

**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**

*“Allegations of improper conduct in charging the Complainant for basic services consumed by  
another”*

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION  
AND IMPROPER CONDUCT BY THE THEMBISILE HANI LOCAL MUNICIPALITY FOR  
IMPROPERLY CHARGING THE COMPLAINANT FOR BASIC SERVICES  
CONSUMED BY THE PREVIOUS OCCUPANT/OWNER OF THE HOUSE HE  
SUBSEQUENTLY PURCHASED.**

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## Executive Summary

- (i) This is the Public Protector's report, issued 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).
- (ii) The report communicates the Public Protector's findings and appropriate remedial action taken in terms of section 182(1) of the Constitution following an investigation into allegations of improper conduct, maladministration and improper prejudice suffered by the Complainant as a result of the decision by the Thembisile Hani Local Municipality (The Municipality) to improperly charge him for basic services consumed by the previous occupant of the house no. 118 at Kwa-Mhlanga "A".
- (iii) On 7 May 2018, the office of the Public Protector received a complaint from Mr. Amon Tinte Kekana (the Complainant) who resides at stand number 1636, Sun City "A" Kwa-Mhlanga, 1022. The Complainant alleged that the Municipality incorrectly held him liable to pay an outstanding services bill of the previous occupant of the property which he eventually bought.
- (iv) In the main, the Complainant alleged that:
  - (aa) On 2 August 2013, he went to the Thembisile Hani Local Municipality to negotiate an offer to purchase house no. 118 at Kwa-Mhlanga "A", three years after the death of the late Mr Joseph Moshabane Ramathe, who was renting the house from the Municipality since 1980 until he passed away on 22 July 2009;
  - (bb) The Letter of Authority was issued to the mother of the deceased, Ms. Emily Ramathe, as the executrix of the deceased estate, on 17 September 2009;

- (cc) The Complainant was informed by an official of the Municipality at the Finance Department that the house purchase price was R37 224. 00, and he was eventually issued with an Acknowledgment of Debt to that effect, which he duly signed on 02 August 2013;
- (dd) A Deed of Grant issued by the Registrar of Deeds on 21 July 2014 stated *inter alia*, that the Complainant and his wife bought site no. 118, Kwa-Mhlanga, and that the Registrar further acknowledged that the sum of R37 224 00 (**Thirty Seven Thousand Two Hundred and Twenty Four Rand only**) was the purchase price of the property, site no. 118 Kwa-Mhlanga;
- (ee) On the same date that the Acknowledgement of Debt was signed and issued to the Complainant, he also received a Tax Invoice indicating that he had an outstanding balance of R18 282.63 for services and other charges, added to the purchase price of R37 224 00, which meant that the Complainant owed the Municipality an amount of R57 142 39;
- (ff) The Municipality's monthly billing statement dated 30 June 2009 required the deceased, Mr Joseph Moshabane Ramathe, who was by then still alive, to pay his account which was in arrears and owing to the Municipality an amount of R8, 618.77 on or before 29 July 2009;
- (gg) By 25 January 2013 the deceased's outstanding debt had increased from R8, 618.77 to R 16,661.08, and finally by 2 August 2013 the debt had escalated to R18, 282.63; and
- (hh) The Complainant was of the view that the Municipality incorrectly and improperly held him liable for a debt which was incurred by the previous occupant of the house.

- (v) Based on an analysis of the complaint, the following issues were identified and investigated:
- (a) Whether the Municipality improperly billed the Complainant for municipal services which were rendered before the property was legally sold and transferred to him;
  - (b) Whether the Complainant suffered improper prejudice as a result of the conduct of the Municipality, in the circumstances.
- (vi) The investigation was conducted by way of correspondence and perusal of all relevant documents, an analysis and application of all relevant laws, policies and prescripts.
- (vii) Key laws and policies taken into account to determine if there had been improper conduct and maladministration by the Municipality and prejudice caused to the Complainant, were principally those imposing administrative standards that should have been complied with by the Municipality during its decision to hold the Complainant liable for payment of services.
- (aa) The Constitution of the Republic of South Africa, 1996 (the Constitution)
  - (bb) The Public Protector Act, 23 of 1994 (the PPA);
  - (cc) Local Government: Municipal Systems Act 32 of 2000 (Municipal Systems Act);
  - (dd) Thembisile Hani Local Municipality Credit Control and Debt Collection Policy of 2015/2016 (published on 01 February 2016);

- (ee) Thembisile Hani Local Municipality Credit Control and Debt Collection By-law (Provincially Gazette Extraordinary, No. 2138, date 15 February 2013).
  
- (viii) On 7 September 2020, a notice (Notice) in terms of section 7(9)(a) of the Public Protector Act was issued to the Municipal Manager of the Municipality to enable him to respond within (10) working days of receipt thereof. However, no response was received.
  
