

**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 and maladministration relating to the failure by the Sol
Plaatje Local Municipality to apply to court for an eviction order”

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT
AND MALADMINISTRATION RELATING TO THE FAILURE BY THE SOL PLAATJE
LOCAL MUNICIPALITY TO APPLY TO COURT FOR AN EVICTION ORDER**

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Executive Summary

- (i) This is a report of the Public Protector 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 23,1994 (the Public Protector Act).
- (ii) The report communicates the findings and appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, following an investigation into allegations of improper conduct and maladministration relating to the failure by the Sol Plaatje Local Municipality to apply to court for an eviction order.
- (iii) The complaint was lodged on 17 May 2019 by Mr Daniel Ngozo on behalf of his late aunt, Ms Kedilatile Mirriam Nkoso (Complainant), at the Northern Cape Provincial Office of the Public Protector South Africa.
- (iv) In the main, the Complainant alleged that:
 - (a) She was lawfully allocated occupant of Erf 20026: 601 Bosch Street Galeshewe, Kimberley. At the back of the property, there are rooms that were occupied by Ms M Mogotsi and her son, Mr Emmanuel Monnapula Mogotsi (Mr Mogotsi).
 - (b) Ms Mogotsi moved out of the backrooms, however her son, refused to vacate the property.
 - (c) In February 2019 and March 2019 the Municipality sent eviction notices to Mr Mogotsi, but he ignored the notices and refused to vacate the property.
 - (d) Further that she approached Mr Mothelesi at the Municipality and requested him to intervene, however Mr Mothelesi informed her that the Municipality did not have funds to deal with the issue.
- (v) In essence, the Complainant alleged failure by the Municipality to apply to court for an eviction order against Mr Mogotsi from Erf 20026: 601 Bosch Street, Galeshewe, which had been allocated to her by the Municipality in 2015.

(vi) ISSUES IDENTIFIED AND INVESTIGATED

(vii) Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:

(a) Whether there was failure by the Sol Plaatje Local Municipality to apply to court for an eviction order against Mr Mogotsi from Erf 20026: 601 Bosch Street, Galeshewe, the property that had been allocated to Ms Nkoko; and if so, whether the conduct of the Municipality was improper and constitutes maladministration.

(viii) The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act. It included correspondence with the Municipality, an analysis of the relevant documents and information obtained during the investigation and consideration and application of the relevant laws and prescripts.

(ix) Correspondence in terms of section 7(4)(b) of the Public Protector Act, 1994 was also issued to Mr S G Mothelesi, the Manager: Housing Administration of the Municipality on 24 July 2019.

(x) Notices were issued in terms of section 7(9) of the Public Protector Act, affording the persons implicated or affected by the evidence obtained during the investigation the opportunity to respond. The Municipality responded on 3 February 2022 by indicating that the matter had been referred to the Legal Unit of the Municipality for further investigation.

(xi) All relevant documents and correspondence were obtained and analysed. Relevant laws, policies and related prescripts were also considered and applied throughout the preliminary investigation.

(xii) Key laws and policies taken into account to determine if there had been maladministration and improper conduct by the Sol Plaatje Local Municipality for failure to apply to court for an eviction order are the following:

- (a) **The Constitution, 1996** [Act. No. 108 of 1996], which is the supreme law of the Republic.
- (b) **The Public Protector Act, 1994** [Act No. 23 of 1994] which the key legislation giving effect to the provisions of section 182(1)(a) to (c) of the Constitution, 1996.
- (c) **The Local Government: Municipal Finance Management Act 56 of 2003.**
- (d) **The Local Government: Municipal Systems Act No 32 of 2000. (Municipal Systems Act).**
- (e) **The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998.**

(xiii) Having considered the evidence and information obtained during the investigation, the Public Protector makes the following findings:

- (a) **Regarding whether there was a failure by the Sol Plaatje Municipality to apply to court for an eviction order against Mr Mogotsi from Erf 20026: 601 Bosch Street, Galeshewe, allocated to Ms Nkoko and if so, whether the conduct of the Municipality was improper and constitutes maladministration:**

- (aa) The allegation that there was failure by the Municipality to apply to court for an eviction order against Mr Mogotsi from Erf 20026: 601 Bosch Street, Galeshewe, allocated to Ms Nkoko, is substantiated. Despite eviction notices sent by the Municipality to Mr Mogotsi indicating that legal action would be taken should he not comply, the Municipality failed to take the matter to court, when Mr Mogotsi refused to comply.

