

**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**

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*Allegations of improper conduct and maladministration against the
Buffalo City Metropolitan Municipality*

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT
AND MALADMINISTRATION BY THE BUFFALO CITY METROPOLITAN
MUNICIPALITY RELATING TO THE PROVISION OF TITLE DEED DOCUMENTS TO
BENEFICIARIES OF RECONSTRUCTION AND DEVELOPMENT PROGRAMME
HOUSES IN KING WILLIAMS TOWN.**



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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 (the Constitution), and published in terms of section 8(1) of the Public Protector Act, 1994 (Public Protector Act).
- (ii) The report communicates my findings and the appropriate remedial action that I am taking in terms of section 182(1)(c) of the Constitution, following an investigation into allegations of improper conduct and maladministration by the Buffalo City Metropolitan Municipality (BCMM) relating to the provision of title deeds documents to beneficiaries of Reconstruction and Development Programme (RDP) Houses in King Williams Town.
- (iii) The complaint was lodged with the Eastern Cape Provincial Office of the Public Protector South Africa in Bhisho by Ms Thantasa Bushet (Complainant) on behalf of herself and 33 other beneficiaries, on 08 March 2018.
- (iv) In the main, the Complainant alleged that:
 - (a) She is a resident of Sweetwaters Township in King Williams Town.
 - (b) On 15 March 2002, she applied to the BCMM for an RDP subsidy, which was approved on 28 January 2005.
 - (c) She received the RDP house (house no 7777) from the BCMM in October 2011, and took occupation, yet she was not provided with the title deed documents.
 - (d) Since March 2018, she has visited the BCMM offices in King Williams Town on numerous occasions, requesting the original title deed documents of her house, but without any success.

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- (e) It is the responsibility of the BCMM to provide her with the original title deed documents to enable her to have full ownership of the property and in order to pass it on to family members or dependents in the event of her death.
- (v) In essence, the Complainant contended that the failure by the BCMM to provide her and 33 other beneficiaries with the original title deed documents in respect of their RDP houses is improper and prejudices them.
- (vi) Based on the analysis of the complaint, the following issues were identified to inform and focus the investigation:
- (a) Whether the BCCM failed to provide the Complainant and the 33 other beneficiaries of RDP houses with title deed documents in terms of the relevant laws and prescripts regulating the transfer of such properties; and if so
- (b) Whether the conduct of the BCMM was improper, constitutes maladministration and prejudiced the Complainant and the other 33 beneficiaries.
- (vii) The investigation was conducted in terms of section 182(1)(a) of the Constitution and sections 6 and 7 of the Public Protector Act. It included correspondence with the BCMM, the National and Eastern Cape Departments of Human Settlements, a meeting with officials of the BCMM, analysis of the information received and application of the relevant laws and prescripts.

(viii) Having considered the evidence and information obtained during the investigation and the regulatory framework setting the standard that should have been upheld by the BCMM, my findings are as follows:

(a) Regarding whether the BCMM failed to provide the Complainant and the 33 other beneficiaries of RDP houses with title deed documents in terms of the relevant laws and prescripts regulating the transfer of such properties.

(aa) The allegation that the BCMM failed to provide the Complainant and the 33 other beneficiaries of RDP houses with the title deed documents in terms of the relevant laws and prescripts regulating the transfer of such properties, is substantiated.

(bb) The BCMM conceded during the investigation that it failed to provide the Complainant and the other 33 beneficiaries of RDP houses with the title deed documents of the respective RDP properties transferred to them by the BCMM.

(cc) It was also not disputed that the Complainant(s) and the other 33 beneficiaries are by law entitled to be provided with the title deed documents.

(b) Regarding whether the conduct of the BCMM was improper, constitutes maladministration and prejudiced the Complainant and the other 33 beneficiaries.

(aa) The allegation the conduct of the BCMM's was improper, constitutes maladministration and prejudiced the Complainant and the 33 other beneficiaries, is substantiated.

- (bb) The failure by the BCMM was in violation of the provisions of the National Housing Code that requires the BCMM to provide the Complainant and the 33 other beneficiaries with the title deed documents.

 - (cc) Due to the failure by the BCMM, the Complainant and the 33 other beneficiaries do not have the title deed documents required by the Deeds Registries Act, 1937 to enable them to sell or bequeath their properties.

