs R Mhaule
The MEC for Education
Mpumalanga Provincial Government
Private Bag X 11341
NELSPRUIT
1200

19 July 2010

Dear Mrs Mhaule


Attached hereto is my report on an investigation into allegations of maladministration relating to the allocation of rented accommodation by the Mpumalanga Provincial Department of Education.

Your attention is directed to the remedial action required in terms of section 182(1)(c) of the Constitution and dealt with in paragraph 10 of the report. Please keep me informed of the progress made with regard to the implementation of the said remedial action.

Best wishes

[Signature]

ADV T N MADONSELA
PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA
Please quote this reference in your reply: Report No. 15 of 2010/11

19 July 2010

Ms J S Masango
P O Box 13294
NELSPRUIT
1200

Dear Ms Masango

COMPLAINT AGAINST MPUMALANGA PROVINCIAL DEPARTMENT OF EDUCATION

Please be advised that the investigation into your complaint has been concluded.

A report on the matter is attached hereto for your information.

Best wishes

[Signature]

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

REPORT NO. 15 OF 2010/11

REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF MALADMINISTRATION RELATING TO THE ALLOCATION OF RENTED ACCOMMODATION BY THE MPUMALANGA PROVINCIAL DEPARTMENT OF EDUCATION
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EXECUTIVE SUMMARY

(i) The Public Protector investigated a complaint lodged by Ms J S Masango (the Complainant) who alleged maladministration by the Department of Education (the Department) in failing to provide proper information on the procedure to be followed in order to secure rented accommodation from the Department.

(ii) From the investigation it was found that:

(a) The Department does not have a set procedure for processing applications for the leasing of residential property under its control and that the process followed in selecting prospective tenants is not transparent.

(b) On a balance of probabilities the available information confirms that the Complainant occupied the premises based on communications from the Department that lead her to belief that she could occupy any vacant property identified.

(iii) The remedial action to be taken is that the Department should regularise the Complainant's occupation of the house and in this regard consider her application and enter into a contract of lease with her, should she meet the qualifying criteria.

(iv) It is recommended that the Department adopts and implements a policy with clear guidelines for applicants and criteria for selection of tenants and establish a committee that would take charge of the leasing process.
REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF MALADMINISTRATION RELATING TO THE ALLOCATION OF RENTED ACCOMMODATION BY THE MPUMALANGA PROVINCIAL DEPARTMENT OF EDUCATION

1. INTRODUCTION

1.1 This report is submitted to the Complainant, the Member of the Executive Council responsible for Education in the Mpumalanga Provincial Government and the Head of the Mpumalanga Provincial Department of Education 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).

1.2 It deals with an investigation into an allegation of maladministration by the Mpumalanga Provincial Department of Education (the Department) in failing to provide Ms Masango with proper information on the qualifying criteria to be followed in order to secure rented accommodation from the Department.

2. THE COMPLAINT

2.1 The investigation was the result of a complaint lodged with the Public Protector by Ms J S Masango (the Complainant), an employee of the Department, on 20 October 2008.

2.2 The Complainant alleged that she first applied to rent a state house at Mgwenya College of Education in 2005. She reported that she made other applications subsequent to her initial application, but she never received a response to any of them. She however observed different occupants moving in and out of the houses over the years.
2.3 She eventually approached the Department to enquire about the procedure she needed to follow in lodging her application and to have her name entered onto a waiting list of applicants.

2.4 She stated that she was informed that there was no set procedure. The practice was that if a prospective tenant identified a vacant house or one that was about to be vacated, then she/he should communicate with the relevant office in that regard and submit a completed application form.

2.5 In April 2008 she became aware of a house that was about to be vacated and approached the Department to inform them of her wish to occupy the house. She then completed an application form and submitted it on 15 April 2008.

2.6 She reported that she was advised that she could take occupation of the house as soon as the present occupant moved out and that she would have to sign for the keys as soon as they were handed over.

2.7 She moved in her belongings into the house as soon as it became vacant as advised, but could not sign for the keys since the house was vacated over the weekend. On the day she was to take occupation of the house, she found that the locks had been changed.

2.8 She approached the Department to enquire about the changing of the locks and was informed that the matter would be investigated.

2.9 It transpired that another individual had also planned on taking occupation of the same house and changed the locks to prevent the Complainant from moving in. On reporting the matter to the relevant office, a written statement was obtained from the Complainant and she was promised that the matter would be resolved.
2.10 While she awaited the outcome of the investigation she was informed that she should vacate the house because a new director had been appointed by the Department and that the house was to be utilised as accommodation for the official.

2.11 The Complainant had been residing in the house since August 2008 and had been paying a monthly rental of R 500.00 from October 2008.

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

3.1 The Public Protector was established in terms of Chapter 9 of the Constitution as one of the institutions that support constitutional democracy. The operational requirements of the Public Protector are provided for by the Public Protector Act.

3.2 Section 6(4) of the Public Protector Act empowers the Public Protector to investigate, among other things, maladministration in connection with the affairs of government at any level.

3.3 The findings of an investigation by the Public Protector may, when he/she deems it fit but as soon as possible, be made available to the complainant and to any person implicated thereby.

3.4 The complaint against the Department falls within the jurisdiction of the Public Protector.

4. **THE INVESTIGATION**

The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act and comprised the following:
4.1 Assessment of the complaint;

4.2 Correspondence with the Head of Department (the HOD); and

4.3 Assessment of the report received from the Department’s Labour Relations and Misconduct Unit.

5. CORRESPONDENCE WITH THE HEAD OF DEPARTMENT

5.1 A written enquiry outlining the complaint dated 5 November 2008 was forwarded to the office of the HOD.

5.2 The HOD replied in a letter dated 23 January 2009, stating that the matter had been referred to the Department’s Deputy Director General: Systems and Planning to investigate and to report back.