- (bb) The conduct of the Municipality in this regard 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*.
- (xiv) **The appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution is the following:**
- (a) **The Municipal Manager of the Municipality to:**
- (aa) Take appropriate steps to approach a court for an eviction order against Mr Mogotsi from Erf 20026: 601 Bosch Street, Galeshewe in terms of Section 6 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998, within **sixty (60) working days** from the date of the report and to inform the family of the Complainant accordingly.
- (bb) Apologise in writing to the family of the late Ms Kedilatile Mirriam Nkoko for the delay in applying to court for an eviction order against Mr Mogotsi, within **sixty (60) working days** from the date of the report in accordance with section 51 of the Local Government: Municipal Systems Act.
- (cc) Take the appropriate steps in respect of disciplinary action against the officials of the Municipality, who contributed to the undue delay or failure to assist the Complainant by applying for an eviction order against Mr Mogotsi, in terms of the Disciplinary Policy of the Municipality and as envisaged in section 67(1)(h) of the Local Government: Municipal Systems Act, 2000, within **sixty (60) working days** from the date of the report.
- (dd) Ensure that all the officials of the Municipality that deal with requests and applications for eviction orders are trained on the relevant legislation and the process and procedure to be followed, within **sixty (60) working days** from the date of the report.

- (ee) Establish, within **one hundred and twenty (120) working days** from the date of the report, internal complaint mechanisms in terms of section 51(a) and (b) of the Local Government: Municipal Systems Act to ensure that complaints against process failures and internal control deficiencies are expeditiously resolved.

- (ff) Ensure that the Internal Audit Unit of the Municipality, on an annual basis, review and advise management on the adequacy and effectiveness of the municipality's system of internal control, risk management and performance management as envisaged by section 165 of the Local Government: Municipal Finance Management Act, 2003 (MFMA).

- (gg) Ensure that the Audit Committee of the municipality, in all its quarterly meetings, consider the Internal audit, Auditor General South Africa and other related investigation reports to ensure that the recommendations are implemented, as envisaged by section 166 of the MFMA.

- (hh) Report to the Council on the implementation of the remedial action taken in paragraphs (aa) to (gg) above, within **ninety (90) working days** from the date of the report.

1. INTRODUCTION

- 1.1. This is a report of the Public Protector, 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 (the Public Protector Act).
- 1.2. The report is submitted in terms of sections 8(1) and 8(3) of the Public Protector Act to Mr Goolam Akharwaray, the Municipal Manager of the Sol Plaatje Local Municipality (Municipality), to inform him of the outcome of the investigation and the remedial action taken.
- 1.3. Copies of the report are also provided to:
 - 1.3.1. Mr B Vass, the Member of the Executive Committee of COGHSTA;
 - 1.3.2. Mr BS Lenkoe, the Head of Department of COGHSTA;
 - 1.3.3. Dr Zamani Saul, the Premier of the Northern Cape Province;
 - 1.3.4. Ms Nomazizi Maputle, the Speaker of the Sol Plaatje Local Municipality;
 - 1.3.5. The Mr Kagisho Dante Sonyoni, the Mayor of the Municipality;
 - 1.3.6. Mr Pitso, the Legal Advisor of the Municipality;
 - 1.3.7. Mr SG Mothelesi, the Housing Manager of the Municipality; and
 - 1.3.8. Mr Daniel Ngozo, who lodged the complaint on behalf of Ms Nkozo.
- 1.4. The report communicates the findings and appropriate remedial action that the Public Protector is taking in terms of the provisions of section 182(1)(c) of the Constitution, following an investigation into allegations of improper conduct and maladministration relating to a failure by the Sol Plaatje Local Municipality to apply to court for an eviction order.

2. THE COMPLAINT

2.1. The complaint was lodged on 17 May 2019 by Mr Daniel Ngozo on behalf of his late aunt, Ms Kedilatile Mirriam Nkoko (Complainant), at the Northern Cape Provincial Office of the Public Protector South Africa.

