

**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**



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**INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND
MALADMINISTRATION RELATING TO A FAILURE BY THE FUNCTIONARIES OF
THE SOL PLAATJE LOCAL MUNICIPALITY TO PROVIDE PROPERTY OWNERS
WITH TITLE DEEDS AND TO RECTIFY THE WRONGFUL ALLOCATION OF THE
ERVEN OF MR GABAETINGWE WILSON MAROPONG AND MR SELLO GOODWILL
SEHLOHO**



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LIST OF ACRONYMS/ABBREVIATIONS

ACRONYMS AND ABBREVIATIONS	DESCRIPTIONS
AGSA	Auditor General South Africa
COGHSTA	Cooperative Governance Human Settlement and Traditional Affairs
Constitution	The Constitution of the Republic of South Africa, 1996
HSS	Housing Subsidy System
MEC	Member of the Executive Council
MFMA	Municipal Finance Management Act, 2003
Municipality	Sol Plaatje Local Municipality
Public Protector	Public Protector of the Republic of South Africa
Public Protector Act	Public Protector Act, 1994
Public Protector Rules	Rules relating to investigations by the Public Protector and matters incidental thereto, 2018 (as amended)



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), which empowers the Public Protector to report on any conduct in state affairs that is suspected to be improper or to result in any impropriety or prejudice, and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act), which provides that the Public Protector may make known the findings, point of view or recommendation of any matter investigated by her.

- (ii) The report relates to an investigation into allegations of improper conduct and maladministration relating to a failure by the functionaries of the Sol Plaatje Local Municipality to provide property owners with Title Deeds and to rectify the wrongful allocation of the erven of Mr Gabaetingwe Wilson Maropong (Mr Maropong) and Mr Sello Goodwill Sehloho (Mr Sehloho).

- (iii) The investigation originated from the following complaints lodged at the Northern Cape Provincial Office of the Public Protector South Africa:
 - (a) The first complaint was lodged on 08 July 2019, by Mr Sehloho, the owner of the Erf No: 26336, Thabo Mbeki Street, Phuthanang, Kimberley. In the main, the Complainant alleged that he applied for an erf, which was approved and someone else was then given his subsidy. He also found out that there were documents indicating that ownership must be changed from him to the other person by the Municipality.

 - (b) The second complaint was lodged on 02 September 2019, by Ms Mercia Julia Swartz (Sebogodi). In the main, Ms Sebogodi alleged that she was the owner of the Erf No: 24187 Witting Close Street, Homelite, Kimberley and the Municipality unduly delayed to provide her with the Title Deed of the house she bought from the Municipality.



- (c) The third complaint was lodged on 20 September 2019, by Ms Keabetswe Ruth Monethi (Ms Monethi) on behalf of Ms Dan Kgosiemang (Ms Kgosiemang), the owner of the Erf No: 21223 Mlimba Street, Galeshewe, Kimberley. In the main, the Complainant alleged that her family is staying in a dilapidated house and the Municipality has not issued the family with a Title Deed.
- (d) The fourth complaint was lodged on 20 September 2019, by Mr Mosekiemang Andrew Visser (Mr Visser) on behalf of Mr Maropong, the owner of an Erf No: 5146 Mocumi Street, Galeshewe. In the main, the Complainant alleged failure by the Municipality to rectify the wrong registration of Erf No: 5146 Mocumi Street, Galeshewe and to provide the family with the correct Title Deed, reflecting the name of Mr Maropong.
- (e) Based on the analysis of the complaint, the following issues were identified to inform and focus the investigation:
- (aa) Whether the functionaries of the Sol Plaatje Municipality unduly delayed to provide Title Deeds, reflecting the details of Ms Sebogodi and Ms Kgosiemang to them, in respect of Erf No: 5146 Mocumi Street, Galeshewe and Erf No: 24187 Whitting Close Street, Homelite, Kimberley, and if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to maladministration and prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act.
- (bb) Whether the functionaries of the Sol Plaatje Municipality failed to rectify the wrongful allocation of erven to Mr Maropong and Mr Sehloho, and if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to maladministration and prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act.



- (f) 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 a consideration and application of the relevant laws and prescripts.
- (g) On 14 June 2023, a notice in terms of section 7(9) of the Public Protector Act (the Notice) was issued to the Municipality and other stakeholders to provide an opportunity for responses on the likely adverse findings and proposed remedial action. Section 7(9)(a) of the Public Protector Act provides that persons implicated in an investigation by the Public Protector, are to be allowed the opportunity to make representations regarding same.
- (h) Following the delivery of the Notice to the Municipality, the Public Protector has not received any response as at the due date of 23 June 2023.
- (i) Having regard to the evidence and regulatory framework determining the standard that the Municipality should have complied with, the following findings are made:
 - (a) Whether the functionaries of the Sol Plaatje Municipality unduly delayed to provide Title Deeds, reflecting the details of Ms Sebogodi and Ms Kgosiemang to them, in respect of Erf No: 5146 Mocumi Street, Galeshewe and Erf No: 24187 Whitting Close Street, Homelite, Kimberley, and if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to maladministration and prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act:
 - (aa) The allegation that the Sol Plaatje Municipality unduly delayed to provide Title Deeds, reflecting the details of Ms Sebogodi and Ms Kgosiemang to them, in



respect of Erf No: 5146 Mocumi Street, Galeshewe and Erf No: 24187 Whitting Close Street, Homelite, Kimberley, is substantiated.

- (bb) In the case of Ms Sebogodi, it is not in dispute that she bought the property concerned from the Municipality as per the Deed of Sale, dated 10 August 2001, but that the Municipality did not ensure the transfer of ownership of the property into her name and that the Title Deed for the property has not been provided to her for a period of approximately twenty two (22) years.
- (cc) The evidence obtained during the investigation also reflects that the Municipality failed to ensure the transfer of ownership of the property into the name of Ms Kgosiemang and that she be provided with a Title Deed for Erf 21223, even though the Northern Cape Department of COGHSTA, had indicated that it would pay the transfer costs of the registration of the said property. To date, the Municipality has failed to give the Northern Cape Department of COGHSTA, an instruction letter to transfer the property into the estate of the late Ms Kgosiemang, as requested.
- (dd) The conduct of the Municipality was accordingly at variance with the provisions of the *Local Government: Municipal Systems Act, 2000*, the *Deeds Registries Act, 1937*, the Code of Conduct for Municipal Staff Workers and in violation of section 195(1) of the Constitution.
- (ee) The Municipality's conduct accordingly constitutes improper conduct as envisaged by section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act. It also caused prejudice to Ms Sebogodi and the family of Ms Kgosiemang as envisaged by section 6(4)(a)(v) of the Public Protector Act.



- (b) Whether the functionaries of the Sol Plaatje Municipality failed to rectify the wrongful allocation of erven to Mr Maropong and Mr Sehloho, and if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to maladministration and prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act:
- (aa) The allegation that the functionaries of Sol Plaatje Municipality failed to rectify the wrongful allocation of erven to Mr Maropong and Mr Sehloho, is substantiated.
- (bb) The Municipality did not rectify the allocation of Erf 5146, which was shown to be registered in the name of the late Mr Maropong as well as Mr Rapelang John Ruiters (Mr Ruiters) and Mrs Lindiwe Julia Ruiters (Ms Ruiters). There is no indication that the Municipality took any decisive action to assist the Maropong and the Ruiters families in this matter. The estate of Mr Maropong cannot be finalised, due to the failure of the Municipality to rectify this issue.
- (cc) In the case of Mr Sehloho, the Municipality failed to rectify the allocation of Erf 26336, which was registered to Mr Mokahe, even though the information obtained from the Housing Subsidy System Portal, dated 12 September 2019, indicates that Mr Sehloho was approved for a housing subsidy for the same property (Erf No 26336), in the A16100001/1, Project and this has not been addressed even after the matter was reported to the Legal Unit of the Municipality.
- (dd) The evidence indicates that Mr Sehloho has been occupying the property for some time, under the impression that he is the owner thereof. When it transpired not to be the case, the Municipality was informed about the error, but failed to correct it.