- (ix) After careful examination of the evidence and information obtained during the investigation and the regulatory framework setting the standards that should have been upheld by the Municipality, the Public Protector makes the following findings:
  - (a) **Regarding whether the Municipality improperly billed the Complainant for services which were rendered before the property was legally sold and transferred to him.**
    - (aa) The allegation that the Municipality improperly billed the Complainant for services which were rendered before the property was legally transferred to him, is substantiated.
  
    - (bb) The Municipality's decision to demand payment from the Complainant for the outstanding debt that was incurred by the previous tenant of the house, which the Complainant subsequently bought, was not supported by any evidence that indicated that the Complainant was a tenant or the occupant of the house before he bought it as alleged by the Municipality. The said decision was therefore unjustified.

- (cc) The Municipality failed to provide any record that confirmed that the Complainant was formally informed that an amount of R18 282, 00 would be added as an accumulated debt for services rendered to the property he was purchasing in 2013. The Municipality also failed to substantiate their claim that the Complainant was a tenant of the said property before he bought it in 2013.
- (dd) The of the Municipality is in contravention of section 118(1) and (3) of the Municipal Systems Act and as substantiated by the *Jordaan* case which placed an obligation on the Municipality to issue a certificate that will allow the registrar of deeds to register the transfer of a property to the new owner. The said certificate is only issued when all the outstanding amounts that became due in connection with that property are fully paid. However, according to the *Jordaan* judgement, it is not the responsibility of the new owner to settle the debt of the previous consumer. According to the *City of Tshwane Metropolitan Municipality and Uniqon Wonings* case, the outstanding amount referred to above is the amount payable over the two years preceding the date of application for the certificate, which does not apply in the current matter.
- (b) Regarding whether the conduct of the Municipality caused the Complainant to suffer improper prejudice.**
- (aa) The allegation that the Complainant suffered improper prejudice as a result of the Municipality's conduct, is substantiated.
- (bb) The decision of the Municipality to bill and demand payment from the Complainant for services that were delivered before the property in question was legally transferred to him, caused the Complainant to suffer financial prejudice.
- (cc) The conduct of the Municipality is in violation of clauses 3.2.1 and 4.1.1 of its own Policy and clause 4(1) of its By-law. In this regard, the Complainant was

financially prejudiced in that he eventually had to pay the amount demanded by the Municipality for services not delivered to him.

- (x) The appropriate remedial action that the Public Protector is taking pursuant of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, is the following:
  - (aa) The Municipal Manager must ensure, within 60 working days from the date of this report, that the Complainant is refunded an amount of R18 282, 00 plus interest calculated in terms of the Prescribed Rate of Interests Act 55 of 1975, and should also apologise in writing to the Complainant for improperly billing him for municipal services which were rendered before the property was legally sold and transferred to him.

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION AND IMPROPER CONDUCT BY THE THEMBISILE HANI LOCAL MUNICIPALITY FOR IMPROPERLY CHARGING THE COMPLAINANT FOR BASIC SERVICES CONSUMED BY THE PREVIOUS OCCUPANT/OWNER OF THE HOUSE WHICH HE SUBSEQUENTLY PURCHASED**

**1 INTRODUCTION**

- 1.1. This is the Public Protector report in terms of section 182 (1) (b) of the Constitution of the Republic of South Africa, 108 of 1996 (the Constitution) and published in terms of section 8 (1) of the Public Protector Act No. 23 of 1994 (the Public Protector Act).
- 1.2. The report is submitted in terms of section 8(1) of the Public Protector Act, to the following people to note the outcome of the investigation:
  - 1.2.1. The Acting Head of the Department of Co-operative Governance and Traditional Affairs in Mpumalanga Province, Mr S. Ngubane.
  - 1.2.2. The Executive Mayor of Thembisile Hani Local Municipality, Cllr. N. Mtsweni.
  - 1.2.3. The Municipal Manager of Thembisile Hani Local Municipality, Mr O.N Nkosi.
- 1.3. A copy of the report is also provided to Mr. Amon Tinte Kekana, the Complainant, to inform him about the outcome of the investigation.
- 1.2.3. The report relates to an investigation into allegations of maladministration, improper conduct and prejudice suffered by Mr. AT Kekana as a result of the alleged decision by the Thembisile Hani Local Municipality (the Municipality) to

improperly charge him for basic services consumed by the previous occupant/owner of the house he subsequently purchased.

