

REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF
THE PUBLIC PROTECTOR ACT, 1994



PUBLIC PROTECTOR
SOUTH AFRICA

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*“Allegations of maladministration and prejudice suffered as a result of the failure by
the Mangaung Metropolitan Municipality to adhere to the terms of a contract for the
sale of land”*

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION AND
PREJUDICE SUFFERED AS A RESULT OF THE FAILURE BY THE MANGAUNG
METROPOLITAN MUNICIPALITY TO ADHERE TO THE TERMS OF A CONTRACT FOR
THE SALE OF LAND

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Executive Summary

- (i) This is the Public Protector's report issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- (ii) The report communicates the findings and appropriate remedial action taken in terms of Section 182(1) (c) of the Constitution, following an investigation into allegations of maladministration and prejudice suffered as a result of the failure by the Mangaung Metropolitan Municipality (the Municipality) to adhere to the terms of a contract for the sale of land (the Contract).
- (iii) The complaint was lodged with the Public Protector, Free State Provincial office, on 17 October 2018 by Mr MV Lehlokoa (the Complainant). The Complainant raised specific concerns about a contract for the sale of land between himself and the Municipality.
- (iv) The Complainant raised the following allegations:
 - a. On 12 January 2018, he entered into a contract for the purchase of a site from the Municipality, situated at number 843, E Section, in Botshabelo (the site);
 - b. The contract for the purchase of the site was signed on 12 January 2018, between himself and the Municipality and it indicated the purchase price for the site as five hundred rands (R500, 00);
 - c. On 5 February 2018, the Complainant, on application for a clearance certificate from the Municipality, to enable him to transfer the property onto his name, received a statement from the Municipality indicating that the purchase price for the site as thirteen thousand five hundred rands (R13 500, 00);

- d. On 8 March 2018, the Attorneys responsible for the transfer of the property had to re-apply for a clearance certificate from the Municipality, as the first application was not attended to;
- e. On 8 May 2018, the Attorneys responsible for the transfer of the site paid the R500, 00 purchase price to the Municipality, as per the terms of the contract;
- f. On 21 May 2018, the Attorneys received a document from the Municipal property valuer, indicating the size of the site as 450 square meters and the value thereof was indicated as R13 500, 00. The Complainant submitted that the site he purchased was in fact 522 square meters in size;
- g. On 22 May 2018, the Municipality issued a clearance certificate indicating the purchase price as R13 500, 00. In order to facilitate the transfer of the property, the Complainant paid the additional amount of R13 500, 00 on 31 May 2018 under objection;
- h. The site was transferred and registered in the name of the Complainant under Title Deed Number TE009377/2018, however the purchase price reflected on the Title Deed was R500, 00. The size of the land was correctly reflected as 522 square meters;
- i. The Complainant became aware of the fact that the Municipality increased the purchase price to R13 500, 00 during February 2018. The Complainant addressed a letter dated 26 February 2018, to the Chief Financial Officer of the Municipality objecting to the higher price which differed from the price on the signed contract. The Complainant alleged that the Chief Financial Officer of the Municipality never responded to his letter; and
- j. The Complainant also alleged that he approached the Municipality after the Title Deed was issued, but the Municipality refused to refund the additional amount of R13 500, 00, which he paid under objection.

- (v) The investigation was conducted in terms of section 182(1)(a) of the Constitution and sections 6 and 7 of the Public Protector Act. It included correspondence with the Municipality, analysis of all relevant documents and information obtained and application of all relevant laws, policies and related prescripts.
- (vi) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:
 - (a) **Whether the Municipality failed to adhere to the terms of the Contract entered into between Complainant and itself and if so, whether such conduct was improper and amounted to maladministration and prejudice to the Complainant as contemplated by section 6(4) of the Public Protector Act, 1994.**
 - (aa) The allegation that the Municipality failed to adhere to the terms of the contract entered into between Complainant and itself, is substantiated.
 - (bb) Although the Complainant had contractual remedies available to him in the event of a breach of the contract per paragraph 3.2 of the agreement, the Municipality failed to correct the material error in the Agreement when it proceeded to conclude the transfer of the site. The Municipality's conduct in this regard prejudiced the Complainant in that he had to pay an additional R13 500.00 in order to obtain the clearance certificate for the site.
 - (cc) The conduct of the Municipality in this regard constitutes improper conduct as envisaged by Section 6(4)(a)(iii) of the Public Protector Act 23 of 1994, however I have taken note of the Municipality's undertakings to remedy the wrong and refund the Complainant the amount of R13 500.00.