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- (ee) The conduct of the Municipality was accordingly in violation of the provisions of section 195(1) of the Constitution and the Code of Conduct for Municipal Staff workers.
- (ff) The Municipality's conduct accordingly constitutes improper conduct as envisaged by section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act. It also caused prejudice to Mr Maropong and Mr Sehloho as envisaged by section 6(4)(a)(v) of the Public Protector Act.
- (j) 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 Speaker of the Municipal Council**
- (aa) Within **thirty (30) calendar days** from the date of the report, table the final report before Council for discussion and implementation.
- (b) The Municipal Manager**
- (aa) Within **one hundred and eighty (180) calendar days** from the date of the report, to ensure the finalisation of the transfer of ownership of the following properties in terms of section 4(1)(b) of the Deeds Registries Act, (as amended by Act 34 of 2013):
- (i) Erf 21223, 59 Mlimba Street Galeshewe Extension 7 in Kimberley, into the estate of the late Ms Dan Kgosiemang;
- (ii) Erf 24187, 20 Whitting Close, Kimberley into the name of Ms Sebogodi;
- (iii) Erf 5146, situated at 4125 Seochwareng Street, Kimberley, into the estate of the late Mr Gabaetingwe Wilson Maropong; and



- (iv) Erf 26336, Promise Land, Kimberley is registered into the name of Mr Sehloho.

- (bb) Within **sixty (60) calendar days** from the date of the report, initiate a process to take appropriate corrective action against the officials of the Municipality who contributed to the failure by the Sol Plaatje Municipality to provide Title Deeds, reflecting the details of Ms Sebogodi and Ms Kgosiemang to them, in respect of Erf No: 5146 Mocumi Street, Galeshewe and Erf No: 24187 Whitting Close Street, Homelite in Kimberley and the failure by the Municipality to rectify the wrongful allocation of erven to Mr Maropong and Mr Sehloho, in terms of section 95(f) of the Local Government: Municipal Financial Management Act (MFMA);

- (cc) Ensure that the Internal Audit Unit of the Municipality, on an **annual** basis, reviews and advises 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 MFMA;

- (dd) Within **thirty (30) calendar days** from the date of receipt of the report, the matter is brought to the attention of the Audit Committee to strengthen oversight over internal controls, to prevent the recurrence of breaches and for the proper detection and reporting thereof to the Municipal Council as envisaged by section 166 of the MFMA; and

- (ee) Within **ninety (90) calendar days**, from the date of receipt of the report, report to the Council on the implementation of the remedial action taken in paragraphs (aa) to (dd) above, and provide the Public Protector with a copy thereof.



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, 1994 (the Public Protector Act).
- 1.2. The report is submitted in terms of section 8(1) read with section 8(3) of the Public Protector Act, which empowers the Public Protector to make known the findings of an investigation to affected parties (including the Complainant) for such persons to note the outcome of the investigation and to implement the remedial action, where applicable, including:
- 1.2.1. Mr. SB Matlala, the Municipal Manager of the Sol Plaatje Local Municipality (Municipality);
- 1.2.2. Mr Bentley Vass (Mr Vass), the Member of the Northern Cape Provincial Executive Committee responsible for Cooperative Governance, Human Settlements and Traditional Affairs (COGHSTA);
- 1.2.3. Mr Bafedile Lenkoe (Mr Lenkoe), the Head of the Northern Cape Department of COGHSTA;
- 1.2.4. Dr Zamani Saul (Dr Saul), the Premier of the Northern Cape Province;
- 1.2.5. Ms NN Maputle (Ms Maputle), the Speaker of the Municipality;
- 1.2.6. Mr Kagisho Dante Sonyoni (Mr Sonyoni), the Executive Mayor of the Municipality; and
- 1.2.7. Mr Sello Goodwill Sehloho, Mr Mosekiemang Andrew Visser Ms Mercia Julia Swartz, and Ms Keabetswe Ruth Monethi (the Complainants).



1.3. The report relates to an investigation into allegations of improper conduct and maladministration relating to failure by the functionaries of the Sol Plaatje Local Municipality to provide property owners with Title Deeds and to rectify the wrongful allocation of the erven of Mr Gabaetingwe Wilson Maropong and Mr Sello Goodwill Sehloho.

2. THE COMPLAINT

2.1. The investigation originated from the following complaints lodged at the Northern Cape Provincial Office of the Public Protector South Africa:

2.1.1. The first complaint was lodged on 08 July 2019, by Mr Sello Goodwill Sehloho (Mr Sehloho), the owner of the Erf No: 26336, Thabo Mbeki Street, Phuthanang, Kimberley. In the main, the Complainant alleged that he applied for an erf, which was approved and someone else was then given his subsidy. He also found out that there were documents indicating that ownership must be changed from him to the other person by the Municipality.

2.1.2. The second complaint was lodged on 02 September 2019, by Ms Mercia Julia Swartz (Sebogodi). In the main, Ms Sebogodi alleged that she was the owner of the Erf No: 24187 Witting Close Street, Homelite, Kimberley and the Municipality unduly delayed to provide her with the Title Deed of the house she bought from the Municipality.

2.1.3. The third complaint was lodged on 20 September 2019, by Ms Keabetswe Ruth Monethi (Ms Monethi) on behalf of Ms Dan Kgosiemang (Ms Kgosiemang), the owner of the Erf No: 21223 Mlimba Street, Galeshewe, Kimberley. In the main, the Complainant alleged that her family is staying in a



dilapidated house and the Municipality has not issued the family with a Title Deed.

- 2.1.4. The fourth complaint was lodged on 20 September 2019, by Mr Mosekiemang Andrew Visser (Mr Visser) on behalf of Mr Gabaetingwe Wilson Maropong (Mr Maropong), the owner of an Erf No: 5146 Mocumi Street, Galeshewe. In the main, the Complainant alleged failure by the Municipality to rectify the wrong registration of Erf No: 5146 Mocumi Street, Galeshewe and to provide the family with the correct Title Deed.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

- 3.1. The Public Protector is an independent constitutional institution established under section 181(1)(a) and (b) of the Constitution of the Republic of South Africa, 1996 (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) of the Constitution directs that the Public Protector has the additional powers and functions prescribed by national legislation.