## 2. THE COMPLAINT

- 2.1. On 07 May 2018, a complaint was received by the office of the Public Protector from Mr AT Kekana (the Complainant) who resides at stand No. 1636, Sun City “A” Kwa-Mhlanga, 1022. The Complainant alleged that the Municipality improperly held him liable to pay an outstanding municipal service bill of the previous occupant/owner of the property which he eventually bought;
- 2.2. He reported that on 2 August 2013, he went to the Thembisile Hani Local Municipality to negotiate an offer to purchase house no. 118 at Kwa-Mhlanga “A”, three years after the death of the late Mr Joseph Moshabane Ramathe, who was renting the property from the Municipality since 1980 until he passed away on 22 July 2009;
- 2.3. The Letter of Authority was issued to the mother of the deceased, Ms. Emily Ramathe, as executrix of the deceased estate, on 17 September 2009;
- 2.4. The Complainant was informed by an official of the Municipality in the Finance Department, that the purchase price of the house was only R37 224. 00;
- 2.5. The Complainant was eventually issued with an Acknowledgment of Debt to that effect which he duly signed on 02 August 2013;
- 2.6. A Deed of Grant issued by the Registrar of Deeds on 21 July 2014, stated *inter alia* that the Complainant and his wife bought site no. 118, Kwa-Mhlanga, at registration division JR Mpumalanga Province extent 800 square metres and the

Registrar further acknowledged that the sum of R37 224, 00 (**Thirty Seven Thousand Two Hundred and Twenty Four Rand only**) was the purchase price of the property, site no. 118 Kwa-Mhlanga.

- 2.7. On the same date an Acknowledgement of Debt was signed and issued to the Complainant, he also received a Tax Invoice indicating that he had an outstanding balance of R18 282.63 for services and other charges, added to the purchase price of R37 224, 00, which meant that the Complainant now owed the Municipality an amount of R57 142 39;
- 2.8. The Municipality's monthly billing statement dated 30 June 2009, required the deceased, Mr Joseph Moshabane Ramathe who was by then still alive, to pay his account which was in arrears and owing to the Municipality, an amount of R8, 618.77 on or before 29 July 2009;
- 2.9. By 25 January 2013, the deceased's outstanding debt had increased from R8, 618.77 to R 16,661.08, and finally by 2 August 2013, the debt had escalated to R18, 282.63;
- 2.10. The Complainant alleged to have approached the Municipality to question the Municipality's decision to demand payment of the amount that was owed by the former deceased tenant, from him;
- 2.11. The Complainant later approached the office (Public Protector South Africa in Mpumalanga) because the Municipality failed to refund him for the payments he had already made on different dates between 10 September 2013 and 31 January 2014, towards the amount that was owed by the former deceased tenant.

- 2.12. The Complainant was of the view that the Municipality incorrectly and improperly held him liable for a debt which was incurred by the previous occupant of the house.

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

- 3.4 The Public Protector’s powers are regulated by the Public Protector Act, which states, amongst others, that the Public Protector has the powers to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector Act also confers powers to resolve a dispute through conciliation, mediation, negotiation or any other appropriate dispute resolution mechanism as well as to subpoena persons and information from any person in the Republic for the purpose of an investigation.

- 3.5 In the Constitutional Court matter of ***Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others (CCT 143/15; CCT 171/15) [2016] ZACC 11(5); 2016(5) BCLR 618 (CC); 2016(3) SA 580 (CC) (31 March 2016)***, Chief Justice Mogoeng stated the following, when confirming the powers of the public protector:
- 3.5.1 Complaints are lodged with the Public Protector to **cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles** (para 65);
- 3.5.2 An appropriate remedy must mean **an effective remedy, for without effective remedies for breach, the value underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced** (para 67);
- 3.5.3 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 that effect, if it is the best attempt at curing the root cause of the complaint** (para 68);
- 3.5.4 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 (para 69);
- 3.5.5 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 (para 70);

- 3.5.6 The Public Protector’s power to take appropriate 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** (para 71);
- 3.5.7 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 these words suggests that **she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence** (para 71(a));
- 3.5.8 **She has the power to determine the appropriate remedy and prescribe the manner of its implementation** (para 71(d))
- 3.5.9 “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 (para 71(e));
- 3.6 The Constitutional Court further held that the remedial action taken by the Public Protector has a binding effect, *“When remedial action is binding, compliance is not optional, and 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.”*

- 3.7 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) affords the Public Protector with the following three separate powers (paragraphs 100 and 101);
- (a) Conduct an investigation;
  - (b) Report on that conduct; and
  - (c) To take remedial action.
- 3.8 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or prima facie findings (Paragraph 104);
- 3.9 The Thembisile Hani Local Municipality 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.
- 3.10 The Public Protector's power and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties.
- 3.11 Section 6(9) of the Public Protector Act grants the Public Protector discretionary powers to accept complaints which are lodged more than two years after the occurrence of the incident. Some of the special circumstances that the Public Protector took into account to exercise her discretion favourably to accept this complaint, includes the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether I would be able to successfully investigate the matter with due consideration to the availability of evidence and / or records relating to the incident(s); whether there are any competent alternative remedies available to the Complainant and the overall impact of the investigation.