(b) Whether the Municipality failed to evaluate the land sold to the Complainant before disposal and if so, whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.

- (aa) The Municipal Valuer of the Municipality valued the land **after** the Offer to Purchase was signed by the parties instead of determining same before the Offer to Purchase was concluded. This is contrary to Section 14(2) (b) of the MFMA which states that *“a Municipality may transfer ownership or otherwise dispose of a capital asset but only after the Municipal Council has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset”*. **(own emphasis added)**
- (bb) The Conduct of the Municipality was inconsistent with the high standard of professional ethics and accountability in public administration as envisaged in Section 195(1) of the Constitution, 1996.
- (cc) The conduct of the Municipality in failing to value the land sold to the Complainant before disposal amounts to maladministration as envisaged in section 6(4) (a) (i) of the Public Protector Act, 1994.
- (dd) I have also taken note of the Municipality’s undertaking in respect of it re-examining the processes for the approval and transfer of immovable property and to ensure corrective action is taken against practises which may have similar outcomes in the future.

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

The Acting City Manager of Mangaung Metro Municipality to:

- (a) Take cognisance of the findings on the acts of maladministration and improper conduct identified in the investigation;
- (b) Ensure that the Complainant is refunded the amount of R13 500.00 as undertaken;
- (c) Ensure that the undertakings by the Municipality to conduct an investigation process and consequence management is carried out expeditiously;
- (d) Ensure that all valuations of capital assets are concluded before Municipal assets are disposed of. This should be included in the Municipality's Policy on Disposal of Land and Other Immovable Assets;
- (e) Ensure that internal complaints mechanisms dealing with complaints are strengthened;
and
- (f) Extend a written apology to the Complainant for the inconvenience caused by raising the contract price after the deed of sale was signed.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION AND PREJUDICE SUFFERED AS A RESULT OF THE FAILURE BY THE MANGAUNG METROPOLITAN MUNICIPALITY TO ADHERE TO THE TERMS OF A CONTRACT FOR THE SALE OF LAND

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) on an investigation into allegations of maladministration and prejudice suffered as a result of the failure by the Mangaung Metropolitan Municipality (the Municipality) to adhere to the terms of a contract for the sale of land (the Contract).

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

1.2.1 The Member of the Executive Council of Cooperative Governance and Traditional Affairs, Honourable ST Nxangisa, MPL;

1.2.2 The Speaker of Mangaung Metro Municipality, Cllr M Nkoane;

1.2.3 The Acting Municipal Manager of Mangaung Metro Municipality, Mr S More;
and

1.2.4 A copy of the report is also provided to the Complainant, Mr MV Lehlokoa.

2. THE COMPLAINT

2.1 The complaint was lodged with the Public Protector, Free State Provincial office, on 17 October 2018 by Mr MV Lehlokoa (the Complainant). The Complainant raised specific concerns about a contract for the sale of land between himself and the Municipality.