- 3.4. The Public Protector's powers are regulated and amplified 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.
- 3.5. Since the incidents or matters concerned occurred more than two (2) years prior to the reporting of the matter to the Public Protector, she has exercised her discretion in terms of section 6(9) of the Public Protector Act to entertain the complaint based on the following special circumstances as envisaged in Rule 10(1) of the Rules relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018, as amended (Public Protector Rules) -

Nature of the complaint and seriousness of the allegations

- 3.5.1. The allegations of undue delay by Sol Plaatje Municipality to provide Title Deeds to Ms Sebogodi and Ms Kgosiemang, in respect of Erf No: 5146 Mocumi Street, Galeshewe and Erf No: 24187 Witting Close Street, Homelite, Kimberley and the failure by the Municipality to rectify wrongful allocation of erven to Mr Maropong and Mr Sehloho, are very serious as they have the potential to impact on the Complainants' housing and property rights in terms of section 25 and 26 of the Constitution, respectively.
- 3.5.2. The alleged undue delay by the Municipality to provide Title Deeds to Ms Sebogodi and Ms Kgosiemang, in respect of Erf No: 5146 Mocumi Street, Galeshewe and Erf No: 24187 Witting Close Street, Homelite, Kimberley and the alleged failure by the Municipality to rectify the wrongful allocation of erven to Mr Maropong and Mr Sehloho, are to date still continuing, thus the alleged prejudice in this matter still subsists.
- 3.5.3. The Complainants raised these matters with the Municipality. Notwithstanding several attempts by them to have the matters resolved, which included raising



these issues with the Municipality's attorneys and approaching the Department of Cooperative Governance Human Settlements and Traditional Affairs (COGHSTA), the issues remained unresolved. The alleged delays by the Municipality to address this matter posed real prejudice to the Complainants, in that they may be evicted since the properties are registered under the names of people either unknown to them or to the Municipality.

- 3.5.4. The aforementioned considerations motivated the Public Protector to investigate the state organs concerned to determine their roles in the alleged undue delay to provide Title Deeds to Ms Sebogodi and Ms Kgosiemang, in respect of Erf No: 5146 Mocumi Street, Galeshewe and Erf No: 24187 Witting Close Street, Homelite, Kimberley and the alleged failure by the Municipality to rectify the wrongful allocation of Erf No: 26336, Thabo Mbeki Street, Phuthanang, Kimberley and Erf No: 21223 Mlimba Street, Galeshewe, Kimberley to Mr Maropong and Mr Sehloho. Conscious of the afore-mentioned considerations, the Public Protector concluded that it is in the interest of justice to investigate and determine the merits of the matter.

The likelihood of being able to investigate the matter due to the delay having regard to the nature of the allegations and the availability of information, evidence, witnesses and records

- 3.5.5. Due consideration was given to available evidence and other information relating to the incident/event that would enable the Public Protector to successfully investigate the complaint.
- 3.5.6. The Complainants provided a reasonable explanation for the delay in reporting the matter to the Public Protector since they had been continuously engaging the Municipality without success since becoming aware of the matter.



Other relevant factors

- 3.5.7. The investigation of the matter could provide an opportunity to identify potential maladministration, systemic deficiencies, prejudice or injustice if any, and to remedy same in the administration of the Municipality.
- 3.6. The Municipality is an organ of the state and its conduct amounts to conduct in state affairs, as a result, the Public Protector is satisfied that the complaints fall within her competency to conduct an investigation as envisaged in section 182(1)(a) of the Constitution and section 6(4)(a) of the Public Protector Act.

4. ISSUES IDENTIFIED AND INVESTIGATED

- 4.1. Based on the analysis of the complaints, the following issues were identified to inform and focus the investigation:
- 4.1.1 Whether the functionaries of the Sol Plaatje Municipality unduly delayed to provide Title Deeds, reflecting the details of Ms Sebogodi and Ms Kgosiemang to them, in respect of Erf No: 5146 Mocumi Street, Galeshewe and Erf No: 24187 Whitting Close Street, Homelite, Kimberley, and if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to maladministration and prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act; and
- 4.1.2 Whether the functionaries of the Sol Plaatje Municipality failed to rectify the wrongful allocation of erven to Mr Maropong and Mr Sehloho, and if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to maladministration and prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act.



5. THE INVESTIGATION

5.1. Methodology

5.1.1 The investigation was conducted in terms of section 182 of the Constitution read with sections 6 and 7 of the Public Protector Act.

5.1.2 Section 7(1) of the Public Protector Act confers on the Public Protector the sole discretion to determine the format and procedure to be followed in conducting any investigation with due regard to the circumstances of each case.

5.2 Approach to the investigation

5.2.1 The investigation was approached using an enquiry process that seeks to determine:

5.2.1.1 What happened?

5.2.1.2 What should have happened?

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

5.2.1.4 In the event of improper conduct or maladministration, what would it take to remedy the wrong or to place the Complainants as close as possible to where they would have been but for the maladministration or improper conduct?

5.2.1.5 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. Evidence is evaluated and a determination is made



on what happened based on a balance of probabilities. In this particular case, the factual enquiry principally focused on whether the functionaries of the Sol Plaatje Municipality unduly delayed to provide Title Deeds, reflecting the details of Ms Sebogodi and Ms Kgosiemang to them, in respect of Erf Now: 5146 Mocumi Street, Galeshewe and Erf No: 24187 Whitting Close Street, Homelite, Kimberley and whether it failed to rectify its wrongful allocation of erven to Mr Maropong and Mr Sehloho.

- 5.2.1.6 The enquiry regarding what should have happened focuses on the law or rules that regulate the standard that should have been met by the functionaries of the Municipality to prevent improper conduct, maladministration and prejudice.
- 5.2.1.7 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 Investigation Process

- 5.3.1 The investigation process included correspondence with officials of the Municipality and the Northern Cape Department of COGHSTA, analysis, evaluation of the relevant documents and information obtained during the investigation and consideration and application of the relevant laws and prescripts.
- 5.3.2 Initially, the complaints were investigated independently from each other. However, during the course of the investigation of similar individual matters, there appeared to be systemic deficiencies in the management of Title Deeds and wrongful allocation of erven by the Municipality, especially by its Legal Unit.



- 5.3.3 During the course of the investigation, these complaints were raised with the Municipality i.e. with the former Acting Municipal Manager, Mr Boy Dihuwayo (Mr Dihuwayo) and other officials of the Municipality, but no response was received. A subpoena was then issued to Mr Dihuwayo, on 28 September 2020 in terms of section 7(4) of the Public Protector Act. Mr Dihuwayo partially responded to some of the allegations in a letter dated 23 October 2020.
- 5.3.4 In connection with other matters raised in the aforementioned subpoena, the Municipality did not respond at all, but made an undertaking to respond before the end of October 2020. Several subsequent attempts by the Public Protector's Investigation Team (Investigation Team), to obtain responses from the Municipality yielded no result.
- 5.3.5 Due to the lack of cooperation by the Municipality, the Investigation Team escalated the matters to the Northern Cape Member of the Executive Council (MEC) for COGHSTA, Mr Vass, in a letter dated 08 March 2021. Consequently, Mr Phetole Sithole (Mr Sithole), the Acting Executive: Infrastructure at the Municipality, requested the complaints to be sent to him again, but the Investigation Team received no further correspondence in response to the allegations from either the Municipality or the Office of the MEC.
- 5.3.6 The matters were then escalated to the Northern Cape Premier, Dr Saul, in a letter dated 14 June 2021 and discussed with him and other high-level officials of the Northern Cape Provincial Administration and Northern Cape Municipalities, on 28 September 2021.