3.12 In this particular matter, over and above what is stated in paragraph 3.11 above, the Public Protector could not ignore the possibility of unfairness and prejudice being caused to the Complainant and other home buyers who were unlawfully expected and actually forced to pay debts incurred by the previous occupants of the relevant houses. The Public Protector also considered the fact that the outcome of this particular investigation would address some systemic administrative issues in the Municipality. As a result of these considerations, the matter was taken on for investigation.

## **4 THE INVESTIGATION**

### **4.1 Methodology**

4.1.1 The purpose of this report is to identify possible maladministration by the Municipality, to determine if the Complainant was improperly prejudiced, and to direct remedial action to remedy any identified maladministration and prejudice, if any is found.

4.1.2 The investigation of the complaint was conducted in terms of section 182(1)(a) of the Constitution which gives the Public Protector the power 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; and in terms of section sections 6(4) of the Public Protector Act, that regulates the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of government at any level.

4.1.3 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration. Section 6 of the Public Protector Act gives the Public Protector

the authority to investigate and report her findings regarding any complaint lodged.

4.1.4 The investigation process included an exchange of correspondence with Municipality and the analysis of relevant documentation, conducted research, and consideration and application of relevant laws, regulatory framework and jurisprudence.

4.1.5 A Notice in terms of section 7(9)(a) of the Public Protector Act, 1994, was issued to the Municipal Manager of the Thembisile Hani Local Municipality, Mr O.N. Nkosi, on 14 September 2020, with a view of affording him an opportunity to respond to those aspects of the investigation which might implicate him to his detriment or lead to an adverse finding pertaining to him as the accounting officer. However, he failed to respond to the Notice within the stipulated ten (10) working days.

## **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:

4.2.1.1. What happened?

4.2.1.2. What should have happened?

4.2.1.3. Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?

4.2.1.4. In the event of maladministration, what would it take to remedy the wrong or to place the Complainant as close as possible to where he 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 or not the Municipality improperly billed the Complainant for municipal services rendered before the property was legally sold and transferred to him.

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 Municipality to prevent maladministration.

4.2.4. The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and maladministration. Where the Complainant has suffered prejudice, the idea is to place him or her as close as possible to where he would have been had the Municipality complied with the regulatory framework setting the applicable standards for good administration.

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

4.3.1. Whether the Municipality improperly billed the Complainant for municipal services which were rendered before the property was legally sold and transferred to him;

4.3.2. Whether the Complainant suffered improper prejudice as a result of the conduct of the Municipality, in the circumstances.

**4.4. The Key Sources of information**

**4.4.1. Documentation**

- 4.4.1.1. A copy of the Complaint Form received from the Complainant on 12 April 2018;
- 4.4.1.2. A copy of an Acknowledgment of Debt that the Complainant duly signed on 02 August 2013;
- 4.4.1.3. Copies of the Municipal Monthly Billing Statements issued in the name of the deceased, Mr Joseph Moshabane Ramathe, who was renting the house from the Municipality from 1980 until he passed away on 22 July 2009;
- 4.4.1.4. The Letter of Authority that was issued to the mother of the deceased, Ms. Emily Ramathe, appointing her as executrix of the deceased estate, on 17 September 2009;
- 4.4.1.5. A copy of the Deed of Grant issued by the Registrar of Deeds on 21 July 2014;
- 4.4.1.6. A copy of a Tax Invoice received by the Complainant on 2 August 2013, after signing an Acknowledgment of Debt, indicating that he had an outstanding balance of R57 142.39 which included the R37 224.00 (purchase price of the property) and an outstanding balance of R18 282.63 for municipal services, amongst other charges.

#### **4.4.2. Correspondence sent and received**

- 4.4.2.1 An email sent on 21 August 2019, from the Public Protector to Mr O. Nkosi, the Municipal Manager of Thembisile Hani Local Municipality.
- 4.4.2.2 Corresponding email received from Adv. Judas Skosana on 06 September 2019.
- 4.4.2.3 An email from Investigator to Adv. Judas Skosana on 06 September 2019.

- 4.4.2.4. A response letter dated 13 September 2019, from Mr O. Nkosi, The Municipal Manager of Thembisile Hani Local Municipality to the Public Protector.
- 4.4.2.5. A letter dated 22 October 2019, from the Public Protector to Mr O. Nkosi.
- 4.4.2.6. An acknowledgment letter dated 21 January 2020 from the Public Protector to Mr O. Nkosi, The Municipal Manager of Thembisile Hani Local Municipality.
- 4.4.1.7. Section 7(9) Notice issued on 14 September 2020 (dated 07 September 2020) from the Public Protector to Mr. O Nkosi, the Municipal Manager of Thembisile Hani Local Municipality.

