
PUBLIC PROTECTOR SOUTH AFRICA

REPORT NO. 16 OF 2018/2019
ISBN NO. 978-1-928366-72-0

"Allegations of maladministration in the matter between Ms DC Dihemo and the North West Provincial Department of Public Works and Roads"

REPORT ON AN INVESTIGATION INTO THE ALLEGED UNDUE DELAY BY THE NORTH WEST PROVINCIAL DEPARTMENT OF PUBLIC WORKS AND ROADS TO TRANSFER OWNERSHIP OF A HOUSE ON ERF 248, 59 BREE STREET, LICHTENBURG, NORTH WEST PROVINCE INTO THE NAME OF MS DC DIHEMO
INDEX

Executive Summary 3

1. INTRODUCTION 8

2. THE COMPLAINT 9

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR 10

4. THE INVESTIGATION 13

5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS 17

6. FINDINGS 23

7. REMEDIAL ACTION 24

8. MONITORING 25
Executive Summary

(i) This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution), and published in terms of section 8(1) of the Public Protector Act, 1994 (Public Protector Act).

(ii) The report relates to an investigation into the alleged undue delay by the North West Provincial Department of Public Works and Roads (Department) to transfer ownership of a house situated on Erf 248, 59 Bree Street, Lichtenburg, North West Province (the property) into the name of Ms DC Dihemo (Complainant). The complaint was lodged with my office on 14 February 2012.

(iii) The Complainant alleged that the Department unduly delayed to transfer ownership of the property into her name and consequently suffered prejudice.

(iv) In the main, she alleged:

(a) She is currently occupying a property situated on Erf 248, 59 Bree Street, Lichtenburg, registered in the name of the Department;

(b) In 2008, she approached the Department and offered to purchase the property. The Department responded to her offer and informed her that the purchase price would be approximately R112 000.00 (the purchase price). The Complainant then proceeded to pay the purchase price on 26 June 2008. She obtained proof of payment dated 05 May 2009 from the Department. She further paid an amount of R3 420.00 to the Office of the State Attorney in Pretoria for transfer costs; and

(c) In a letter dated 17 November 2009, the Department informed her to pay a monthly occupational rental of R200.00 in line with the Deed of Sale. Her attention was further drawn to the fact that according to the Deed of Sale, she was not allowed to
alter and/or extend the property until the property was transferred into her name.
To date, the Department has failed to transfer the said property into her name.

(v) On analysis of the complaint, the following issues were identified and investigated:

(a) Whether the Department unduly failed to register and transfer ownership of a property on Erf 248, 59 Bree Street, Lichtenburg, North West Province into the Complainant’s name; and

(b) Whether the Complainant suffered prejudice as a result of the conduct of the Department in the circumstances

(vi) The investigation process was conducted through meetings and interviews with the Complainant and relevant officials of the Department as well as an inspection of all relevant documents, analysis and application of all relevant laws, policies and related prescripts.

(vii) A section 7(9)(a) notice was issued to the Head of the Department, Mr P Mothupi, on 05 April 2018, however he failed to respond.

(viii) A similar section 7(9)(a) notice was also issued to the Honourable MEC Maluleka and Head of Office of the State Attorney, Mr JF Zwiegalenr on 05 April 2018, and no response came forth.

(ix) Key laws and policies taken into account to determine if there had been maladministration by the Department and prejudice to the Complainant were principally those imposing administrative standards that should have been complied with by the Department or its officials when transferring ownership of a property into the Complainant’s name. They include the following:
(a) The Constitution and Promotion of Administrative Justice Act, 2000 impose a duty on all organs of the state to provide administrative action that is lawful, reasonable and fair to everyone; and

(b) Batho Pele Principles is an initiative that was launched in 1997 to transform the Public Service at all levels.

(x) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

(a) Regarding whether the Department unduly failed to register and transfer ownership of a property situated on Erf 248, 59 Bree Street, Lichtenburg, North West Province in the Complainant’s name:

(aa) The allegation that the Department unduly failed to register and transfer ownership of the property into the Complainant’s name is substantiated.

(bb) The Department has to date failed to process and/or to ensure the registration and transfer of ownership of the property into the Complainant’s name.