 - (dd) The conduct of the Municipality accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act. It also prejudices the Complainant and the 33 other beneficiaries.
- (ix) **The appropriate remedial action that I am taking in terms section 182(1)(c) of the Constitution is the following:**
- (a) **The City Manager of the BCMM to:**
 - (aa) Take the appropriate steps to ensure that the Complainant and the other beneficiaries of RDP houses referred to in this report, are provided with the title deed documents of the respective properties within 60 business days from the date of this report

- (bb) Report to the Council of the BCMM on the steps taken as referred to in paragraphs (ix)(a)(aa) and (ix)(a)(bb) above within 90 business days from the date of this report; and

- (cc) Apologise in writing to the Complainant and the other beneficiaries for the delay in providing them with the title deed documents and of the steps taken as referred to in paragraph (ix)(a)(aa) above, within 30 business days from the date of this report.

REPORT ON INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND MALADMINISTRATION BY THE BUFFALO CITY METROPOLITAN MUNICIPALITY RELATING TO THE PROVIDING OF TITLE DEED DOCUMENTS TO BENEFICIARIES OF RECONSTRUCTION AND DEVELOPMENT PROGRAMME HOUSES IN KING WILLIAMS TOWN

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 section 8(1) of the Public Protector Act 23 of 1994 (Public Protector Act).

1.2 The report is submitted in terms of section 8(1) and 8(3) of the Public Protector Act to the following persons to inform them of the outcome of my investigation:

1.2.1 Mr X Nqatha, the Member of the Executive Council of the Eastern Cape Provincial Government responsible for Cooperative Governance and Traditional Affairs (MEC);

1.2.2 Ms P N Roboli, the Acting Head of the Eastern Cape Department of Cooperative Governance and Traditional Affairs;

1.2.3 Ms T Poswa, the Head of the Eastern Cape Department of Human Settlements;

1.2.4 Mr Humphrey Maxhegwana, the Speaker of Council of the Buffalo City Metropolitan Municipality (BCMM);

1.2.5 Mr Xola Pakati, the Executive Mayor of the BCMM; and

1.2.6 Mr Andile Sihlahla, the City Manager of the BCMM.

1.3 A copy of the report is also provided to Ms Thantasa Bushet, who lodged the complaint, to inform her about the outcome of the investigation.

1.4 The report relates to an investigation into allegations of improper conduct and maladministration by the BCMM regarding the providing of title deeds documents to beneficiaries of Reconstruction and Development Programme (RDP) houses in King Williams Town.

2. THE COMPLAINT

2.1 The complaint was lodged with the Eastern Cape Provincial Office of the Public Protector South Africa (PPSA) on 08 March 2018, by Ms Thantasa Bushet (Complainant) on behalf of herself and 33 other beneficiaries.

2.2 In the main, the Complainant alleged that:

2.2.1 She is a resident of Sweetwaters Township in King Williams Town.

2.2.2 On 15 March 2002, she applied to the BCMM for an RDP subsidy, which was approved on 28 January 2005.

2.2.3 She received the RDP house (house no 7777) from the BCMM in October 2011, and took occupation, yet she was not provided with the title deed documents.

2.2.4 Since March 2018, she has visited the BCMM offices in King Williams Town on numerous occasions, requesting the original title deed documents of her house, but without any success.

2.2.5 It is the responsibility of the BCMM to provide her with the original title deed documents to enable her to have full ownership of the property and in order to pass it on to family members or dependents, in the event of her death.

2.2.6 In essence, the Complainant contended that the failure by the BCMM to provide her and 33 other beneficiaries with the original title deed documents in respect of their RDP houses is improper and prejudices them.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution to support and 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) of the Constitution directs that the Public Protector has additional powers and functions prescribed by legislation.

3.4 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 the power to resolve disputes through mediation, conciliation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.5 Of significance is that in the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National*

*Assembly and Other*¹ the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect. 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.

- 3.6 In the above-mentioned constitutional matter, Mogoeng CJ, stated the following, when confirming the powers of the Public Protector:
- 3.6.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65);
- 3.6.2 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);
- 3.6.3 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 (paragraph 68).