5.4 The Key Sources of Information

5.4.1 Documents and correspondence

- 5.4.1.1 Deed of Sale, dated 10 August 2001;
- 5.4.1.2 Letter from the Head of the Northern Cape Department of Housing and Local Government to the Municipality, dated 15 February 2008;
- 5.4.1.3 Letter from the then Head of the Northern Cape Department of Housing and Local Government to the Municipality, dated 29 June 2009;
- 5.4.1.4 Notice of Sale in Execution, dated 07 December 2010;
- 5.4.1.5 Registration of Prepaid Meter Application, dated 25 April 2016;
- 5.4.1.6 Application for Water and Electricity Connection to the Municipality, dated 25 April 2016;
- 5.4.1.7 Letter from the Municipality to Ms Kgosiemang, dated 31 August 2016;
- 5.4.1.8 Letter from Mr Mothelesi to the Water and Electricity Section of the Municipality, dated 15 August 2017;
- 5.4.1.9 Evaluation Certificate, dated 29 May 2019;
- 5.4.1.10 Letter from Mr Mothelesi to Ms Kgosiemang, dated 28 May 2019;
- 5.4.1.11 Letter from the Master of the Northern Cape High Court to Mr Visser, dated 29 May 2019;
- 5.4.1.12 Property Enquiry Details, dated 12 September 2019;
- 5.4.1.13 Email from the Public Protector to the Municipality, dated 03 October 2019;
- 5.4.1.14 Email from the Public Protector to the Municipality, dated 22 October 2019;



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- 5.4.1.15 Letter from the Public Protector to Mr Dhlwayo, dated 06 July 2020;
 - 5.4.1.16 Letter from Mr Dhlwayo to the Public Protector, dated 23 October 2020;
 - 5.4.1.17 Letter from the Public Protector to Mr Robertson, dated 26 November 2020;
 - 5.4.1.18 Email from the Municipality to the Public Protector, dated 01 December 2020;
 - 5.4.1.19 Email from the Public Protector to Mr Pegram, dated 13 August 2021; and
 - 5.4.1.20 Email from the Department to the Public Protector, dated 17 August 2021.

5.5 Legislation and other prescripts

- 5.5.1 Constitution of the Republic of South Africa, 1996;
- 5.5.2 Deeds Registries Act, 1937;
- 5.5.3 Local Government: Municipal Systems Act, 2000; and
- 5.5.4 Local Government: Municipal Finance Management Act, 2003.

5.6 Notices issued in terms of section 7(9)(a) of the Public Protector Act

- 5.6.1 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued on 14 June 2023 to the following persons:
 - 5.6.1.1 Mr Matlaba, the Municipal Manager;
 - 5.6.1.2 Dr Saul, the Premier of the Northern Cape;
 - 5.6.1.3 Mr Lenkoe, the Head of the Department of COGHSTA;
 - 5.6.1.4 Mr Vass, the MEC for COGHSTA;
 - 5.6.1.5 Ms Maputle, the Speaker of the Municipality; and
 - 5.6.1.6 Mr Sonyoni, the Executive Mayor of the Municipality.



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 Whether the functionaries of the Sol Plaatje Municipality unduly delayed to provide Title Deeds, reflecting the details of Ms Sebogodi and Ms Kgosiemang to them, in respect of Erf No: 5146 Mocumi Street, Galeshewe and Erf No: 24187 Whitting Close Street, Homelite, Kimberley, and if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to maladministration and prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act

The complaint of Ms Mercia Julia Swartz (Sebogodi)

Common cause

6.1.1 Ms Sebogodi's subsidy for a low-cost house was approved by COGHSTA and she qualified for an amount of forty one thousand and twenty seven rands (R41 027.00).

6.1.2 In August 2001, Ms Sebogodi made an offer to the Municipality to purchase the property situated at the Erf No: 24187 Witting Close Street, Homelite in Kimberley.

Issue in dispute

6.1.3 The issue for the Public Protector's determination is whether the functionaries of Sol Plaatje Municipality unduly delayed to provide a Title Deed reflecting the details of Ms Sebogodi, in respect of the property that she bought and if so, whether such conduct was improper in terms of section 182(1)(a) of the



Constitution and amounted to maladministration and prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act.

The Complainant's version

6.1.4 Ms Sebogodi contends that the Municipality failed to transfer the Title Deed of the property allocated to her for a low-cost house and to provide her with the document which reflects her name.

Municipality's response

6.1.5 On 03 October 2019, the Investigation Team raised the allegations with Mr Dhlwayo, through an email with a view to obtaining a response in respect to the complaint. Mr Dhlwayo responded through a letter dated 23 October 2020, in which he indicated that:

6.1.5.1 A Deed of Sale was entered into between the Sol Plaatje Municipality and Ms Sebogodi after the property was abandoned by Ms Iris Magdalene April (Ms April);

6.1.5.2 The Municipality attempted on numerous occasions to get the property de-registered from Ms April's name in order for the sale agreement between the Municipality and Ms Sebogodi to be finalized;

6.1.5.3 The property was still registered in the name of Ms April and as a result thereof, the property cannot be registered in the name of Ms Sebogodi; and

6.1.5.4 Ms Sebogodi had always been made aware of this and the Legal Section of the Municipality had been tasked to find a solution.



Evidence obtained during the investigation

- 6.1.6 According to a letter dated 15 February 2008, from the Head of the Northern Cape Department of Housing and Local Government (no name was noted) addressed to the then Municipal Manager obtained during the investigation, Ms Sebogodi's subsidy for a low-cost house was approved and she qualified for an amount of forty one thousand and twenty seven rands (R41 027.00).
- 6.1.7 In terms of the Deed of Sale dated 10 August 2001, entered into between Ms Sebogodi and the then Municipality of the City of Kimberley, Ms Sebogodi bought the property described as Erf 24187, 20 Whitting Close, Kimberley for the amount of twenty five thousand seven hundred and seventy six rand (R25 776-00) on 10 August 2001. However, the Deed of Sale in question was not signed by the Municipality.
- 6.1.8 On 25 August 2004, the attorneys representing the Municipality (Van De Wall & Partners) sent a letter to Ms Sebogodi, advising her that the Municipality had re-purchased Erf 24187 at a sale in execution. They further informed her that the property was still registered in the name of Ms April and that it would have to be registered in the name of the Municipality first before it can be transferred to her.
- 6.1.9 According to an undated template document addressed to the Investigation Team, from COGHSTA, on 18 August 2021, Erf 24187 Whitting Close Homelight, Kimberley was registered in the name of Ms April, although it was sold in execution in 2008 in terms of a judgment granted by the Magistrate's Court in favour of the Municipality and further that the Department would follow up with the conveyancers.
- 6.1.10 In terms of a letter dated 29 June 2009, from the then Acting Head of the Northern Cape Department of Housing and Local Government (no name was noted), addressed to the Municipal Manager, it was stated that:



- 6.1.10.1 Ms Sebogodi qualified for a housing subsidy in 2003 and bought the house from Sol Plaatje Municipality for the price of twenty five thousand seven hundred and seventy six rand (R25 776.00); and
- 6.1.10.2 The subsidy amount was paid to the representative of the municipality namely, Messrs Van De Wall and Partners Attorneys.
- 6.1.11 According to the Notice of Sale in Execution in the matter between Sol Plaatje Municipality and Ms April (Case No 1124/08, dated 07 December 2010), Erf 24187, held by Deed of Transfer T8184/1993, better known as 20 Whitting Close, Roodepan Kimberley would be sold in execution on 27 January 2011, as a result of a judgment granted on 31 March 2008, under a writ of execution in the Magistrate's Court for the District of Kimberley.

The complaint of Ms Keabetswe Ruth Monethi (Ms Monethi)

Common cause

- 6.1.12 The late Ms Dan Kgosiemang, the mother of Ms Monethi, resided on the property situated at Erf 21223, 59 Mlimba Street Galeshewe Extension 7 in Kimberley.
- 6.1.13 She lived on the property with her family until her death.