(cc) The conduct of the Department is in violation of sections 33 and 195 of the Constitution, section 3 of PAJA and the Batho Pele Principle on redress.

(dd) The Department’s failure to ensure registration and transfer of ownership of the property into the Complainant’s name constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.
Regarding whether the Complainant suffered prejudice as a result of the conduct of the Department in the circumstances:

(aa) The allegation that the Complainant suffered prejudice as a result of the Department’s failure to ensure the registration and transfer of the property into her name is substantiated.

(bb) The Complainant has continuously been paying monthly occupational rental of R200 for the past 10 years and has been prohibited from effecting any alterations or causing any extensions to be made to the property.

(cc) The reasonable period within which the property should have been transferred into the name of the Complainant is 6 months. Failure to ensure transfer of the property for more than 10 years has caused severe financial prejudice to the Complainant, in the form of occupational rental.

(xi) In the light of the above findings, I am taking the following appropriate remedial action, as contemplated in section 182(1)(c) of the Constitution:

(a) The Head of the Department must, within 30 working days from the date of publication of this report, send a letter of apology to the Complainant for the undue delay to transfer ownership of the property into her name;

(b) The Head of the Department must, within 30 working days from the date of publication of this report, provide the Office of the State Attorney with all the necessary documents to enable the State Attorney to register and transfer ownership of Erf 248, 59 Bree Street, Lichtenburg into the Complainant’s name;

(c) The Head of Office of the State Attorney in North West must, upon receipt of all the documents from the Department and within 45 working days from the date of
publication of this report, ensure registration and transfer of Erf 248, 59 Bree Street, Lichtenburg into the name of Ms DC Dihemo;

(d) The Head of the Department must, within 30 working days of publication of this report, refund the Complainant all the monies paid as occupational rental, plus interest at a rate prescribed by the Minister of Justice in terms of the Prescribed Rate of Interest Act 55 of 1975, minus the rental for 6 months, which would have been a reasonable time to register the property, and

(e) The Head of the Department must, with immediate effect, stop charging the occupational rental on Erf 248, 59 Bree Street, Lichtenburg.
REPORT ON AN INVESTIGATION INTO THE ALLEGED UNDUE DELAY BY THE NORTH WEST PROVINCIAL DEPARTMENT OF PUBLIC WORKS AND ROADS TO TRANSFER OWNERSHIP OF A HOUSE ON ERF 248, 59 BREE STREET, LICHTENBURG, NORTH WEST PROVINCE INTO THE NAME OF MS DC DIHEMO

1. INTRODUCTION

1.1. This is my report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and published in terms of section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2. The report is submitted in terms of section 8(3) of the Public Protector Act to the following people to note the outcome of my investigation:

1.2.1. The Member of Executive Council (MEC) for Public Works and Roads, Honourable MJ Maluleka;

1.2.2. The Director General of the North West Provincial Government, Dr KL Sebego;

1.2.3. The Head of Office of the State Attorney, Mahikeng, Mr JF Zwiegelaar;

1.2.4. The Head of the Department of Public Works and Road, Mr P Mothupi; and

1.2.5. The Administrator, Mr M S Thobakgale.

1.3. A copy of the report is also provided to Ms DC Dihemo to inform her about the outcome of my investigation.

1.4. The report relates to an investigation into the alleged undue delay by the North West Provincial Department of Public Works and Roads (Department) to transfer ownership
2. THE COMPLAINT

2.1 Ms DC Dihemo (Complainant) alleged that the Department unduly delayed to transfer ownership of the property into her name which caused her prejudice.