#### **4.4.3. Meetings held**

- 4.4.3.1 No meeting was held to discuss this matter, due to the Covid-19 pandemic lockdown.

#### **4.4.4. Legislation**

- 4.4.4.1. The Constitution of the Republic of South Africa, 1996 (the Constitution)
- 4.4.4.2. The Public Protector Act, 23 of 1994 (the PPA);
- 4.4.4.3 Local Government: Municipal Systems Act 32 of 2000 (Municipal Systems Act);
- 4.4.4.4. Thembisile Hani Local Municipality Credit Control and Debt Collection Policy of 2015/2016 (published on 01 February 2016);
- 4.4.4.5 Thembisile Hani Local Municipality Credit Control and Debt Collection By-law (Provincially Gazette Extraordinary, No. 2138, date 15 February 2013)

#### **4.4.5. Case law**

4.4.5.1. *Jordaan and Others v City of Tshwane Metropolitan Municipality and Others* (2017) ZACC 31.

4.4.5.2 *City of Tshwane v Uniqon Wonings (20771/2014) [2015] ZASCA 162; 2016 (2) SA 247 (SCA) (20 November 2015).*

### **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 Municipality improperly billed the Complainant for services which were rendered before the property was legally sold and transferred to him.**

#### *Common cause issues*

5.1.1 The late Mr Joseph Moshabane Ramathe was renting house no. 118 at Kwa-Mhlanga "A" from the Municipality from 1980 until he passed away on 22 July 2009.

5.1.2 The Complainant purchased the house previously occupied by Mr Ramathe from the Municipality for an amount of R37 224. 00.

5.1.3 The Complainant was issued with an Acknowledgment of Debt which he duly signed on 2 August 2013.

- 5.1.4 The Letter of Authority relating to the administration of the Deceased's estate was issued to Ms. Emily Ramathe, the mother of the deceased on the 17 September 2009, which gave her control of the deceased's estate, including *inter alia* settling any debts attached to the estate.
- 5.1.5 On 2 August 2013 the Complainant received a Tax Invoice with ref no: 1006809c, indicating that he had an outstanding balance of R57 142.39 owing to the Municipality, which included the R37 224. 00 (purchase price of the property) and an outstanding balance of R18 282.63 for municipal services, amongst other charges such as interest, refuse, rates & taxes, basic sanitation, basic water, clearance certificate etc.

Issues in dispute

- 5.1.6 The Complainant argued that the Municipality's decision to bill him for the outstanding debt on the municipal services was improper. The Complainant alleged that by the time he signed the acknowledgment of debt in August 2013, the house was not occupied and that it had been vacant since the death of Mr Joseph Moshabane Ramathe in July 2009.
- 5.1.7 The Municipality disputed the allegations made by the Complainant and argued in their letter dated 13 September 2019, in response to an email dated 21 August 2019 from the investigation team, that its records show that the Complainant was staying at stand no. 118 Kwa-Mhlanga "A" before 2013 and that he was owing the Municipality the amount of R 37 224.00 for the purchase price of the house.

- 5.1.8 The Municipality further stated in the same letter that in addition to the purchase price, the Complainant was owing R18 282.63, for the services rendered by the Municipality while he was staying in the house before he made a payment arrangement.
- 5.1.9 In response to the follow-up letter by the investigation team dated 22 October 2019, the Municipality argued in their letter dated 15 January 2020 that, when the Complainant was presented with an invoice of R 57 142.39, which included the amount of R 18 282.63 for services rendered, he never disputed it, and in fact he signed the acknowledgement of debt letter. As a result, the Municipality argued that if the Complainant did not know about the debt for services rendered, he should have contested it instead of signing for it. However, in their initial letter dated 13 September 2019 mentioned above, the Municipality admitted that the acknowledgement of debt was for the purchase price of the house.
- 5.1.10 The Complainant maintains that the terms and conditions of the acknowledgment of debt did not include taking responsibility of the existing debt incurred by the deceased while he was still alive and/or by his estate after his death. As such, he believed that he should not be held liable for the debt that arose before the transfer of ownership of the property.
- 5.1.11 The Complainant also maintains that the Municipality was supposed to claim the R18 282.63 from the estate of the deceased, which was to be paid by Ms Emily Ramathe, who was the executrix of the deceased estate.
- 5.1.12 The Municipality acknowledged that Ms Emily Ramathe was issued with a Letter of Authority in respect of the deceased estate. However, the Municipality issued a contradictory statement by claiming that it was the responsibility of the Complainant to enquire with Ms Emily Ramathe before buying the house whether she had settled all the debt owed by her deceased son before he bought the

house, and that the Complainant instead signed an acknowledgment of debt with the Municipality.

5.1.13 However, the Complainant indicated that to his knowledge, he was purchasing the property from the Municipality and not from the former occupant, and thus he did not see the need to enquire about any outstanding debt from Ms Emily Ramathe.