2.2. In the main, the Complainant alleged that:

2.2.1. She is the lawful allocated occupant of Erf 20026:601 Bosch Street, Galeshewe in Kimberley. Rooms at the back of the property were illegally occupied by Ms M Mogotsi and her son, Mr Emmanuel Monnapula Mogotsi.

2.2.2. Ms Mogotsi moved out of the backrooms, however her son, refused to vacate the property.

2.2.3. In February 2019 and March 2019 the Municipality sent eviction notices to Mr Monnapula Mogotsi, but he ignored the notices and refused to vacate the property.

2.2.4. In essence, the Complainant alleged failure by the Municipality to apply to court for an eviction order against Mr Mogotsi from Erf 20026: 601 Bosch Street, Galeshewe, in Kimberley, that had been allocated to her by the Municipality in 2015.

2.2.5. During the investigation of the matter, it was established that the Complainant passed away on 5 August 2021.

3. ISSUES IDENTIFIED AND INVESTIGATED

3.1. **On analysis of the complaint, the following issue was identified to inform and focus the investigation:**

3.1.1. Whether there was a failure by the Sol Plaatje Local Municipality to apply to court for an eviction order against Mr Mogotsi from Erf 20026: 601 Bosch Street, Galeshewe, a property allocated to Ms Nkoko; and if so, whether the conduct of the Municipality was improper and constitutes maladministration.

4. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

4.1. The mandate of the Public Protector

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

4.3. 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.”

4.4. Section 182(2) of the Constitution directs that the Public Protector has additional powers and functions prescribed by national legislation.

4.5. 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 and to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

4.6. In the matter of the *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

4.7. The Constitutional Court further held that:

4.7.1. Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (paragraph 65);

4.7.2. 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);

4.7.3. 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);

4.7.4. 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);

4.7.5. 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

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

² *Supra* at para [73].

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);

4.7.6. 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);

4.7.7. 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));

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

4.7.9. "*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)).

4.8. In the matter of the ***President of the Republic of South Africa v 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:

4.8.1. The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the Constitution (para 71);

- 4.8.2. 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 (paragraphs 100 and 101):
- a) Conduct an investigation;
 - b) Report on that conduct; and
 - c) To take remedial action.
- 4.8.3. The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or *prima facie* findings. (para 104);
- 4.8.4. 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);
- 4.8.5. 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 (paragraphs 107 and 108); and
- 4.8.6. *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (paragraph 112 of the judgment).
- 4.9. The Municipality is an organ of state and its conduct amounts to conduct in state affairs, and as a result, the matter falls within the jurisdiction of the Public Protector.
- 4.10. The Public Protector's powers and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties.

5. THE INVESTIGATION

5.1. Methodology

5.1.1. The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act. The investigation process included the assessment of the complaint, analysis of information and evidence obtained during the investigation and applicable legal prescripts.

5.1.2. 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.

5.1.3. A notice in terms of section 7(4)(b) of the Public Protector Act, 1994 containing the allegations made by the Complainants, as well requesting for a response to the allegations made and documents pertinent to the issue under investigation was issued to Mr SG Mothelesi, the Manager: Housing Administration of the Municipality the email dated 24 July 2019.

5.2. Approach to the investigation

5.2.1. The investigation was approached using an enquiry process that seeks to find out:

5.2.1. What happened?

5.2.2. What should have happened?

5.2.3. Is there a discrepancy between what happened and what should have happened and does that deviation amount to improper conduct or maladministration?

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

- 5.2.5. 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 there was failure by the Sol Plaatje Local Municipality to apply to court for an eviction order against Mr Mogotsi from Erf 20026: 601 Bosch Street, Galeshewe, property that was allocated to Ms Nkozo; and if so, whether the conduct of the Municipality was improper and constitutes maladministration?
- 5.2.6. 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 improper conduct, maladministration and prejudice.
- 5.2.7. 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.