2.2 In the main, the Complainant alleged the following:

2.2.1 She is currently occupying the property, registered in the name of the Department. In 2008 she approached the Department and offered to purchase the property. The Department responded to her offer and informed her that the purchase price would be approximately R112 000.00 (the purchase price). The Complainant then proceeded to pay the purchase price on 26 June 2008. She obtained proof of payment dated 05 May 2009 from the Department. She further paid an amount of R 3 420.00 to the Office of the State Attorney in Pretoria for transfer costs; and

2.2.2 In a letter dated 17 November 2009 the Department informed the Complainant to pay a monthly occupational rental of R200.00 in line with the Deed of Sale. Her attention was further drawn to the fact that according to the Deed of Sale she was not allowed to alter and/or extend the property until ownership of the property was transferred into her name. However to date, the Department has failed to transfer the property into her name; and

2.2.3 She visited the Department several times to enquire about its failure to transfer ownership of the property into her name, however she was not assisted and/or provided with reasons for the delay to transfer ownership of the property into her name.
3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional body established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

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

"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 the matter of Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect.\(^1\) The Constitutional Court further held that: "When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences."\(^2\)

3.4 In the above-mentioned Constitutional matter, Mogoeng CJ, stated the following, when confirming the powers of the Public Protector:

---

1. [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].
2. Supra at para [73].
3.4.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65);

3.4.2 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (paragraph 67);

3.4.3 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has the effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68);

3.4.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow (paragraph 69);

3.4.5 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to (paragraph 70);

3.4.6 The Public Protector’s power to take remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (paragraph 71);

3.4.7 Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in
the words suggests that she has to leave the exercise of the power to take remedial action to other institutions or that it is the power that is by its nature of no consequence (paragraph 71(a));

3.4.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d)); and

3.4.9 “Appropriate” means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (paragraph 71(e)).

3.5 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by legislation.

3.6 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.7 The Department is an organ of state and its conduct amounts to conduct in state affairs and as a result the matter falls within the ambit of the Public Protector’s mandate.

3.8 The Public Protector’s power and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties.
4. THE INVESTIGATION

4.1 Methodology

4.1.1 The investigation was conducted in terms of section 182(1)(a) of the Constitution and sections 6 and 7 of the Public Protector Act.

4.1.2 The Public Protector Act confers on me the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration. Section 6 of the Public Protector Act gives me the authority to resolve a matter without conducting an investigation and resolve a complaint through appropriate Alternative Dispute Resolution (ADR) measures such as conciliation, mediation and negotiation.

4.1.3 The complaint was initially classified as an Early Resolution matter capable of resolution by way of a conciliation process or mediation in line with section 6(4)(b) of the Public Protector Act. However, after several attempts to conciliate the matter, it was escalated into an investigation.

4.2 Approach to the investigation

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

(i) What happened?

(ii) What should have happened?

(iii) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?

(iv) In the event of maladministration what would it take to remedy the wrong or to place the Complainant as close as possible to where they would have been but for the maladministration or improper conduct?
4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether the Department unduly delayed to register and transfer ownership of the property into the Complainant’s name, if so whether such failure constitutes improper conduct and/or maladministration and whether the Complainant suffered prejudice as a result of an undue delay to register and transfer ownership of the property.

4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Department or organ of state to prevent maladministration and prejudice to the Complainant.

4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration. Where a complainant has suffered prejudice the idea is to place him or her as close as possible to where they would have been had the Department or organ of state complied with the regulatory framework setting the applicable standards for good administration.

4.3 On analysis of the complaint, the following were issues considered and investigated:

4.3.1 Whether the Department unduly failed to register and transfer ownership of a property situated on Erf 248, 59 Bree Street, Lichtenburg, North West Province into the Complainant’s name.

4.3.2 Whether the Complainant suffered prejudice as a result of the conduct of the Department in the circumstances.
4.4 The key sources of information

4.4.1 Documents

4.4.1.1 A copy of an acknowledgement letter from the State Attorney, Pretoria, dated 08 September 2006

4.4.1.2 A copy of the receipt from the Department dated 26 June 2008

4.4.1.3 A copy of an affidavit from the Complainant dated 16 March 2017

4.4.1.4 A copy of a section 7(4) notice dated 11 June 2016 addressed to Mr MS Thobakgale, the then Head of the Department, Ms NMG Mfikwe, the Director: Corporate Service and Mr M Madienyane, the then Chief Financial Officer

4.4.2 Interviews conducted

4.4.2.1 A meeting between my investigation team and Mr G Magoma, the Department’s former Director: Legal Services on 09 February 2016