2.2 In the main, the Complainant alleged the following:

2.2.1 On 12 January 2018, he entered into a contract for the purchase of a site from the Municipality, situated at number 843, E Section, in Botshabelo (the site);

2.2.2 The contract for the purchase of the site was signed on 12 January 2018, between himself and the Municipality and it indicated the purchase price for the site as five hundred rands (R500, 00);

2.2.3 On 5 February 2018, the Complainant, on application for a clearance certificate from the Municipality, to enable him to transfer the property onto his name, received a statement from the Municipality indicating that the purchase price for the site as thirteen thousand five hundred rands (R13 500, 00);

2.2.4 On 8 March 2018, the Attorneys responsible for the transfer of the property had to re-apply for a clearance certificate from the Municipality, as the first application was not attended to;

2.2.5 On 8 May 2018, the Attorneys responsible for the transfer of the site paid the R500, 00 purchase price to the Municipality, as per the terms of the contract;

- 2.2.6 On 21 May 2018, the Attorneys received a document from the Municipal property valuer, indicating the size of the site as 450 square meters and the value thereof was indicated as R13 500, 00. The Complainant submitted that the site he purchased was in fact 522 square meters in size;
- 2.2.7 On 22 May 2018, the Municipality issued a clearance certificate indicating the purchase price as R13 500, 00. In order to facilitate the transfer of the property, the Complainant paid the additional amount of R13 500, 00 on 31 May 2018 under objection;
- 2.2.8 The site was transferred and registered in the name of the Complainant under Title Deed Number TE009377/2018, however the purchase price reflected on the Title Deed was R500, 00. The size of the land was correctly reflected as 522 square meters;
- 2.2.9 The Complainant became aware of the fact that the Municipality increased the purchase price to R13 500, 00 during February 2018. The Complainant addressed a letter dated 26 February 2018, to the Chief Financial Officer of the Municipality objecting to the higher price which differed from the price on the signed contract. The Complainant alleged that the Chief Financial Officer of the Municipality never responded to his letter; and
- 2.2.10 The Complainant also alleged that he approached the Municipality after the Title Deed was issued, but the Municipality refused to refund the additional amount of R13 500, 00, which he paid under objection.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

- 3.1 The Public Protector is an independent constitutional body established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.
- 3.2 Section 182(1) of the Constitution provides:
- “The Public Protector has the power as regulated by national legislation-*
- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
 - (b) to report on that conduct; and*
 - (c) to take appropriate remedial action.”*
- 3.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national legislation.
- 3.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs and to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.
- 3.5 In 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*

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

reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.”²

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

3.7 The Public Protector’s power and jurisdiction to investigate this matter and take appropriate remedial action was not disputed by any of the parties.

4. THE INVESTIGATION

4.1 Methodology

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

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

4.2 Approach to the investigation

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

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

² *Supra* at para [73].

- In the event of maladministration what would it take to remedy the wrong or to place the Complainant as close as possible to where they would have been but for the maladministration or improper conduct?
- 4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the municipality failed to adhere to the terms of a contract for the sale of land which resulted in maladministration and prejudice suffered by the Complainant.
- 4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Municipality or organ of state to prevent maladministration.
- 4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration, improper conduct and prejudice suffered by the residents of the Municipality.
- 4.2.5 The investigation process included an exchange of correspondence with former Mr T Mea, the Acting City Manager of the Municipality, Mr S More, the current Acting City Manager of the Municipality, and Adv J Phaladi, the Head of Human Settlement of the Municipality. Analysis of relevant documentation, conducted research, and the consideration and application of relevant laws, regulatory framework and jurisprudence.
- 4.3 **On analysis of the complaint, the following issues were considered and investigated:**

4.3.1 Whether the Municipality failed to adhere to the terms of the Contract entered into between Complainant and itself, and if so, whether such conduct was improper and amounted to maladministration and prejudice to the Complainant as contemplated by section 6(4) of the Public Protector Act, 1994 and;

4.3.2 Whether the Municipality failed to value the land sold to the Complainant before disposal, and if so, whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.