5.3. The Key Sources of information

5.3.1. Documents and correspondence

- 5.3.1.1. A copy of the letter from Mr S G Mothelesi, dated 15 April 2015.
- 5.3.1.2. A copy of the allegations sent to Mr S G Mothelesi, Manager: Housing Administration of the Municipality the email dated 24 July 2019.
- 5.3.1.3. A copy of the Municipality's statement of account of Ms Nkozo, dated 25 April 2019.
- 5.3.1.4. A copy of the Deeds Office Property Printout, dated 2 October 2019.
- 5.3.1.5. A copy of the Housing Subsidy System (HSS), dated 19 February 2022.
- 5.3.1.6. A copy of the Eviction Notice from Mr S G Mothelesi, dated 5 March 2022.

5.3.1.7. A copy of the response to the allegations letter of the Public Protector South Africa (PPSA) from Mr S G Mothelesi, the Manager: Housing Administration of the Municipality, dated 31 July 2020.

5.3.2. Meetings held

5.3.2.1. Meeting held on 3 February 2022 with Mr Goolam Akharwaray, the Municipal Manager of the Municipality.

5.3.3. Legislation and other prescripts

5.3.3.1. *The Constitution of the Republic of South Africa, 1996.*

5.3.3.2. *The Public Protector Act No 23 of 1994.*

5.3.3.3. *The Local Government: Municipal Finance Management Act 56 of 2003.*

5.3.3.4. *The Local Government: Municipal Systems Act No 32 of 2000. (Municipal Systems Act).*

5.3.3.5. *The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998.*

5.3.3.6. *Adjusted Alert Level Regulations issued in terms of section 27 of the Disaster Management Act, 2002 (Gazette No 45253, 30 September 2021 as amended by Gazette 45297, dated 11 October 2021).*

5.3.4. Notices issued in terms of section 7(9) of the Public Protector Act

5.3.4.1. A Notice was issued in terms of section 7(9) of the Public Protector Act to Mr Goolam Akharwaray, the Municipal Manager of the Municipality, on 6 January 2022 affording him an opportunity to respond to the evidence obtained during the

investigation. The Municipal Manager responded to the section 7(9) Notice and his responses are incorporated in the report.

5.3.4.2. Letters were also sent to Dr Zamani Saul, the Premier of the Northern Cape, Mr BS Lenkoe, the Head of Department of COGHSTA, Mr B Vaas, the MEC of COGHSTA, Mr Pitso, the Legal Advisor of the Municipality, Mr S G Mothelesi, the Housing Manager of the Municipality, affording them the opportunity to respond to the contents of the section 7(9) Notice in as far as it affects or impacts them, on 6 January 2022. No responses were received.

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

6.1. Regarding whether there was a failure by the Sol Plaatje Municipality to apply to court for an eviction order against Mr Mogotsi from Erf 20026: 601 Bosch Street, Galeshewe, a property allocated to Ms Nkozo and if so, whether the conduct of the Municipality was improper and constitutes maladministration:

Common cause or undisputed facts

6.1.1. It is common cause that Mrs Kedilatile Mirriam Nkozo was allocated occupancy of Erf 20026: 601 Bosch Street, Greater No. 2 Galeshewe, Kimberley by the Municipality.

6.1.2. According to a Deeds Office Property Printout, dated 2 October 2019, Erf 20026, Galeshewe is registered in the name of the Municipality under Title Deed T70/2002.

6.1.3. Ms Mirriam Mogotsi, the mother of Mr Emmanuel Monnapula Mogotsi was allocated a house in Dunstan/Ubuntu 184 Project. The house was built in 2013/2014. She and her son, Mr E M Mogotsi occupied a back room on the Erf allocated to the Complainant.

6.1.4. When Ms Mogotsi moved out of Erf 20026: 601 Bosch Street, her son Mr. Monnapula Mogotsi refused to move with her and decided to remain on the property.

6.1.5. In February 2019 and March 2019, the Municipality issued eviction notices to Mr Mogotsi to move out of the property, but he ignored the notices and refused to vacate the property.

Issues in dispute

6.1.6. The Complainant contended that despite numerous requests, the Municipality failed to apply to court for an eviction order against Mr Mogotsi who illegally occupied one of the buildings on erf 20026: 601 Bosch Street, Galeshewe.

6.1.7. According to a letter dated 15 April 2015 addressed to the Complainant from Mr S G Mothelesi, the Manager: Housing Administration of the Municipality, obtained during the investigation, he informed the Complainant that:

“Based on the deliberations and presentation with above property (601 Bosch Street) the following has been resolved.