¹ [2016] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76]

² Supra at para [73]

- 3.6.4 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).
- 3.6.5 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).
- 3.6.6 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 (paragraph 71).
- 3.6.7 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 (paragraph 71(a))
- 3.6.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d)).
- 3.6.9 "*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)).
- 3.7 In the matter of the *President of the Republic of South Africa vs Office of the Public Protector and Others* (91139/2016) [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 All SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December

2017), the court held as follows, when confirming the powers of the Public Protector:

- 3.7.1 The constitutional power is curtailed in the circumstances wherein there is conflict with obligations under the constitution (para 71);
- 3.7.2 The Public Protector has power to take remedial action, which include instructing the President to exercise powers entrusted on him under the Constitution if that is required to remedy the harm in question (para 82);
- 3.7.3 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers (para 100 and 101):
 - a) Conduct an investigation;
 - b) Report on that conduct and
 - c) To take remedial action;
- 3.7.4 The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or prima facie findings (para 104);
- 3.7.5 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court (para 105);
- 3.7.6 The fact that there are no firm findings on the wrong doing, does not prohibit the Public Protector from taking remedial action. The Public Protector's observations constitute prima facie findings that point to serious misconduct (para 107 and 108); and

- 3.7.7 Prima facie evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (para 112).
- 3.7.8 The BCMM is an organ of state and its conduct amounts to conduct in state affairs. As a result, this matter falls within the jurisdiction of the Public Protector.
- 3.7.9 The jurisdiction of the Public Protector was not disputed by any of the parties.
- 3.7.10 Regarding the exercise of the discretion of the Public Protector in terms of section 6(9) of the Public Protector Act to entertain matters where the incident or the matter complained of occurred two years or longer prior to the complaint only in special circumstances, I concluded that the alleged failure on the part of the Municipality to provide the Complainant and the other beneficiaries of RDP houses with the title deed documents was still continuing at the time the complaint was lodged and is still continuing to date. The *“incident or matter complained”* of is therefore a continuous occurrence that causes perpetual prejudice until the title deed documents are provided by the Municipality.
- 3.7.11 Moreover, the alleged failure on the part of the Municipality has a serious impact on the right and ability of the Complainant and the other beneficiaries to sell or bequeath their property, which in my view in any event constitutes special circumstances that warrant an investigation by the Public Protector.

4. THE INVESTIGATION

4.1 Methodology

- 4.1.1 The investigation was conducted in terms of sections 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

4.1.2 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.

4.2 Approach to the Investigation

4.2.1 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 improper conduct or maladministration?

4.2.1.4 In the event of maladministration or improper conduct, what would it take to remedy the wrong and what action should be taken?

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 BCMM failed to provide the Complainant and 33 other beneficiaries of RDP houses with title deed documents.

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 BCMM to prevent improper conduct and or maladministration as well as prejudice.

4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and/or maladministration, where possible and appropriate.

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

4.3.1 Whether the BCCM failed to provide the Complainant and the 33 other beneficiaries of RDP houses with title deed documents in terms of the relevant laws and prescripts regulating the transfer of such properties; and if so

4.3.2 Whether the conduct of the BCMM was improper, constitutes maladministration and prejudiced the Complainant and the other 33 beneficiaries.

4.4 The Key Sources of information

4.4.1 Correspondence between the Public Protector and:

4.4.1.1 The Complainant, dated 08 March 2018.

4.4.1.2 Ward Councillor Ms Sixolisiwe Ntsasela of the BCMM, dated 22 March 2018 and 1 June 2018.

4.4.1.3 Mr A Sihlahla, the City Manager of the BCMM, dated 25 June 2018, 16 October 2018 and 15 January 2019.

4.4.1.4 Mr L Mbula, the Head of the Housing Directorate of the BCMM, dated 19 June 2018, 5 July 2018, 17 October 2018, 13 November 2018, 28 November 2018, and 6 December 2018.

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- 4.4.1.5 Ms J Lawrence, Housing Official at the BCMM, dated 15 June 2018.
 - 4.4.1.6 Ms L S Chiba, Senior Administration Officer of the BCMM, dated 22 January 2019.
 - 4.4.1.7 Ms P Nogilana, Administration Officer of the BCMM, dated 15 November 2018.
 - 4.4.1.8 Ms T Poswa, the Head of the Eastern Cape Department of Human Settlements, dated 2 June 2020.
 - 4.4.1.9 Mr D Mpendu, Senior Housing Officer at the Eastern Cape Department of Human Settlements, dated 2 June 2020 and 4 June 2020.
 - 4.4.1.10 Ms N Buthelezi, Chief Director: Policy Framework and Human Settlements of the National Department of Human Settlements, dated 23 June 2020.
 - 4.4.1.11 Mr A Mshumpela, the General Manager: Housing and Strategy of the BCMM, dated 1 October 2018.