4.4.2.2 A meeting with the Complainant on 14 February 2012

4.4.3 Correspondence sent and received

4.4.3.1 A copy of a letter dated 07 February 2017 addressed to the Department’s Director of Corporate Services

4.4.3.2 An email from the Office of the State Attorney, Pretoria, dated 07 March 2017

4.4.3.3 Response letters from the Department dated 27 March 2017 and 14 July 2017

4.4.3.4 A response letter from the Department dated 04 December 2015
4.4.3.5 A copy of a letter dated 14 October 2014 addressed to the Chief Director of the Department of Rural Development and Land Reform

4.4.3.6 A copy of a section 7(9)(a) notice addressed to the Member of the Executive Council for Public Works and Roads dated 28 March 2018

4.4.3.7 A copy of a section 7(9)(a) notice addressed to the Head of the Department dated 28 March 2018

4.4.3.8 A copy of a section 7(9)(a) notice addressed to the Head of the State Attorney dated 28 March 2018

4.4.4 Legislation and other prescripts

4.4.4.1 The Constitution

4.4.4.2 Public Protector Act

4.4.4.3 Promotion of Administrative Justice Act; 2000 (PAJA)

4.4.4.4 Batho Pele Principles

4.4.5 Case law

4.4.5.1 Noupoort Christian Care Centre v Minister of National Department of Social Developments 2005 (1) BLRC 1034(T)
5 THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1 Regarding whether the Department unduly failed to register and transfer ownership of a property on Erf 248, 59 Bree Street, Lichtenburg, North West Province into the Complainant's name:

Common cause issues

5.1.1 It is common cause that the property was part of the residential properties that were advertised for disposal by the Department.

5.1.2 The Complainant occupied the property since 2000. Early in 2008, she approached the Department with an offer to purchase the property and was advised that its total purchase price was R112 000-00. She paid the total purchase price of the property on 26 June 2008 to the Department. She obtained proof of payment dated 05 May 2009 from the Department.

5.1.3 It is also common cause that the Complainant paid an additional amount of R3 420.00 as transfer costs to the Office of the State Attorney, Pretoria, which acknowledged receipt of the payment as per a letter dated 08 September 2008.

5.1.4 The Department informed the Complainant through a letter dated 17 November 2009 to pay a monthly occupational rental of R200.00 as stipulated in the Deed of Sale as it could not be waived, otherwise the Deed of Sale would be withdrawn and she would be expected to pay market related rental. However, to date the Department has failed to transfer the property into her name.
5.1.5 The Department apologised for failing to transfer ownership of the property into the Complainant’s name as per a letter dated 14 July 2017 from Mr Jabulani Mathabela: Director: Strategic Asset Management.

The State Attorney’s response to my enquiry

5.1.6 On 07 March 2017, my investigation team made an enquiry with the Office of the State Attorney in Pretoria regarding the cause of the delay in transferring ownership of the property into the Complainant’s name. Mrs HJ Badenhorst responded as follows as per an email dated 07 March 2017:

“I confirm that the following matters are outstanding namely (Ref Nr: 1384/05/D2/D):

(a) Item 28(1) Certificate;
(b) Clearance Certificate;
(c) Income Tax of Mrs Dihemo or an estimation of her yearly income;
(d) Written confirmation from the Department of Public Works that it has received the purchase price herein;
(e) Correct signed Power of Attorney to give Transfer—the one received has not been signed by witnesses and shall be returned to Mr P More for rectification;
(f) Written confirmation by Mrs Dihemo indicating her marriage status, full names, surname, identity Numbers and that she has not been declared insolvent”;

5.1.7 It is clear from the response of the State Attorney that the Department did not submit the necessary documents to the State Attorney to enable the latter to process the transfer of ownership of the property into the Complainant’s name.
Application of the relevant law

5.1.8 Section 33(1) and (2) of the Constitution imposes a duty on all organs of the state to provide administrative action that is lawful, reasonable and fair to everyone. It provides that:

"(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair".

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons".

5.1.9 The question that remains to be resolved in this regard is whether the Department's action was lawful, reasonable or fair to the Complainant.