That the property/site is officially allocated to you and the account will be registered in your name as from 1 May 2015. You are not to sublet the above site, is (sic) still belongs to the municipality.”

6.1.8. In terms of the Municipality’s statement of account of Ms Nkozo, dated 25 April 2019, she was the registered account holder of Site 601 Bosch Street, Galeshewe, Kimberley.

6.1.9. According to the Housing Subsidy System (HSS), Ms Nkozo applied for a housing subsidy on 13 May 2015 for the Project Sol Plaatjie Kimberley infill areas 370 and, which was approved on 6 March 2017.

6.1.10. In a written response to the allegations during the investigation, dated 31 July 2020, Mr S G Mothelesi, the Manager: Housing Administration of the Municipality stated that Ms Nkozo was the owner of the allocated site at 601 Bosch Street, Greater No.2 Galeshewe, Kimberley and she was free to evict Mr Mogotsi upon receipt of her title deed. Mr Mothelesi further stated that:

6.1.10.1. Mr Mogotsi's mother was allocated a site at Dunstan/Ubuntu, on which she subsequently built a house through a subsidy.

6.1.10.2. Mr Mogotsi was supposed to have moved with the family as the site was allocated to his mother at the time.

6.1.10.3. The title deed registration was underway and that the Complainant would be informed as soon as same had been completed.

6.1.11. In another response to the allegations obtained from the Municipality during the investigation, dated June 2020, the Municipality stated that:

6.1.11.1. The owner had the right to apply for an eviction order as the owner of the Site/House, which the Municipality built in 2015 as part of the Infill Areas in the First Phase of the 370 houses built then.

6.1.11.2. Ms Mogotsi got a house in Dunstan/Ubuntu 184 Project, which was built in 2013/14 and left her son in the rooms she had hired then from the Complainant. The son demanded that the Municipality provide him with alternative housing, which was not well received, because the son was part of the Mogotsi family.

6.1.11.3. Mr Mogotsi should apply for a site, the same as everybody else to be put on the Housing Needs Register for a site consideration.

6.1.12. According to the Eviction Notice from Mr S G Mothelesi, the Manager: Housing Administration of the Municipality, addressed to Mr Mogotsi on 19 February 2019, he was informed that:

6.1.12.1. Erf No: 20026: 601 Bosch Street, Galeshewe, belonged to the Municipality.

6.1.12.2. A housing subsidy was approved in the name of Ms Nkoko.

6.1.12.3. He should vacate the property by no later than 28 February 2019 and not harass any of the occupants.

6.1.12.4. Failure to comply with the notice would result in legal action taken against him and he would be responsible for all the costs incurred.

6.1.13. In terms of the second Eviction Notice from Mr S G Mothelesi, addressed to Mr Mogotsi on 5 March 2019, he was advised to vacate the property at Erf 20026 allocated to Ms Nkoko by no later than 30 March 2019 and not to harass any of the occupants.

6.1.14. According to a letter, dated 5 April 2017 from Mr S G Mothelesi, to Mr K G Lebusho, a Technician of the Municipality, Mr Mothelesi requested Mr Lebusho to disconnect the electricity at 601 Bosch Street because the box installed was done without the knowledge of the Municipality. Mr Mothelesi further informed Mr Lebusho that the name of the tenant whose pre-paid box was not registered, was Mr Mogotsi who was violent towards the legal owner, Ms Nkoko.

6.1.15. In another written response to the PPSA investigation team, dated 23 October 2020, the former Acting Municipal Manager, Mr Boy Dhuwayo stated that:

6.1.15.1. The property in question was registered in the name of the Municipality and had been officially allocated to Ms Nkoko as per the approved housing subsidy.