Issue in dispute

- 6.1.14 The issue for the Public Protector's determination is whether the functionaries of Sol Plaatje Municipality unduly delayed to provide a Title Deed reflecting the details of the late Ms Kgosiemang in respect of Erf 21223, 59 Mlimba Street



Galeshewe Extension 7 in Kimberley, and if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to maladministration and prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act.

The Complainant's version

- 6.1.15 Ms Monethi contends that the Municipality unduly delayed to transfer the property situated at Erf 21223, 59 Mlimba Street Galeshewe Extension 07, in Kimberley to her late mother's name, whilst she was still alive even though she had resided on the property with her family for many years.

Municipality's version

- 6.1.16 On 22 October 2019, the Investigation Team raised the allegations with Mr Tebogo Bonokwane (Mr Bonokwane), Manager: Housing Development at the Municipality, through an email, but no response was received from Mr Bonokwane. On 06 July 2020, the allegations were raised with Mr Dhlwayo, with a view to obtaining a response in respect to the complaint.
- 6.1.17 In a response to the allegations through a letter dated June 2020, the Municipality replied in a template document titled '*Matters against Sol Plaatje Municipality*' by indicating that there was no subsidy for Ms Kgosiemang captured on the housing system and that there had to be an investigation into the matter. However, the outcome of the investigation was never provided to the Public Protector.
- 6.1.18 In another response to the allegations, through an email dated 01 December 2020, Mr George Mosimane (Mr Mosimane), an official of the Municipality, stated that Ms Kgosiemang did apply for a housing subsidy and was awaiting funding from the Department of COGHSTA and further that supporting



documents from the Housing Support System (HSS), would be forwarded to the Public Protector on 03 December 2020. No response was received from the Municipality on 03 December 2020.

COGHSTA's version

6.1.19 On 13 August 2021, the Investigation Team raised the allegations with Mr A Pegram (Mr Pegram). According to a response from the Department of COGHSTA received through an email dated 17 August 2021, the Department stated that:

6.1.19.1 There was no subsidy registered on the HSS System for Ms Kgosiemang;

6.1.19.2 The property was registered in the name of the Municipality; and

6.1.19.3 A similar complaint was received from the Office of the Premier and the matter was referred back to the Municipality for attention. In the letter to the Municipality, the Department of COGHSTA indicated that the Department would pay the transfer costs of the registration of the property to the name of Ms Kgosiemang, however, no response was received from the Municipality. It was further stated in the letter that the Municipality is required to provide the Department of COGHSTA with an instruction letter to transfer the property.

Evidence obtained during the investigation

6.1.20 According to a letter from the Municipality addressed to the late Ms Kgosiemang, dated 31 August 2016, titled: '*Public Notice Calling for inspection of Supplementary Valuation Roll 2016 and lodging of objections*' that was obtained during the investigation, Ms Kgosiemang is the owner of Erf 21223, 59 Mlimba Street, Galeshewe Extension 7, in Kimberley.



6.1.21 In a letter, dated 28 May 2019, from Mr Mothelesi, addressed to Ms Kgosiemang, he requested Ms Kgosiemang to report at the Housing Section of the Municipality in Tyson Road in Kimberley to be interviewed regarding the housing issue. However, there is no evidence whether the interview occurred, what the purpose of the interview was, as well as the outcome thereof.

Notice in terms of section 7(9)(a) of the Public Protector Act

6.1.22 On 14 June 2023, a notice in terms of section 7(9) of the Public Protector Act (the Notice) was issued to the Municipality and other stakeholders to provide an opportunity for responses on the likely adverse findings and proposed remedial action. Section 7(9)(a) of the Public Protector Act provide that persons implicated in an investigation by the Public Protector, are to be allowed the opportunity to make representations regarding same.

6.1.23 Following the delivery of the Notice to the Municipality, the Public Protector received only an acknowledgment of receipt from the office of the Municipal Manager, however, no substantive response was received from any of the parties as at the due date of 23 June 2023.

Applicable legal framework

The Constitution of the Republic of South Africa, 1996

6.1.24 In terms of section 25(1) of the Constitution, no one may be deprived of their property except in terms of a law of general application and no law may permit arbitrary deprivation of property. Furthermore, in terms of section 26(1) of the Constitution, everyone has the right to have access to adequate housing.



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

- (a) A high standard of professional ethics must be promoted and maintained;
- (b) Efficient, economic and effective use of resources must be promoted; and
- (c) Public administration must be accountable.

The Deeds Registries Act, 1937 (as amended by Act 34 of 2013)

6.1.26 Section 16 of the Deeds Registries Act, provides that the ownership of land may be conveyed from one person to another only by means of a deed of transfer executed or attested by the registrar, and other real rights in land may be conveyed from one person to another only by means of a deed of cession attested by a notary public and registered by the registrar.

The Local Government: Municipal Systems Act, 2000

6.1.27 Section 55(1)(d) of the Municipal Systems Act provides, that as the head of the administration of a municipality, the municipal manager is, subject to the policy considerations 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.

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

Case law

6.1.29 In the *Government of the Republic of South Africa v Grootboom*¹ matter, the court described the state's constitutional obligations in relation to the right to adequate housing as a constitutional issue of fundamental importance to the development of South Africa's new constitutional order.

6.1.30 In *Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others*² the court further stated that:

"The commitment to transform our society into one which respects and observes the values of human dignity, freedom and equality lies at the heart of our constitutional order.

As former Chief Justice Chaskalson wrote in Soobramoney, "this commitment is reflected in various provisions of the Bill of Rights and in particular in sections

¹ *Government of the Republic of South Africa and Others v Grootboom and Others* 2001(1) SA 46 (CC).

² *Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others* [2021] ZACC 45.



26 and 27 which deal with access to housing, health care, food, water and social security”³.

6.1.31 The court further held that after more than a decade of futile engagements by the applicants with the Ekurhuleni Municipality and others, all of the provided explanations from the Municipality about the budgetary constraints, the various processes that have to be finalised, before the houses could be built, etc. were delaying tactics to continue to deprive the applicants access to adequate housing, which the court rejected.

Analysis

6.1.32 The current position, therefore, is that Ms Sebogodi bought the property in question from the Municipality, who at the time presented to her that it was the owner. She paid the purchase price for the property and also received a subsidy for the building of a low-cost house on the erf. However, despite her several requests to the Municipality, it has to date failed to effect the transfer of the property to reflect her details and to further provide her with a Title Deed for the said property.

6.1.33 The Title Deed of a property is therefore the irrefutable proof of the ownership thereof. In the case of Ms Sebogodi it is not in dispute that she bought the property concerned from the Municipality, but that the Municipality had failed to ensure that she is provided with the Title Deed of the property for a period of approximately twenty two (22) years.

6.1.34 In the matter of Ms Kgosiemang, the 2016 *Valuation Roll* of the Municipality indicated that she is the owner of Erf 21223, 59 Mlimba Street Galeshewe Extension 7 in Kimberley. However, the Municipality did not ensure that the

³ *Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others* [2021] ZACC 45 at para 18 and 19.



transfer of the property into her name was finalised so that she can be provided with a Title Deed in her name, as proof of ownership.