4.4 **The Key Sources of information**

4.4.1 **Documents**

4.4.1.1 Offer to Purchase dated 8 January 2018;

4.4.1.2 Valuation Certificate dated 5 February 2018;

4.4.1.3 Receipt regarding the payment of R500.00 dated 8 May 2018;

4.4.1.4 Receipt regarding the payment of R13 500 dated 31 May 2019;

4.4.1.5 Moroka Attorneys Report Undated;

4.4.1.6 Deed of Sale in respect of the Complainant dated 21 June 2021;

4.4.1.7 Declaration by Occupant Dated 07 June 2013;

4.4.1.8 Copy of Permission to Occupy Dated 07 June 2013;

4.4.1.9 Mangaung Supply Chain Management Policy 2020/2021; and

4.4.1.10 Exchange of email between Moroka Attorneys and Adv. Phaladi dated 20 April 2018.

4.4.2 **Meetings conducted**

4.4.2.1 Meeting between the Public Protector Investigation Team and the City Manager, Mr More on 18 August 2021;

4.4.2.2 Meeting between the Public Protector Investigation Team and the Complainant on 14 September 2021; and

4.4.2.3 Meeting between the Public Protector Investigation Team and the City Manager, Mr More on 15 September 2021.

4.4.3 Correspondence sent and received

4.4.3.1 Exchange of emails between Adv. Erika Cilliers and Adv. Phaladi on 5 and 6 August 2019.

4.4.4 Legislation and other prescripts

4.4.4.1 The Constitution of the Republic of South Africa, 1996;

4.4.4.2 The Public Protector Act, No. 23 of 1994;

4.4.4.3 2018 Mangaung Supply Chain Management Policy; and

4.4.4.4 The Municipal Finance Management Act No.56 of 2003 (MFMA).

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

4.4.5.1 Notice in terms of section 7(9) (a) of the Public Protector Act dated 14 June 2021 served on the former Acting Municipal Manager Mr T Mea;

4.4.5.2 Notice in terms of section 7(9) (a) of the Public Protector Act dated 14 June 2021 was served to the Acting City Manager, Mr S More on 18 August 2021;

4.4.5.3 Meeting held between the Investigating Team and the Acting City Manager, Mr T More on 19 August 2021 to discuss the Notice issued in terms of section 7(9)(a) of the Public Protector Act;

- 4.4.5.4 Response to the Notice issued in terms of section 7(9)(a) of the Public Protector Act received from the Acting City Manager, Mr S More dated 01 September 2021;
- 4.4.5.5 Further response to the Notice issued in terms of section 7(9)(a) of the Public Protector Act received from the Acting City Manager, Mr S More dated 01 September 2021;
- 4.4.5.6 Further response to the Notice issued in terms of section 7(9)(a) of the Public Protector Act received from the Acting City Manager, Mr S More dated 15 September 2021;
- 4.4.5.7 Discretionary Notice dated 05 May 2021 issued to the Complainant on 06 May 2021; and
- 4.4.5.8 Response to the discretionary Notice dated 31 May 2021 received from the Complainant on the 31 May 2021.

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

- 5.1 Whether the Municipality failed to adhere to the terms of the Contract entered into between Complainant and itself and if so, whether such conduct was improper and amounted to maladministration and prejudice to the Complainant as contemplated by section 6(4) of the Public Protector Act, 1994.**

Common cause issues

- 5.1.1 On 8 January 2018, the Complainant signed a contract with the Municipality to purchase the property situated at “ERF 843, Botshabelo-E, District Thaba Nchu, Free State Province, in extent 522” (five hundred and twenty two) square meters. The

contract was signed by Ms Puleng Pascalina Thakheli, the duly authorised representative of the Municipality, in her capacity as Manager, Project Implementation of the Municipality on 12 January 2018.

- 5.1.2 Paragraph 2 of the Contract states “*2.1 The Purchase price of the Property shall be the amount of Five Hundred Rand (R500.00) that is still to be paid to the Seller on request.*”
- 5.1.3 Paragraph 7 of the Contract states that the Purchaser is already in possession of the property.
- 5.1.4 Paragraph 9.1 of the contract appoints Messrs Moroka Attorneys to facilitate the transfer of the site into the name of the Complainant. It further determines that the parties undertake to complete, sign and execute documents necessary to finalise the transfer of the property.
- 5.1.5 On 5 February 2018, the Municipal Valuer issued a valuation certificate, indicating the market value of the site to be R13 500, 00.
- 5.1.6 The Complainant was informed through the attorneys of this higher amount and he submitted that on 26 February 2018, he addressed the issue of the increased price (contrary to the price agreed to in the contract), with Mr E Mohlahlo, the former Chief Financial Officer of the Municipality. In the letter, the Complainant objected to the unilateral increase of the purchase price, contrary to paragraph 2 of the contract.
- 5.1.7 On 8 May 2018, the Complainant paid the R500.00 purchase price, as reflected in paragraph 2 of the Contract, to the Municipality and he received a receipt number 329208, for the payment.
- 5.1.8 On 22 May 2018, the Attorneys who facilitated the transfer of the site, informed the Complainant to pay an amount of R13 500, 00, in addition to the purchase price of