- 6.1.15.2. In addressing the problem, the Municipality had engaged Mr Mogotsi with an offer of alternative accommodation, but he refused the offer.
- 6.1.15.3. Mr Mogotsi had since appointed an attorney to represent him on the matter and it was being attended to.
- 6.1.15.4. The Municipality had however decided to apply for an eviction order against Mr Mogotsi not later than 27 October 2020, the application was being processed by the Municipal Legal Department, and that the Public Protector South Africa (PPSA) would be informed of the progress made in this regard.
- 6.1.16. Despite several undertakings by the Municipality that the court process of evicting Mr Mogotsi would be instituted or that the Complainant would be issued with a title deed in her name for the property concerned, the matter has to date not been resolved.
- 6.1.17. In a response to a section 7(9) Notice during the investigation, in a meeting held on 3 February 2022, Mr Goolam Akharwaray, the Municipal Manager of the Municipality indicated that after receipt of the Notice he referred the matter to the Legal Unit of the Municipality for further investigation and undertook to respond on 9 February 2022. No response was received from the Municipality on 9 February 2022.

Application of law and relevant prescripts

The Constitution of the Republic of South Africa, 1996 [Act. No. 108 of 1996]

6.1.18. Section 195 of the Constitution provides that the public administration must be governed by the democratic values and principles enshrined in the Constitution including, *inter alia*, the following principles:

6.1.18.1. A high standard of professional ethics must be promoted and maintained;

6.1.18.2. Efficient, economic and effective use of resources must be promoted; and

6.1.18.3. Public administration must be accountable.

Local Government: Municipal Systems Act 32 of 2000

6.1.19. Section 55(1) of the Municipal Systems Act provides, that as the head of the administration of a municipality, the Municipal Manager is, subject to the policy directions of the municipal council, responsible and accountable for, *inter alia*, the management of the provision of services to the local community in a sustainable and equitable manner.

6.1.20. A Code of Conduct for Municipal Staff Members is provided for in Schedule 2 to the Municipal Systems Act.

6.1.21. Item 2 of the Code provides that a staff member of a municipality must at all times-

(a) loyally execute the lawful policies of the municipal council;

(b) perform the functions of office in good faith, diligently, honestly and in a transparent manner;

(c) act in such a way that the spirit and objects of section 50 are promoted;

(d) act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and

e) act impartially and treat all people, including other staff members, equally without favour or prejudice”.

6.1.22. Breaches of the Code must, by virtue of item 14, be dealt with in terms of the disciplinary procedures of the Municipality.

Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998

6.1.23. Section 6 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act provides, *inter alia*, that:

“An organ of state may institute proceedings for the eviction of an unlawful occupier from land, which falls within its area of jurisdiction, except where the unlawful occupier is a mortgagor and the land in question is sold in a sale of execution pursuant to a mortgage and the court may grant such order if it is just and equitable to do so, after considering all the relevant circumstances and if-

(a) the consent of that organ of state is required for the erection of a .building or structure on that land or for the occupation of the land and the unlawful occupier is occupying a building or structure on that land without such consent having been obtained; or

(b) it is in the public interest to grant such order”

6.1.24. In this matter, the Municipality had not provided the Complainant with any proof that she was the registered owner of Erf 20026. It was accordingly reasonable for

her to have assumed that as she had been occupying the Erf as per allocation thereof to her by the Municipality, the latter was the registered owner thereof.

6.1.25. According to the evidence, Mr Mogotsi did not have consent of the Municipality to occupy the land and had already ignored two eviction notices issued to him by the Municipality. In the circumstances, the Municipality may approach the court in terms of section 6 for an eviction order.

6.1.26. The Municipality have threatened, but failed to approach the court to evict Mr Mogotsi.

6.1.27. In terms of the adjusted Alert Level Regulations issued in terms of section 27 of the Disaster Management Act, 2002 (Gazette No 45253, 30 September 2021 as amended by Gazette 45297, dated 11 October 2021), a person may not be evicted from his home for the duration of the national state of disaster unless a competent court has granted authorising the eviction.

Conclusion

6.1.28. The available evidence show that Erf 20026: 601 Bosch Street, Galeshewe, is registered in the name of the Municipality. Mr Mogotsi does not have the consent of the Municipality to occupy the property belonging to the Municipality.

6.1.29. As an organ of state, the Municipality is in a position to apply for an eviction order against Mr Mogotsi, in terms of section 6 the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998, which it committed to but failed to do.

6.1.30. The evidence and information obtained during the investigation indicated that there was failure by Municipality since March 2019 to apply to court for an eviction order against Mr Mogotsi from Erf 20026: 601 Bosch Street, Galeshewe.