4.4.2 Meetings held

- 4.4.2.1 A meeting was held with Mr L Mbula, the Head of the Housing Directorate, Mr A Mshumpela, the General Manager: Housing and Strategy and Mr T Mjanqeka, the Programme Manager: Housing and Administration of the BCMM, on 14 December 2018.

4.5 Legislation and other legal prescripts

- 4.5.1 The Constitution of the Republic of South Africa, 1996.
- 4.5.2 The Public Protector Act, 23 of 1994.
- 4.5.3 National Housing Act, 107 of 1997.

- 4.5.4 The National Housing Code, 2009.
- 4.5.5 Deeds Registries Act, 47 of 1937.
- 4.5.6 The Local Government: Municipal Systems Act, 32 of 2000 (the Municipal Systems Act).
- 4.6 Notices issued in terms of section 7(9) of the Public Protector Act, 23 of 1994.**
 - 4.6.1 A notice was issued in terms of section 7(9) of the Public Protector Act to the City Manager of the BCMM on 31 August 2020. He responded on 18 September 2020.

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

- 5.1 Regarding whether the BCCM failed to provide the Complainant and the 33 other beneficiaries of RDP houses with title deed documents in terms of the relevant laws and prescripts regulating the transfer of such properties.**

Common cause or undisputed facts

- 5.1.1 The Complainant applied to BCMM for a RDP subsidy on 15 March 2002. Her application was approved on 28 January 2005 in respect of ERF number 7777 in Sweetwaters, King Williams Town.
- 5.1.2 She received the RDP house from the BCMM in October 2011, and took occupation.

- 5.1.3 The BCMM did not provide the Complainant with the title deed documents of the property.
- 5.1.4 The Complainant is the registered owner of Erf 7777. The property was transferred to her name in the Deeds Registry, in December 2005.
- 5.1.5 In his response to the complaint dated 01 October 2018, Mr Andile Mshumpela, the General Manager Housing and Strategy at BCMM, provided a list of 34 beneficiaries (including the Complainant) that were not provided by BCMM with title deeds as follows:

No	Name	Surname	ID No	Title Deed No	ERF No
1	Xolisa	Kolisi	7306285957084	T2748/2006	7525
2	Simthembile	Nojaholo	6508295772087	T2765/2006	7572
3	Nomakhaya	Bless	6512252841083	T1554/2015	7578
4	Nomhle	Mamatu	4003250429081	T2702/2006	7624
5	Nandipha	Yawa	6406260971083	T6952/2005	7766
6	Nongayithini	Mpiti	5502210168084	T6904/2005	7781
7	Thozama Cornelia	Simelele	6607280542081	T6912/2005	7789
8	Nowiwi	Qamngana	4002260398088	T6962/2005	7808
9	Nosipho	Gaqo	6401110838087	T6965/2005	7811
10	Nontembiso	Ndzunga	5503060901087	T6969/2005	7816
11	Kholiwe	Kilani	4412250752089	T6974/2005	7821

12	Nomonde	Tuku	5305250216080	T6855/20 05	7829
13	Nontsapho	Gijana	5809090175083	T6869/20 05	7845
14	Nkwenkwe Ben	Ndlelenqwe lo	3206305267080	T6870/20 05	7846
15	Lizi	Ntsikaniso	6306105044080	T1557/20 15	7948
16	Olemanne	Nozikhakha ne	6001155202080	T2616/20 06	8020
17	Nombuyiselo	Lantu	4704250605089	T7503/20 05	8123
18	Nomfukwaza na	Gora	3204040707080	T1560/20 15	8140
19	Phindile	Gora	8311245950087	T1561/20 15	8226
20	Bulelwa	Potwana	6711010721088	T1411/20 06	8241
21	Siphelo	Yenge	6406135167081	T1416/20 06	8246
22	Nowandile	Jonas	5501130566088	T7515/20 05	8259
23	Mncedisi	Twesha	6412045935088	T7516/20 05	8260
24	Nonkondla	Sigutya	5303160505080	T7518/20 05	8263
25	Maxwell	Sityatya	4201135558088	T7519/20 05	8265
26	Mxolisi Stanley	Skeyi	6004285122087	T7527/20 05	8268
27	Noxolo	Mangona	6506260225081	T7493/20 05	8278
28	Linda	Qumra	5803030216081	T7522/20 05	8275
29	Nomthandaz o	Mqhayi	6305190725082	T1565/20 15	8276
30	Nomalinge	Ndungane	6604041471080	T1566/20 15	8279