- 6.1.35 The Municipality also did not dispute that the late Ms Kgosiemang resided on the property and should have been provided with the Title Deed of the property. In fact, it was liaising with COGHSTA to do so at the time of the investigation.
- 6.1.36 In this case, the Municipality did not ensure that the respective properties were transferred into the names of Ms Sebogodi and Ms Kgosiemang. The Municipality failed to perform its functions of the office in good faith, diligently and honestly.
- 6.1.37 The Municipality did not take steps to ensure the finalisation of the transfer of the properties in question into the names of Ms Sebogodi and Ms Kgosiemang, even though it was required to do so due to the fact that Ms Sebogodi's subsidy was approved, there was a deed of sale between Ms Sebogodi and the Municipality as well as the fact that Ms Kgosiemang had stayed on the property and the Municipality offered her the property.
- 6.1.38 The conduct of the officials of the Municipality denied the Complainants an opportunity to be issued with Title Deeds on Erf No: 5146 Mocumi Street, Galeshewe and Erf No: 24187 Whitting Close Street, Homelite in Kimberley.

Conclusion

- 6.1.39 The Title Deed of a property is irrefutable proof of the ownership thereof. In the case of Ms Sebogodi, it is not in dispute that she bought the property concerned from the Municipality, but that the Municipality has not taken steps to ensure transfer of ownership of the property into her name and be provided with a Title Deed of the property for a period of approximately twenty two (22) years.



- 6.1.40 The evidence obtained during the investigation also shows that the Municipality failed to ensure transfer of ownership of the property situated at Erf 21223 into the name of the late Ms Kgosiemang and be provided with a Title Deed to the property, even though the Northern Cape Department of COGHSTA had indicated that it would pay the transfer costs of the registration of the said property.
- 6.1.41 To date, the Municipality has failed to give the Northern Cape Department of COGHSTA an instruction letter to transfer the property into the name of the late Ms Kgosiemang.
- 6.1.42 The officials who were involved breached the Code of Conduct for municipal staff members. The Municipality failed to perform its functions of the office in good faith, diligently and honestly, therefore the relevant officials who were involved in this process must be dealt with in terms of the disciplinary procedures of the Municipality for their breach of the Code of Conduct for municipal staff members.
- 6.1.43 The Municipality acted in violation of the standard required of public administration as stated in section 195(1) of the Constitution and the Code of Conduct for Municipal Staff Members.
- 6.2. Whether the functionaries of the Sol Plaatje Municipality failed to rectify the wrongful allocation of erven to Mr Maropong and Mr Sehloho, and if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to maladministration and prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act**



Common cause

- 6.2.1. In terms of a Death Certificate, dated 27 May 2019, Mr Gabaetingwe Wilson Maropong (Mr Maropong), passed away on 16 May 2019.
- 6.2.2. Mr Maropong was residing at Erf 5146, situated at 4125, Seochwareng Street, Kimberley until he passed away and was the registered municipal services account holder for the same erf.

Issue in dispute

- 6.2.3. The issue for the Public Protector's determination is whether the functionaries of Sol Plaatje Municipality failed to rectify the wrongful allocation of Erf 5146, situated at 4125 Seochwareng Street, Kimberley to Mr Maropong and if so, whether such conduct was improper as envisaged in section 182(1)(a) of the Constitution and amounted to maladministration and prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act.

The Complainant's version

- 6.2.4. The Complainant contends that the functionaries of Sol Plaatje Municipality failed to rectify the wrongful allocation of Erf 5146, situated at 4125 Seochwareng Street, Kimberley to Mr Maropong, whilst he was still alive even though he had resided on the property with his family for many years.
- 6.2.5. The Municipality was aware of the wrong registration of Erf 5146.

Municipality's response

- 6.2.6. On 6 July 2020, the allegations were raised through a letter with Mr Dhluwayo, with a view to obtaining a response in respect of the complaint.



- 6.2.7. In his response to the allegations, through a letter dated 23 October 2020, Mr Dhlwayo, stated that:
- 6.2.7.1. The Municipality was aware of the wrong registration of Erf 5146 and in order for it to be corrected, the Municipality needed Letters of Authority from the Master of the Northern Cape High Court (the Master);
- 6.2.7.2. At the time, the Municipality had challenges in obtaining Letters of Authority from the Master;
- 6.2.7.3. The Municipality did engage its Legal Section to take up the matter with the Master, because the Master had since January 2019, ceased to issue Letters of Authority for instances where the properties were still registered in the name of the Sol Plaatje Municipality and other incidents of wrong registration⁴; and
- 6.2.7.4. The estate of Mr Maropong was currently before the Master and had not been finalised due to the issue of the wrongful registration of Erf 5146.

COGHSTA's response

- 6.2.8. On 26 November 2020, the allegations were raised with Mr Mathys Robertson (Mr Robertson), Senior Manager: Housing Administration at COGHSTA, with a view to obtaining a response in respect to the complaint. In a response to the allegations, through an email dated 11 December 2020, Mr Robertson, stated that:
- 6.2.8.1. The Department has no proof to substantiate the claim Erf 5146 was incorrectly registered;

⁴ This was confirmed with the Masters office on 09 May 2022.



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- 6.2.8.2. The facts had to be confirmed by the Municipality;
 - 6.2.8.3. The term of the panel of conveyancers had expired and conveyancers would be appointed on a tender basis during the 2021/22 financial year; and
 - 6.2.8.4. COGHSTA had no final list of erven that would be rectified in 2021/22.

Evidence obtained during the investigation

- 6.2.9. According to the Evaluation Certificate of the Municipality, dated 29 May 2019, Mr Maropong was the registered owner of Erf 5146 situated at 4125 Seochwareng Street, Vergenoeg Extension 6, Kimberley.
- 6.2.10. However, in contrast to the Evaluation Certificate, the Property Enquiry Details obtained from a Deeds Web search, dated 27 May 2019, indicated that Erf 5146 is registered in the names of Mr Ruiter and Ms Ruiter under Deed of Title Number TE7181/1993. The erf was registered on 16 June 1993.
- 6.2.11. In a letter dated 29 May 2019, from the Master of the Northern Cape High Court in Kimberley, Mr Visser was requested to provide the Municipal Valuation in connection with the fixed property in question and an extract of a deed search or Title Deed in connection with the fixed property so that the estate of the late Mr Maropong could be registered. This was done, but the deed search revealed that the property was registered under the names of Mr and Ms Ruiter.
- 6.2.12. Despite several enquiries by the Public Protector to the Municipality, the matter remained unresolved.



The complaint of Mr Sello Goodwill Sehloho

Common cause

- 6.2.13. According to the Property Enquiry Details on the Deeds Web dated 12 September 2019, Mr Freddie Mokae (Mr Mokae), is the registered owner of Erf 26336, Promise Land, Kimberley, with Deed of Title Number T2055/2017.

Issue in dispute

- 6.2.14. The issue for the Public Protector's determination is whether the functionaries of Sol Plaatje Municipality failed to rectify the wrongful allocation of an erf to Mr Sehloho.

The Complainant's version

- 6.2.15. Mr Sehloho contends that the Municipality failed to rectify the allocation of Erf 26336 from Mr Freddie Mokae to him, even though the information obtained from the Housing Subsidy System Portal dated 12 September 2019, indicated that he was approved for a housing subsidy under site 221 (Erf No 26336) in the A16100001/1 Project.

Municipality's response

- 6.2.16. On 6 July 2020, the allegations were raised through a letter with Mr Dhlwayo, with a view to obtaining a response in respect of the complaint.
- 6.2.17. In a response to the allegations, dated 14 July 2020, addressed to the Investigation Team, Mr Ngoako Modiba (Mr Modiba), the Chief Town Planner of the Municipality, stated that the matter was referred to Mr Isaac Prince (Mr



Prince), Subsidy Administrator of the Municipality, as the matter entails a housing dispute.