6. REPORT BY THE LABOUR RELATIONS AND MISCONDUCT UNIT

6.1 The Public Protector received a report from the Department’s Ehlanzeni Regional Labour Relations Office. The contents of the report are as follows:

6.1.1 "On the 16th of September 2008, the Office of the Deputy Director Labour Relations received a referral from the Deputy Director Financial and Support Services at Ehlanzeni Region to demand the handing over of keys to the cottage by Ms J S Masango.

6.1.2 During investigation it appeared that the cottage was initially leased to Ms A P Masango an official to the department who was previously attached to Ehlanzeni Region and now employed to the same department at Head Office.
6.1.3 Ms A P Masango wrote to Immovable Asset giving a notice that she was vacating the house by the 1 August 2008 and requested a cancellation to the stop order deduction but failed to submit the cottage keys.

6.1.4 The office of immovable assets wrote to Ms A P Masango on the 26\textsuperscript{th} of August 2008 reminding her about her vacation.

No response was received from Ms A P Masango though the stop order cancellation was effected. It was later established that over a particular weekend a fight broke out between Ms J S Masango and another employee from Examination Section in the region over the occupation of the house.

6.1.5 The office immovable assets then discovered that Ms Masango broke into the cottage and eventually gained access to occupy the cottage without authorisation. Labour Relations convened a meeting with Ms J S Masango to discuss the matter upon which labour established that:

6.1.5.1 Since 2005 Ms Masango was making applications to rent in the cottage;

6.1.5.2 A lot of other officials were leased time and again to Ms Masango's dismay as to what procedure was being followed;

6.1.5.3 That was also confirmed by an official from immovable asset Mr Mhlongo Wandle;

6.1.5.4 She also spoke to the acting head in immovable assets who advised her that the region does not have any intentions to lease the cottages as the region was running short of office space; and
6.1.5.5 She alleges that Wandile Mhlongo gave her a go ahead to occupy the cottage though that was disputed by Mr Mhlongo.”

6.2 Labour Relations concluded that:

6.2.1 “Ms Masango had to vacate the house and follow the correct procedure. (A letter dated 10 October 2008 was written to Ms J S Masango to vacate the cottage and she refused);

6.2.2 Both Ms A P Masango and Ms J S Masango used their relations to illegally exchange the occupation of the cottage;

6.2.3 It was clear that the relevant office has failed to manage this case and other cases relating to the lease as it is arguable as to what mechanism was being used to lease and what criteria was followed to select qualifying candidates;

6.2.4 There was no justification for invading departmental assets and that she had taken advantage of the situation to force herself in the cottage (sic) without challenging this inconsistency in a fair and just procedure;

6.2.5 Ms Masango’s stay in the cottage was completely illegal; and

6.2.6 There was no proper procedure on the selection of individual applications and that the process lacks transparency.”

6.3 Labour relations recommended that:

6.3.1 “Ms Masango be evicted from the cottage to avoid setting a wrong precedence; and
6.3.2 A policy with clear policies and guidelines on the selection process is set and a committee is put in place to manage the entire leasing process to avoid subjectivity.”

7. OBSERVATIONS

7.1 The Complainant first applied in 2005 but never received a response to her applications. She should have been informed of the status of her application.

7.2 The Department’s Labour Relations and Misconduct Unit confirmed in its report that there is no proper procedure in place for the leasing of their houses. There is lack of transparency and this makes the process of allocation of rented accommodation to be subject to abuse.

7.3 In the absence of set procedure it is reasonable to assume that an informal practice existed, which was generally followed and that the Complainant acted in accordance with that practice.

7.4 It is worth noting that in its report, the Department concluded that the Complainant had to vacate the house and follow the correct procedure while the same report observed that it was not clear “as to what mechanism is being used to lease and what criteria is followed to select qualifying candidates”.

7.5 While the report contains an allegation that the Complainant gained unauthorised entry into the property, it concluded that there was an exchange of the property between the previous occupant and the Complainant.

7.6 The Complainant has been residing in the house from August 2008 to date and has been paying rent since October 2008.
8. FINDINGS

8.1 There is no proper procedure in place to regulate the processing of applications for residential accommodation and no clear and transparent criteria for selecting prospective tenants exists.

8.2 On a balance of probabilities the available information confirms that the Complainant occupied the premises based on communications from the Department that lead her to belief that she could occupy any vacant property identified.

9. REMEDIAL ACTION

9.1 The remedial action to be taken is that the Department should regularise the Complainant's occupation of the house and, in this regard consider her application and enter into a contract of lease with her should she meet the qualifying criteria.

9.2 In terms of section 182(1)(b) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, it is recommended that the Department should implement the recommendation contained in the report by the Department's Labour Relations and Misconduct Unit of the Ehlanzeni Regional Office regarding the adoption of a policy with clear guidelines on the selection of tenants and establish a committee to manage the entire leasing process in order to prevent a recurrence of similar complaints.
10. CONCLUSION

10.1 The Head of the Department should submit a report regarding action to be taken in response to this report by 31 August 2010.

10.2 The Head of the Department should submit a report indicating action taken with regard to implementation of this report by 30 October 2010.

10.3 The Public Protector will monitor the implementation process on an ongoing basis.

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

DATE: 19/07/2010

Assisted by: Ms L K Skosana, Senior Investigator, Mpumalanga Province

ISBN 978-1-920456-14-6