31	Siphokazi	Skweyiya	6706160055089	T1078/20 06	8282
32	Edward	Kente	5903255790081	T7528/20 05	8302
33	Siziwe Signoria	Potwana	4707060663081	T7525/20 05	8308
34	Thantasa	Bushet	6507300553086	T6961/20 05	7777

Issues in Dispute

- 5.1.6 According to the Complainant, she visited the offices of the BCMM in King Williams Town in January 2018 to request the title deed documents. She could not be provided with the documents and was advised by officials of the Housing Department to go to the Deeds Registration Office, where she would have to pay for a copy. This she could not do, being unemployed and indigent.
- 5.1.7 The Complainant approached the Municipal Ward Councilor of the area where she resides for assistance. She arranged another meeting for the Complainant with Mr Witbooi, an official of the BCMM that was held on 7 March 2018. At this meeting, she was informed that the title deed documents of her property could not be found.
- 5.1.8 Ms Lucy Chiba, a Senior Administration Officer of the BCMM, confirmed during the investigation, on 27 June 2018 that the Complainant had visited their offices, but that the title deed documents could not be traced. She further indicated on 30 October 2018 that the BCMM was resolving the issue and that a firm of attorneys would be appointed to assist in providing the Complainant and the 33 other beneficiaries with the title deed documents.
- 5.1.9 During the investigation, Mr Witbooi of the BCMM indicated that the official who was responsible for the safe-keeping of title deed documents passed on and that the title deed documents of RDP beneficiaries (including that of the Complainant

and the other 33 beneficiaries) could not be found. This was confirmed in a meeting held during the investigation with the Head of the Housing Directorate, Mr L Mbula, the General Manager Housing and Strategy, Mr A Mshumpela and the Programmer Manager, Housing and Administration, Mr T Mjanqeka, on 14 December 2018.

5.1.10 The BCMM officials did not indicate or comment regarding when they first became aware of the untraceable title deeds or the steps taken by the BCMM to obtain the title deed documents and to provide it to the beneficiaries.

5.1.11 Replying to the notice sent to him in terms of section 7(9) of the Public Protector Act, on 18 September 2020, the City Manager confirmed that the Complainant and the other beneficiaries had not been provided with title deed documents by the BCMM. He further stated that the BCMM was liaising with the Eastern Cape Department of Human Settlements for the provision of funds for re-issuing or reprinting of the lost title deed documents from its Title Deed Restoration Programme.

Application of the relevant law and prescripts

5.1.12 The National Housing Act, 1997 introduced a variety of government programmes in order to provide poor households with access to adequate housing, as provided for by section 26 of the Constitution.

5.1.13 The National Housing Code, 2009 established the policy framework in terms of which housing projects are implemented.

5.1.14 Security of tenure is a fundamental principle of the National Housing Code. All beneficiaries of a housing assistance programme must acquire secure tenure, either in the form of ownership, leasehold, deed of grant or formal, rental arrangements and related non-ownership forms of tenure.

5.1.15 Generally, subsidies will be made available only to beneficiaries who acquire registered title to a property, either in the form of ownership, leasehold, 99-year leasehold, or deed of grant.

5.1.16 In this matter, the beneficiaries had to acquire security of tenure by way of the transfer of the respective properties to them by the BCMM that had to provide them with the title deed documents in order to qualify for a subsidy.

5.1.17 This legal requirement was confirmed during the investigation by the Chief Director: Policy Frameworks of the National Department of Human Settlements.

5.1.18 Section 16 of the Deeds Registries Act, 1937 provides that the ownership of land from one person to another may be conveyed only by means of a deed of transfer, executed or attested to by the Registrar of Deeds.

5.1.19 Beneficiaries of the RDP houses accordingly require the title deed documents in order to show that the property was legally transferred to them by the BCMM and to sell or bequeath the properties that is registered in their names in the Deeds Registry.

5.1.20 Section 117 of the Municipal Systems Act provides that all records of a municipality are in the custody of the Municipal Manager.

Conclusion

5.1.21 The BCMM conceded during the investigation that it failed to provide the Complainant and the 33 other beneficiaries of RDP houses with the title deed documents of the respective properties transferred to them by the BCMM.