5.1.14 Lastly, the Municipality argued that the onus is on the Complainant to prove why he decided to sign the acknowledgment of debt letter if he had suspicions that the bill included a debt owed by the previous tenant (the deceased).

Application of the relevant law

5.1.14 Section 195(1) of the Constitution, 1996 provides that public administration must be governed by the democratic values and principles enshrined in the Constitution. It requires, *inter alia*, a high standard of professional ethics and accountable public administration which is impartial, fair and transparent.

5.1.15 The process followed by the Municipality in the sale of the property to the Complainant was expected to be transparent, fair and without bias. A high standard of professional ethics and fairness dictates that proper processes of alienation of the property by the Municipality should be followed. Failure to do so by the Municipality would amount to the contravention of the principles and values espoused in section 195 of the Constitution.

5.1.16 Section 118(1) of the Local Government: Municipal Systems Act 32 of 2000 (Municipal Systems Act), that deals with restraint on transfer of properties, provides that a registrar of deeds may not register the transfer of property except

on production to that registrar of deeds, of a prescribed certificate, issued by the municipality in which that property is situated; and which certifies that all amounts that became due in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.

- 5.1.17 Section 118(3) provides that the payment of the said money owed on the property takes preference over any bond registered against the property. This means that the money owed to the Municipality should be settled before the bond can be registered.
- 5.1.18 The section creates a duty on the Municipality to issue a clearance certificate that certifies that all the money due to the Municipality incurred in the two years preceding the purchase of the property is paid before the registrar of deeds can transfer the property to the new owner. Although the section does not specifically state who should pay the said debt, clauses 3.2.1 and 4.1.1 of the Credit Control and Debt Collection Policy of 2015/2016 of the Thembisile Hani Local Municipality indicate that the Municipality must enter into an enforceable agreement with the consumer regarding the services that are delivered. This means that it is the consumer who has to settle the debt with the Municipality.
- 5.1.19 In the present matter, the Municipality was afforded an opportunity to provide evidence that confirms that the Complainant did in fact occupy the house at stand no.118 Kwa-Mhlanga "A", prior to the signing of the Acknowledgment of debt. However, no evidence was provided by the Municipality. Therefore, the Municipality was not justified in demanding payment from the Complainant who was not the consumer.

- 5.1.20 At the time that the Complainant signed the Acknowledgment of Debt on 02 August 2013, which related to the purchase price of R37 224.00, the debt incurred by the deceased, Mr Joseph Moshabane Ramathe still existed but was not included in the Acknowledgment of Debt and as such it should have been settled by the Executrix, Ms Emily Ramathe, and not by the subsequent owner of the property.
- 5.1.21 According to clause 3.2.1 of the Credit Control and Debt Collection Policy of 2015/2016 (the Policy) of the Thembisile Hani Local Municipality published on 01 February 2016, the Municipal Manager must, in terms of the Municipal Systems Act, implement and enforce the Municipality's credit control and debt collection policy. Further to that, and in accordance with the said policy, he/she should establish effective administrative mechanisms, processes and procedures to collect money that is due and payable to the Municipality.
- 5.1.22 The above clause places an obligation on the Municipal Manager to enforce the policy by collecting money due to the Municipality according to the effective administrative mechanisms, processes and procedures established in accordance with the policy. In the current case the Municipality tried to enforce the policy against the late Mr Joseph Moshabane Ramathe (the deceased) before he passed on, when the debt was at R8 618.77 as stated in the statement of 30 June 2009. The Municipality however, later enforced the policy against the Complainant when the debt stood at R 18 282.63 in 2013.
- 5.1.23 Clause 4.1.1 of the Policy provides that *“before supplying of a service, a consumer must inter alia enter into a contract of agreement and such contract should provide for a deposit to be paid as security. Such contract shall set out the conditions on which services are provided and shall require the consumer to note the contents of the Municipality's Credit Control and Debt Collection Policy”*. It further provides that *“when the consumer is not the owner of the*

*property to which the services are to be provided, a properly executed letter from the owner, or authorised agent, indicating that the consumer is the lawful occupant of the property shall be attached to the service contract”.*

- 5.1.24. Clause 4(1) of the Thembisile Hani Local Municipality Credit Control and Debt Collection By-law (the By-Law) also provides that *“No municipal services shall be provided to any property unless a written agreement governing the supply and cost thereof has been entered into with the Municipality subject to its administrative, logistical and financial capability”.*
- 5.1.25 Clause 4.1.1 of the Policy read together with clause 4.1 of the By-law, make provision for a contract of agreement, which sets out the necessary conditions on which services are provided, to be entered into between the Municipality and the consumer. However, where the consumer is not the owner but the occupant, as per the Policy, he/she must then be provided with a letter stating that he/she is the lawful occupant and that the said letter must be attached to the service contract. The service contract allows the Municipality to enforce the policy on one hand and places an obligation upon the consumer to pay for the services rendered on the other hand.
- 5.1.26 The Complainant was neither the owner nor the occupant at the time when the debt arose. That is the reason why no agreement was entered into with him or alternatively that is why no letter was issued indicating that he was the occupant. In actual fact, the Municipality failed to produce any letter coming from the owner, the Executrix or any authorised agent, indicating that the Complainant was the consumer of services on that property before it was sold and transferred to the Complainant. Therefore, the Complainant was under no obligation to pay for the services that were not provided to him or which he did not consume.