6.1.31. The undue delay and failure of the Municipality to assist the Complainant by applying for an eviction order was improper, as it deprived her from fully enjoying lawful occupation of the land. It also amounted to maladministration as envisaged by section 6(4) of the Public Protector Act.

7. FINDINGS

7.1. Having considered the evidence as well as the regulatory framework determining the standard that should have been complied with by the Municipality, the Public Protector makes the following adverse findings:

7.1.1. Regarding whether there was failure by the Sol Plaatjie Municipality to apply to court for an eviction order against Mr Mogotsi from Erf 20026: 601 Bosch Street, Galeshewe, the property allocated to Ms Nkoko and if so, whether the conduct of the Municipality was improper and constitutes maladministration:

7.1.1.1. The allegation that there was a failure by the Municipality to apply to court for an eviction order against Mr Mogotsi from Erf 20026: 601 Bosch Street, Galeshewe, from the house allocated to Ms Nkoko, is substantiated.

7.1.1.2. Despite eviction notices sent by the Municipality to Mr Mogotsi indicating that legal action would be taken should he not comply, the Municipality failed to take the matter to court, when Mr Mogotsi refused to comply.

7.1.1.3. The Municipality's conduct accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration and undue delay in terms of section 6(4)(a) of the Public Protector Act.

8. REMEDIAL ACTION

8.1. The appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution, with a view to remedying maladministration, improper conduct referred to in this report is the following:

8.1.1. The Municipal Manager of the Municipality to:

- 8.1.1.1. Take appropriate steps to approach a court for an eviction order against Mr Mogotsi from Erf 20026: 601 Bosch Street, Galeshewe in terms of Section 6 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998, within **sixty (60) working days** from the date of the report and to inform the family of the Complainant accordingly.
- 8.1.1.2. Apologise in writing to the family of the late Ms Kedilatile Mirriam Nkozo for the delay in applying to court for an eviction order against Mr Mogotsi, within **sixty (60) working days** from the date of the report in accordance with section 51 of the Local Government: Municipal Systems Act.
- 8.1.1.3. Take the appropriate steps in respect of disciplinary action against the officials of the Municipality, who contributed to the undue delay or failure to assist the Complainant by applying for an eviction order against Mr Mogotsi, in terms of the Disciplinary Policy of the Municipality and as envisaged in section 67(1) (h) of the Local Government: Municipal Systems Act, 2000, within **sixty (60) working days** from the date of the report.
- 8.1.1.4. Ensure that all the officials of the Municipality that deal with requests and applications for eviction orders are trained on the relevant legislation and the process and procedure to be followed, within **sixty (60) working days** from the date of the report.

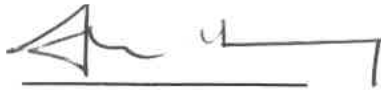
- 8.1.1.5. Establish, within **one hundred and twenty (120) working days** from the date of the report, internal complaint mechanisms in terms of section 51(a) and (b) of the Local Government: Municipal Systems Act to ensure that complaints against process failures and internal control deficiencies are expeditiously resolved.
- 8.1.1.6. Ensure that the Internal Audit Unit of the Municipality, on an annual basis, review and advise management on the adequacy and effectiveness of the municipality's system of internal control, risk management and performance management as envisaged by section 165 of the Local Government: Municipal Finance Management Act, 2003 (MFMA).
- 8.1.1.7. Ensure that the Audit Committee of the municipality, in all its quarterly meetings, consider the Internal audit, Auditor General South Africa and other related investigation reports to ensure that the recommendations are implemented, as envisaged by section 166 of the MFMA.
- 8.1.1.8. Report to the Council on the implementation of the remedial action taken in paragraphs 8.1.1.1. to 8.1.1.7 above, within **ninety (90) working days** from the date of the report.

9. MONITORING

- 9.1. The Municipal Manager of the Municipality to submit an action plan to the Public Protector within **thirty (30) working days** from the date of this report on the implementation of the remedial action referred to in paragraph 8.1 above.
- 9.2. The submission of the implementation plan and the implementation of the 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: 27 / 02 /2022



Assisted by: Mr M Khanya, Provincial Representative:
Northern Cape
Pll Coastal, Public Protector South Africa