- 5.1.22 It was also not disputed that the Complainant and the 33 other beneficiaries are by law entitled to be provided with the title deed documents by the BCMM.
- 5.1.23 The BCMM further conceded that the title deed documents were not held in proper safekeeping as they were lost when the official in whose care they were, passed on.
- 5.1.24 The BCMM indicated in October 2018 that a firm of attorneys would be appointed to resolve the matter, but to date that did not happen.
- 5.1.25 According to the City Manager of the BCMM, the Eastern Cape Department of Human Settlements was approached for assistance in this regard.
- 5.2 Regarding whether the conduct of the BCMM was improper, constitutes maladministration and prejudiced the Complainant and the other 33 beneficiaries.**

Common Cause issues

- 5.2.1 It is not in dispute that the Complainant and the 33 other beneficiaries referred to in paragraph 5.1.5 above, have not been provided with title deed documents by the BCMM in respect of the RDP houses transferred to them.
- 5.2.2 As indicated in paragraph 5.1 above, the BCMM was by law required to have transferred the properties on which the RDP houses were built to the names of the beneficiaries and accordingly and to provide them with the proof of transfer in the form of the title deeds of the respective properties. The BCMM has to date failed to do so.

Application of the relevant law and prescripts

5.2.3 The law and other prescripts referred to in paragraphs 5.1.12 to 5.1.20 above also apply to the consideration of this issue.

Conclusion

5.2.4 The failure by the BCMM to provide the Complainant and the 33 other beneficiaries with the title deed documents of the respective properties that were transferred to and on which RDP houses were built for them, is improper and constitutes maladministration.

5.2.5 Due to the failure by the BCMM, the Complainant and the 33 other beneficiaries do not have the title deed documents required by the Deeds Registration Act, 1937 to enable them to sell or bequeath their properties. This is prejudicing them.

6. FINDINGS

Having regard to the evidence, the regulatory framework setting the standard that should have been upheld by the BCMM and the impact on the Complainant(s), I therefore make the following findings:

6.1 Regarding whether the BCCM failed to provide the Complainant and the 33 other beneficiaries of RDP houses with title deed documents in terms of the relevant laws and prescripts regulating the transfer of such properties.

6.1.1 The allegation that the BCMM failed to provide the Complainant and the 33 other beneficiaries of RDP houses with the title deed documents in terms of the relevant laws and prescripts regulating the transfer of such properties, is substantiated.

- 6.1.2 The BCMM conceded during the investigation that it failed to provide the Complainant and the other 33 beneficiaries of RDP houses with the title deed documents of the respective RDP properties transferred to them by the BCMM.
- 6.1.3 It was also not disputed that the Complainant(s) and the other 33 beneficiaries are by law entitled to be provided with the title deed documents.
- 6.2 Regarding whether the conduct of the BCMM was improper, constitutes maladministration and prejudiced the Complainant and the other 33 beneficiaries.**
- 6.2.1 The allegation the conduct of the BCMM's was improper, constitutes maladministration and prejudiced the Complainant and the 33 other beneficiaries, is substantiated.
- 6.2.2 The failure by the BCMM was in violation of the provisions of the National Housing Code that requires the BCMM to provide the Complainant and the 33 other beneficiaries with the title deed documents.
- 6.2.3 Due to the failure by the BCMM, the Complainant and the 33 other beneficiaries do not have the title deed documents required by the Deeds Registries Act, 1937 to enable them to sell or bequeath their properties.
- 6.2.4 The conduct of the Municipality accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act. It also prejudices the Complainant and the 33 other beneficiaries.

7. REMEDIAL ACTION

7.1 The appropriate remedial action that I am taking in terms section 182(1)(c) of the Constitution is the following:

7.1.1 The City Manager of the BCMM to:

7.1.1.1 Take the appropriate steps to ensure that the Complainant and the other beneficiaries of RDP houses referred to in this report, are provided with the title deed documents of the respective properties within 60 business days from the date of this report ;

7.1.1.2 Report to the Council of the BCMM on the steps taken as referred to in paragraphs 7.1.1.1 and 7.1.1.2 above within 90 business days from the date of this report; and

7.1.1.3 Apologise in writing to the Complainant and the other beneficiaries for the delay in providing them with the title deed documents and of the steps taken as referred to in paragraph 7.1.1.1 above, within 30 business days form the date of this report.

8. MONITORING

8.1 The City Manager of the BCMM must submit an Implementation Plan to my office within thirty (30) business days from the date of receipt of this report indicating how the remedial action referred to in paragraph 7 above will be implemented.

8.2 The submission of the implementation plan and the implementation of my remedial action shall in the absence of a court order, be complied with within the period prescribed in this report to avoid being in contempt of the Public Protector.



ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 9/12/2020

Assisted by: Mr Sizwe Mazantsi, Eastern Cape