- 5.1.27 Both Municipal billing statements dated 30 June 2009 and 25 January 2013 respectively, indicate that the consumer who was to pay for basic service delivered was the deceased himself or his estate, and not the Complainant. This shows that the Municipality was, at all material times, aware who was responsible to pay for services delivered. The Complainant was not the consumer of the Municipality at the time, as there was no contract for the rendering of services between the Municipality and the Complainant in terms of clause 4.1.1. of the policy and also clause 4(1) of the By-law, and as such the Municipality could not enforce the policy or place an obligation upon the Complainant to pay for the services rendered in terms of 3.2.1. of its policy and the by-law.
- 5.1.28 Reference should also be made to the Constitutional Court judgement in the case of *Jordaan and Others v City of Tshwane Metropolitan Municipality and Others* (2017) ZACC 31, which confirmed the correct interpretation and validity of section 118(3) of the Municipality Systems Act when it declared that, upon transfer of a property, a new owner is not liable for debts arising before transfer from the charge upon the property under section 118(3). As a result, the Complainant cannot be held liable for the debts attached to the property before the property was sold and transferred to him.
- 5.1.29 In *City of Tshwane Metropolitan Municipality and Uniqon Wonings (Pty) Ltd* (20771/2014) [2015] ZASCA 162, the SCA (the court) declared in respect **section 118(1)** of the **Local Government: Municipal Systems Act 32 of 2000** that where a township owner sells an erf in the township, and applies for a clearance certificate in respect of municipal rates and charges required before transfer can be effected, the municipality must determine the rates and charges payable over the preceding two years in connection with that erf and issue the certificate against payment of that amount.

5.1.30 The court's decision is to the effect that the Municipality was entitled to debt incurred and/or payable over the two years preceding the date of application for the certificate but not to the historical debt incurred beyond the said two years. However, in the current case the amount demanded by the Municipality constituted historical debt that the previous occupant incurred about four years before the Complainant purchased the property. In the said period of four years the house was not occupied by the Complainant and as such it could not have accumulated debt in the two years preceding the application for the clearance certificate, more so that the house belonged to the Municipality before it was purchased by the Complainant.

#### Conclusion

5.1.31 Based on the evidence in the possession of the Public Protector, it can be concluded that the decision to bill the Complainant the R18 282 00 in addition to the purchase price of the house in question, was not in compliance with section 118(1) and (3) of the Local Government: Municipal Systems Act, as the Complainant was not the consumer at the time when the debt arose.

5.1.32 It can also be concluded that the Municipality's conduct to demand that the Complainant pay the debt incurred by the previous consumer when there was no contract between the Municipality and the Complainant, was not only improper but also irregular and not in compliance with clauses 3.2.1 and 4.1.1 of its own policy, together with as well as clause 4(1) of the By-law.

## **5.2 Regarding whether the Complainant suffered improper prejudice as a result of the conduct of the Municipality in the circumstances**

### Common cause

- 5.2.1 It is common cause that the Complainant bought a house that was previously occupied by the late Mr Joseph Moshabane Ramathe, who was renting it from the Municipality since 1980 until he passed away on 22 July 2009.
- 5.2.2 It is also common cause that there is no record where the Municipality formally informed the Complainant that an amount of R18 282, 00 would be added to the purchase price, as an accumulated debt for services rendered prior to 2013, in respect of the property he was purchasing.
- 5.2.3 The Complainant only received a Tax Invoice TI 2413 after his signing of the Acknowledgment of Debt pertaining to the purchase price on 2 August 2013.
- 5.2.4 The Municipality failed to substantiate their claim that the Complainant was a tenant of the said property prior to purchasing the property. The Municipality further failed to refund him for the payments he made on different dates between 10 September 2013 and 31 January 2014, towards the amount that was owed by the former deceased tenant.

### Application of relevant law

- 5.2.5 According to clauses 3.2.1 and 4.1.1 of the Municipality's Credit Control and Debt Collection Policy read with the Municipality's Credit Control and Debt Collection By-law, referred to in paragraphs 5.1.21; 5.1.23 and 5.1.24 above, the Municipal Manager had to enforce the policy and the by-law against the consumer who has

entered into a service agreement with the Municipality pertaining to the services that are provided.