- 6.2.18. Despite several e-mails sent to officials of the Municipality by the investigation team, no response was received to explain why the erf was allocated to two different persons i.e. Mr Sehloho and Mr Freddie Mokae respectively.

Evidence obtained during the investigation

- 6.2.19. In terms of the Registration of Prepaid Meter Application, dated 25 April 2016, from Mr Mothelesi, addressed to Ms C Gojo (Ms Gojo), an official of the Municipality at the Enquiries Unit, obtained Mr SG Sehloho was verified as the legal occupant of P221 (Erf 26336) Promise Land.
- 6.2.20. According to the Application for Water and Electricity Connection to the Municipality dated 25 April 2016, obtained during the investigation, Mr Sehloho was reflected as the tenant at Erf 26336.
- 6.2.21. In another Application for Electricity and Water Connection (Supply)-Residential Form W1 dated 25 April 2016, Mr Sehloho was reflected as the owner of Erf 26336.
- 6.2.22. In terms of the letter dated 15 August 2017, from Mr Mothelesi, addressed to the Water and Electricity Section of the Municipality, he instructed the Water and Electricity Section to:
- 6.2.22.1. Change the details of Account 900000052689 of erf 26336 Promise Land;
- 6.2.22.2. Omit the name of Mr SG Sehloho and add the name of Mr Freddie Mokae with ID Number: 630112 5872 081; and
- 6.2.22.3. Register the Rates, Sewer, Refuse and Water Services.



- 6.2.23. In terms of the Application for Electricity and Water Connection (Supply)-Residential Form W1, dated 29 August 2017, Mr Freddie Mokae applied to the Municipality for Electricity and Water services and was reflected as the owner of 26336 (221) Promise Land, Phutanang, Kimberley.
- 6.2.24. The Municipality did not explain why Mr Mothelesi instructed the Water and Electricity Section to change the details of Account 900000052689 of Erf 26336 Promise Land and remove the name of Mr Sehloho and add the name of Mr Mokae onto the Municipal Account.
- 6.2.25. Despite several enquiries to the Municipality by the Investigation Team, the matter had not been resolved.

Notice in terms of section 7(9)(a) of the Public Protector Act

- 6.2.26. On 14 June 2023, a notice in terms of section 7(9) of the Public Protector Act (the Notice) was issued to the Municipality and other stakeholders to provide an opportunity for responses on the likely adverse findings and proposed remedial action. Section 7(9)(a) of the Public Protector Act provide that persons implicated in an investigation by the Public Protector, are to be allowed the opportunity to make representations regarding same.
- 6.2.27. Following the delivery of the Notice to the Municipality, the Public Protector received only an acknowledgment of receipt from the office of the Municipal Manager, however, no substantive response was received from any of the parties as at the due date of 23 June 2023.



Applicable legal framework

The Constitution of the Republic of South Africa, 1996

- 6.2.28. In terms of section 25(1) of the Constitution, no one may be deprived of their property except in terms of a law of general application, no law may permit arbitrary deprivation of property and in terms of section 26(1) of the Constitution everyone has the right to have access to adequate housing.
- 6.2.29. Section 195(1) of the Constitution provides that public administration must be governed by the democratic values and principles enshrined in the Constitution including, *inter alia*, the following principles:
- (a) A high standard of professional ethics must be promoted and maintained;
 - (b) Efficient, economic and effective use of resources must be promoted; and
 - (c) Public administration must be accountable.

The Deeds Registries Act, 1937 (as amended by Act 34 of 2013)

- 6.2.30. Section 16 of the Deeds Registries Act, provides that the ownership of land may be conveyed from one person to another only by means of a deed of transfer executed or attested by the registrar, and other real rights in land may be conveyed from one person to another only by means of a deed of cession attested by a notary public and registered by the registrar.

The Local Government: Municipal Systems Act, 2000

- 6.2.31. 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



considerations 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.

- 6.2.32. A Code of Conduct for Municipal Staff Members is provided for in Schedule 2 to the Municipal Systems Act. Item 2 of the Code of Conduct for Municipal Staff Members provides that a staff member of a municipality must at all times -
- (i) *loyally execute the lawful policies of the municipal council;*
 - (ii) *perform the functions of office in good faith, diligently, honestly and in a transparent manner;*
 - (iii) *act in such a way that the spirit and objects of section 50 are promoted;*
 - (iv) *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*
 - (v) *act impartially and treat all people, including other staff members, equally without favour or prejudice.*

Analysis

- 6.2.33. In the matter of Mr Maropong, the Municipality failed to rectify the wrongful allocation of an erf.
- 6.2.34. The Title Deed of a property is therefore the irrefutable proof of the ownership thereof. In the case of Mr Maropong, it is not in dispute that Erf 5146 belongs to him, but that the Municipality had failed to ensure that he is provided with the correct Title Deed of the property.



- 6.2.35. The Municipality also did not dispute that Mr Maropong resided on the property and should have been provided with the correct Title Deed of the property. The conduct of the functionaries of the Municipality denied the Complainant an opportunity to be issued with the correct Title Deed in relation to Erf 5146.
- 6.2.36. The Municipality did not take steps to ensure the rectification of the wrongful registration of Erf 26336, Promise Land, Kimberley to reflect the name of the correct owner Mr Sehloho.
- 6.2.37. The officials that were responsible for the transfer of Erf 5146, acted in violation of the Code of Conduct for Municipal Staff Members in that they failed to perform their functions of office in good faith and diligently.
- 6.2.38. In this case, the functionaries of the Municipality did not ensure that Erf 5146 discussed above was rectified to reflect the correct owner of the property i.e. Mr Maropong, the Municipality did not perform its functions in good faith, diligently and honestly.
- 6.2.39. The Municipality did not take steps to ensure the rectification of the wrongful registration of Erf 26336, Promise Land, Kimberley, to reflect the name of the correct owner Mr Sehloho.
- 6.2.40. The Title Deed of a property is irrefutable proof of the ownership thereof. In the case of Mr Sehloho, it is not in dispute that Erf 26336, Promise Land, Kimberley, belongs to him, but that the Municipality had failed to ensure that he is provided with the correct Title Deed of the property. The Municipality also did not dispute that Mr Sehloho resided on the property and should have been provided with the correct Title Deed of the property.
- 6.2.41. The Municipality did not ensure that Erf 26336, Promise Land, Kimberley was transferred into the name of Mr Sehloho and the Municipality failed to perform its functions in good faith, diligently and honestly.



Conclusion

- 6.2.42. The Municipality did not rectify the allocation of Erf 5146 as the evidence reflects that the property is registered in the names of Mr and Ms Ruiters and to date, the matter had still not been addressed.
- 6.2.43. There is no indication that the Municipality took any decisive action to assist the Maropong family in this matter. The estate of the late Mr Maropong cannot be finalised, due to the failure of the Municipality to rectify the error and provide the family with appropriate relief.
- 6.2.44. In the matter of Mr Sehloho, the Municipality allocated an Erf for low-cost housing to him, whilst the same property was already registered in the name of Mr Mokae. The Complainant has been occupying the property for some time under the impression that he is the owner thereof. When it transpired to not be the case, the Municipality failed to correct the error and provide Mr Sehloho and Mr Mokae with appropriate relief to address the issue.
- 6.2.45. The officials that were responsible for the transfer of Erf 5146, acted in violation of the Code of Conduct for Municipal Staff Members in that they failed to perform their functions of office in good faith and diligently, when they registered Erf 5146, in the name of another person than that of Mr Maropong.
- 6.2.46. The functionaries of the Municipality acted in violation of the standard required of public administration as stated in section 195(1) of the Constitution and the Code of Conduct for Municipal Staff Members.
- 6.2.47. The evidence and information obtained during the investigation indicate that the Municipality failed to rectify the wrongful allocation of erven even, after the matter was reported to the Legal Unit of the Municipality.