5.1.10 In terms of section 33(2) of the Constitution, it was expected of the Department to provide reasons for its decision or action. The reasons must contain sufficient information which would enable the recipient to understand both the reasoning process and the issues to be addressed and the aggrieved person must be able to consider whether an administrative act or decision is justifiable in relation to the reasons thereof, where his or her rights are affected or threatened by such act or decision.

5.1.11 The Department had a constitutional and statutory duty to provide the Complainant with written reasons regarding its failure to process the registration and transfer of ownership of the property into her name timeously.

5.1.12 The PAJA gives effect to section 33 of the Constitution. Administrative action is defined in section 1 of the PAJA as follows:

"Any decision taken or failure to take a decision, by an organ of the State when...exercising a public function.... in terms of any legislation which adversely affects the rights of any person and which has a direct, external legal effect."
5.1.13 The requirement for administrative action that is lawful, reasonable and procedurally fair is further emphasised in section 3(1) of the PAJA which provides that administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.

5.1.14 In *Noopoort Christian Care Centre v Minister of National Department of Social Developments* 2005 (1) BLRC 1034 (T) the applicant argued that the failure by the respondent to determine the question of whether it was entitled to a permanent licence amounted to unlawful administrative action in terms of section 1 of PAJA. A decision includes any decision of an administrative nature made under an empowering provision, including the decision relating to issuing or refusing to issue a licence. In the current case failure by the Department to process the registration and transfer ownership of the property into the Complainant's name amounts to administrative action.

5.1.15 "Batho Pele", a Sesotho word, which means "People First," is an initiative that was launched in 1997 to transform the Public Service at all levels. The initiative was launched because the democratic South African government inherited a Public Service that was not people-friendly and lacked the skills and attitudes to meet the developmental challenges facing the country. In the struggle to transform the Public Service, the old culture had to be changed to ensure that the people are served properly.

5.1.16 The relevant *Batho Pele* principle of redress provides that:

"If the promised standard is not delivered citizens should be offered an apology, a full explanation and speedy and effective remedy and when complaints are made, citizens should receive a sympathetic positive response"

5.1.17 It was expected of the Department to provide the Complainant with a response and regular feedback regarding her enquiry about the delay to transfer ownership of the property into her name.
5.1.18 The Constitutional Court on the other hand, has been clear in its interpretation of section 195 of the Constitution as imposing, among others, the duty on all public functionaries to take action to prevent or arrest an irregularity as soon as the attention of such public functionary has been drawn to such an irregularity. In the matter at hand, the Department despite being informed about its failure to ensure the registration and transfer of the property, failed to arrest the irregularity.

Conclusion

5.1.19 Based on the evidence obtained, it can be concluded that the Department acted in violation of the provisions of the Constitution, PAJA and Batho Pele Principle of redress when it failed to process the registration and transfer of ownership of the property and to update the Complainant about the matter.

5.2 Regarding whether the Complainant suffered prejudice as a result of the Department’s conduct in the circumstances:

Common cause issues

5.2.1 The Complainant submitted that the Department has to date, after payment of the purchase price and transfer costs, failed to process the transfer of ownership of the property into her name and this has adversely affected her financially.

5.2.2 The Complainant indicated that she was prohibited from altering and/or extending the property until finalisation of the ownership transfer as per a letter dated 27 November 2009 thereby causing a delay in improving the value of the property.

3 In Khumalo and Ano. v MEC for Education: KZN CCT10/13 [2013] ZACC 49 the Constitutional Court said [par 35] that a responsible public functionary who is alerted to an irregularity or impending irregularity has a responsibility to arrest such irregularity.
5.2.3 She said that the continuous payment of the monthly occupational rental of R200.00 since payment of the purchase price of the property on 26 June 2008 could have been used to improve it. The Complainant could not produce all the receipts dating back from 2008 as proof of payment of the monthly occupational rental. She, however, provided my investigation team with some of the receipts.

Application of the relevant law

5.2.4 The Department’s conduct needs to be tested against the basic values and principles governing public administration outlined in section 195(1) of the Constitution, which state, among others, that public administration must be governed by democratic values and principles. It provides that:

“(1) Public administration must be governed by democratic values and principle enshrined in the Constitution, including the following principles:

a) ........................................

b) ........................................

c) ........................................

d) ........................................

e) People’s needs must be responded to and the public must be encouraged to participate in policy-making;

f) Public administration must be accountable…”

5.2.5 In terms of section 33(1) of the Constitution, the Complainant’s constitutional right to administrative action that is lawful, reasonable and procedurally fair was violated by the Department’s failure to ensure transfer of the property into her name.