- 5.2.6 The clauses above, therefore create a duty on the consumer to settle any outstanding debt he/she may have incurred against the Municipality. The Complainant was not a consumer prior to buying the property, and as such the Municipality erred in forcing him to settle the debt for services delivered to the previous tenant.

### Conclusion

- 5.2.7 Based on the evidence obtained above, it can be concluded that the Municipality's decision to demand and accept payment from the Complainant for the debt that accumulated against the property before he purchased the house, was not in compliance with clauses 3.2.1 and 4.1.1 of the policy and clause 4.1 of the by-law. As a result the Complainant suffered financial prejudice.

## **6. FINDINGS**

### **6.1 Regarding whether the Municipality improperly billed the Complainant for services which were rendered before the property was legally sold and transferred to him**

- 6.1.1 The allegation that the Municipality improperly billed the Complainant for services rendered before the property was legally transferred to him, is substantiated.

- 6.1.2 The Municipality's decision to demand payment from the Complainant for the outstanding debt that was incurred by the previous tenant of the house (the late Mr Joseph Moshabane Ramathe), which the Complainant subsequently bought, was not supported by any evidence that indicated that the Complainant was a

tenant or the occupant of the house before he bought it as alleged by the Municipality. The said decision was therefore unjustified.

6.1.3 The Municipality failed to provide any record that confirmed that the Complainant was formally informed that an amount of R18 282, 00 would be added as an accumulated debt for services rendered to the property he was purchasing in 2013. The Municipality also failed to substantiate their claim that the Complainant was a tenant of the said property before he bought it in 2013.

6.1.4 The conduct of the Municipality is in contravention of section 118(1) and (3) of the Municipal Systems Act and as substantiated by the *Jordaan* case (supra) which placed an obligation on the Municipality to issue a certificate that will allow the registrar of deeds to register the transfer of a property to the new owner. The said certificate is only issued when all the outstanding amounts that became due in connection with that property are fully paid. However, according to the *Jordaan* judgement, it is not the responsibility of the new owner to settle the debt of the previous consumer. According to the *City of Tshwane Metropolitan Municipality and Uniqon Wonings* case, the outstanding amount referred to above is the amount payable over the two years preceding the date of application for the certificate, which is not applicable in the current matter.

6.1.5 As a result, the conduct of the Municipality constitutes improper conduct as envisaged in section 182 (1) of the Constitution and maladministration as envisaged in section 6(4) (a) (i) of the Public Protector Act.

**6.2 Regarding Whether the conduct of the Municipality caused the Complainant to suffer improper prejudice:**

- 6.2.1 The allegation that the Complainant suffered improper prejudice as a result of the Municipality's conduct, is substantiated.
- 6.2.2 The decision of the Municipality to bill and demand payment from the Complainant for services that were delivered before the property in question was legally transferred to him, caused the Complainant to suffer improper financial prejudice.
- 6.2.3 The conduct of the Municipality is in violation of clauses 3.2.1 and 4.1.1 of its own Policy and clause 4.1 of the by-law. In this regard the Complainant was financially prejudiced in that he eventually paid the amount demanded by the Municipality for services not delivered to him.
- 6.2.4 The Municipality's conduct constitutes improper conduct as envisaged in section 182 (1) of the Constitution and maladministration as envisaged in section 6(4) (a) (i) of the Public Protector Act.

## **7. REMEDIAL ACTION**

- 7.1 The appropriate remedial action that the Public Protector is taking as contemplated in section 182 (1) (c) of the Constitution, with a view to remedying the improper conduct and maladministration referred to in this report, is the following:
- 7.1.1 The Municipal Manager must ensure, within 60 working days from the date of this report, that the Complainant is refunded an amount of R18 282 00, plus interest calculated in terms of the Prescribed Rate of Interests Act 55 of 1975 and he must also apologise in writing to the Complainant for improperly billing for

municipal services rendered before the property was legally sold and transferred to him.

## 8. MONITORING AND IMPLEMENTATION OF THE REMEDIAL ACTION

- 8.1. The Municipal Manager to submit an action plan, within thirty (30) working days of issuing of this report, indicating how the remedial action mentioned above will be implemented.
- 8.2. The submission of the implementation plan and the implementation of the remedial action shall, in the absence of a court order directing otherwise, be complied with within the period prescribed in this report to avoid being in contempt of the Public Protector.



**ADV. KHOLEKA GCALEKA**  
**ACTING PUBLIC PROTECTOR OF**  
**THE REPUBLIC OF SOUTH AFRICA**

**DATE:** 05 March 2021

Assisted by: Mr BG Sithole, Provincial Representative and Mr PA Mzimba, Senior Investigator,  
Mpumalanga Province