7. FINDINGS

7.1. Having regard to the evidence, the regulatory framework determining the standard that the Municipality should have complied with, the following findings are made:

7.1.1 Whether the functionaries of the Sol Plaatje Municipality unduly delayed to provide Title Deeds, reflecting the details of Ms Sebogodi and Ms Kgosiemang to them, in respect of Erf No: 5146 Mocumi Street, Galeshewe and Erf No: 24187 Whitting Close Street, Homelite, Kimberley, and if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to maladministration and prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act

7.1.1.1 The allegation that the Sol Plaatje Municipality unduly delayed to provide Title Deeds, reflecting the details of Ms Sebogodi and Ms Kgosiemang to them, in respect of Erf No: 5146 Mocumi Street, Galeshewe and Erf No: 24187 Whitting Close Street, Homelite, Kimberley, is substantiated.

7.1.1.2 In the case of Ms Sebogodi, it is not in dispute that she bought the property concerned from the Municipality as per the Deed of Sale, dated 10 August 2001, but that the Municipality did not ensure the transfer of ownership of the property into her name and that the Title Deed for the property has not been provided to her for a period of approximately twenty two (22) years.

7.1.1.3 The evidence obtained during the investigation also reflects that the Municipality failed to ensure the transfer of ownership of the property into the name of Ms Kgosiemang and that she be provided with a Title Deed for Erf 21223, even though the Northern Cape Department of COGHSTA, had indicated that it would pay the transfer costs of the registration of the said property. To date, the Municipality has failed to give the Northern Cape



Department of COGHSTA, an instruction letter to transfer the property into the estate of the late Ms Kgosiemang, as requested.

7.1.1.4 The conduct of the Municipality was accordingly at variance with the provisions of the *Local Government: Municipal Systems Act, 2000*, the *Deeds Registries Act, 1937*, the Code of Conduct for Municipal Staff Workers and in violation of section 195(1) of the Constitution.

7.1.1.5 The Municipality's conduct accordingly constitutes improper conduct as envisaged by section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act. It also caused prejudice to Ms Sebogodi and the family of Ms Kgosiemang as envisaged by section 6(4)(a)(v) of the Public Protector Act.

7.1.2 Whether the functionaries of the Sol Plaatje Municipality failed to rectify the wrongful allocation of erven to Mr Maropong and Mr Sehloho, and if so, whether such conduct was improper in terms of section 182(1)(a) of the Constitution and amounted to maladministration and prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act

7.1.2.1 The allegation that the functionaries of Sol Plaatje Municipality failed to rectify the wrongful allocation of erven to Mr Maropong and Mr Sehloho, is substantiated.

7.1.2.2 The Municipality did not rectify the allocation of Erf 5146, which was shown to be registered in the name of the late Mr Maropong as well as Mr Rapelang John Ruiter (Mr Ruiter) and Mrs Lindiwe Julia Ruiter (Ms Ruiter). There is no indication that the Municipality took any decisive action to assist the Maropong and the Ruiter families in this matter. The estate of Mr Maropong cannot be finalised, due to the failure of the Municipality to rectify this issue.



- 7.1.2.3 In the case of Mr Sehloho, the Municipality failed to rectify the allocation of Erf 26336, which was registered to Mr Mokae, even though the information obtained from the Housing Subsidy System Portal, dated 12 September 2019, indicates that Mr Sehloho was approved for a housing subsidy for the same property (Erf No 26336), in the A16100001/1, Project and this has not been addressed even after the matter was reported to the Legal Unit of the Municipality.
- 7.1.2.4 The evidence indicates that Mr Sehloho has been occupying the property for some time, under the impression that he is the owner thereof. When it transpired not to be the case, the Municipality was informed about the error, but failed to correct it.
- 7.1.2.5 The conduct of the Municipality was accordingly in violation of the provisions of section 195(1) of the Constitution and the Code of Conduct for Municipal Staff workers.
- 7.1.2.6 The Municipality's conduct accordingly constitutes improper conduct as envisaged by section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act. It also caused prejudice to Mr Maropong and Mr Sehloho as envisaged by section 6(4)(a)(v) of the Public Protector Act.

8. REMEDIAL ACTION

- 8.1. The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action with a view of redressing the conduct referred to in this report.



8.2. 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.

8.3. Having regard to the evidence, the regulatory framework determining the standard the Municipality should have complied with, and the impact on the Complainants, the Public Protector is taking the following remedial action, in terms of section 182(1)(c) of the Constitution:

The Speaker of the Municipal Council

8.3.1 Within **thirty (30) calendar days** from the date of the report, table the final report before Council for discussion and implementation.

The Municipal Manager

8.3.2 Within **one hundred and eighty (180) calendar days** from the date of the report, to ensure the finalisation of the transfer of ownership of the following properties in terms of section 4(1)(b) of the Deeds Registries Act, (as amended by Act 34 of 2013):

8.3.2.1 Erf 21223, 59 Mlimba Street Galeshewe Extension 7 in Kimberley, into the estate of the late Ms Dan Kgosiemang;

8.3.2.2 Erf 24187, 20 Whitting Close, Kimberley into the name of Ms Sebogodi;

8.3.2.3 Erf 5146, situated at 4125 Seochwareng Street, Kimberley, into the estate of the late Mr Gabaetingwe Wilson Maropong; and

8.3.2.4 Erf 26336, Promise Land, Kimberley is registered into the name of Mr Sehloho.



- 8.3.3 Within **sixty (60) calendar days** from the date of the report, initiate a process to take appropriate corrective action against the officials of the Municipality who contributed to the failure by the Sol Plaatje Municipality to provide Title Deeds, reflecting the details of Ms Sebogodi and Ms Kgosiemang to them, in respect of Erf No: 5146 Mocumi Street, Galeshewe and Erf No: 24187 Whitting Close Street, Homelite in Kimberley and the failure by the Municipality to rectify the wrongful allocation of erven to Mr Maropong and Mr Sehloho, in terms of section 95(f) of the Local Government: Municipal Financial Management Act (MFMA);
- 8.3.4 Ensure that the Internal Audit Unit of the Municipality, on an **annual** basis, reviews and advises 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 MFMA;
- 8.3.5 Within **thirty (30) calendar days** from the date of receipt of the report, the matter is brought to the attention of the Audit Committee to strengthen oversight over internal controls, to prevent the recurrence of breaches and for the proper detection and reporting thereof to the Municipal Council as envisaged by section 166 of the MFMA; and
- 8.3.6 Within **ninety (90) calendar days**, from the date of receipt of the report, report to the Council on the implementation of the remedial action taken in paragraphs (8.3.2) to (8.3.5) above, and provide the Public Protector with a copy thereof.



9. **MONITORING**

- 9.1. The Municipal Manager to submit an action plan to the Public Protector **within thirty (30) calendar days** from the date of this report on the implementation of the remedial action referred to in paragraph 8 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. KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR OF
THE REPUBLIC OF SOUTH AFRICA
DATE: 30 JUNE 2023

Assisted by: Adv Deon Barnard,
Executive Manager: PII Coastal