5.2.6 It was expected of the Department to maintain a high standard of professional ethics by ensuring that the property was transferred accordingly without delay. By timeously
processing the transfer, the Department would have promoted and shown its efficient, economic and effective use of resources.

Conclusion

5.2.7 Based on the above, it can be concluded that the conduct of the Department in the circumstances was improper, and caused the Complainant to suffer financial prejudice by failing to timeously transfer ownership of the property into her name.

6. FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

6.1 Regarding whether the Department unduly failed to register and transfer ownership of a property situated on Erf 248, 59 Bree Street, Lichtenburg, North West Province in the Complainant’s name:

6.1.1 The allegation that the Department unduly failed to register and transfer ownership of the property into the Complainant’s name is substantiated.

6.1.2 The Department has to date failed to process and/or to ensure the registration and transfer of ownership of the property into the Complainant’s name.

6.1.3 The conduct of the Department is in violation of sections 33 and 195 of the Constitution, section 3 of PAJA and the Batho Pele Principle on redress.

6.1.4 The Department’s failure to ensure registration and transfer of ownership of the property into the Complainant’s name constitutes improper conduct as envisaged in
section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

6.2 Regarding whether the Complainant suffered prejudice as a result of the conduct of the Department in the circumstances:

6.2.1 The allegation that the Complainant suffered prejudice as a result of the Department’s failure to ensure the registration and transfer of the property into her name is substantiated.

6.2.2 The Complainant has continuously been paying monthly occupational rental of R200 for the past 10 years and has been prohibited from effecting any alterations or causing any extensions to be made to the property.

6.2.3 The reasonable period within which the property should have been transferred into the name of the Complainant is 6 months. Failure to ensure transfer of the property for more than 10 years caused severe financial prejudice to the Complainant, in the form of occupational rental.

7. REMEDIAL ACTION

In the light of the above findings, the appropriate remedial action I am taking in terms of section 182(1)(c) of the Constitution is the following:

7.1 The Head of the Department must, within 30 working days from the date of publication of this report, send an apology letter to the Complainant for the undue delay to transfer ownership of the property into her name;

7.2 The Head of the Department must, within 30 working days from the date of publication of this report, provide the Office of the State Attorney with all the necessary documents
to enable the State Attorney to register and transfer ownership of Erf 248, 59 Bree Street, Lichtenburg into the Complainant’s name;

7.3 The Head of Office of the State Attorney in North West must, upon receipt of all the documents from the Department and within 45 working days from the date of publication of this report, ensure registration and transfer of Erf 248, 59 Bree Street, Lichtenburg into the name of Ms DC Dihemo;

7.4 The Head of the Department must, within 30 working days of publication of this report, refund the Complainant all the monies paid as occupational rental, plus interest at a rate prescribed by the Minister of Justice in terms of Prescribed Rate of Interest Act 55 of 1975, minus the rental for 6 months, which would have been a reasonable time to register the property, and

7.5 The Head of the Department must, with immediate effect, stop charging the occupational rental on Erf 248, 59 Bree Street, Lichtenburg.

8. MONITORING

8.1 The Head of the Department must, within 15 working days from the date of this report, provide my office with an implementation plan of the remedial action referred to in paragraph 7 above.

8.2 I will monitor implementation of the remedial action contained in paragraph 7 above.
8.3 In accordance with the Constitutional Court judgment in the matter of *Economic Freedom Fighters vs Speaker of the National Assembly and Others*, each remedial action listed in paragraph 7 above is legally binding on the person directed to implement, unless it has been reviewed and set aside by a Court or an appropriate interim Court Order to stay the implementation of the remedial action is obtained within the period stated therein.

ADV BUSISIWE MKHWEBANE  
PUBLIC PROTECTOR OF THE REPUBLIC OF SOUTH AFRICA  
DATE: 21/09/2018