R500.00 already paid on 8 May 2018. The Complainant paid the additional amount under objection in terms of his letter of 26 February 2018, submitted to the Chief Financial Officer of the Municipality.

- 5.1.9 The Title Deed for Site 843 Botshabelo E, with Title Deed Number TE009377/2018, was issued in the name of the Complainant on 21 June 2018.

Issues in dispute

- 5.1.10 In an email dated 6 August 2019 to my office, Adv. J Phaladi, the Head of the Department of Human Settlements of the Municipality, submitted that the value of land bought from the Municipality is determined by the Municipal Valuer, as the cost of land and the price to be paid by purchaser.
- 5.1.11 Adv. J Phaladi, in her email of 6 August 2019, further submitted that the R500, 00 purchase price, which is normally reflected in general deeds of sale, are meant for people who are entitled to free sites from the Municipality. The purpose of the R500, 00 purchase price reflected in the contract, is therefore only to comply with requirements by the Registrar of Deeds when sites are allocated to indigents, free of charge.
- 5.1.12 Furthermore, in the same correspondence, Adv. J Phaladi submitted that the Complainant is a private client, and that he does not qualify for a free site. In terms of the Municipality's procedures, policies and legislation, the Complainant had to pay the cost of land as a purchase price, which reflects the market value of the land as required by section 14 of the Municipal Finance Management Act, Act 56 of 2003 (MFMA).
- 5.1.13 Adv. Phaladi contended that this was explained to the Complainant on several occasions. Adv. Phaladi further submitted that this is the normal practice at the

Municipality to conclude contracts at R500, 00 and she also indicated that the purchase price of R500, 00 stipulated on the contract, was an error. She also submitted that the Municipal Finance Management Act (MFMA) clearly requires Municipalities to sell land at market value. She further submitted that if the Complainant was not satisfied with the purchase price, he could have cancelled the contract.

- 5.1.14 No evidence was submitted that the Municipality at any stage after the signing of the contract and before the registration of the Title Deed in the name of the Complainant, endeavoured to rectify the error on the contract. Thus failed to amend the terms of the initial contract nor conclude a new agreement reflecting the additional R13 500.00.
- 5.1.15 The Complainant however, disputed this explanation and submitted that he signed a contract, indicating a purchase price as R500, 00 and the higher price was only explained to him after the transfer of the site into his name. He submitted that he was the occupant of this site since 2013, and that he had paid the increased purchase price under objection to become the owner of the site he had occupied for a lengthy period of time. He submitted a letter in this regard to the Chief Financial Officer of the Municipality, Mr E Mohlahlo on 26 February 2018.
- 5.1.16 The Complainant submitted the same letter on 26 July 2018, after receipt of his title deed to the site, to the Office of the Chief Financial Officer (signed for by a certain Gordon), the Department of Human Settlements and Housing (signed for by a certain Yolanda), the City Manager (signed for by a certain Canna), and the Office of the Executive Mayor (signed for by HA Msiza). In the letter he indicated the steps he took after February 2018 to have the matter of the purchase price resolved.

Response to the Discretionary Notice (Notice) issued to the Complainant in terms of rule 42(1) of the *Rules Relating to Investigations by the Public Protector and*

Matters Incidental thereto, 2018 (the Public Protector Rules) as promulgated under section 7(11) of the Public Protector Act, 23 of 1994 (Public Protector Act) dated 05 May 2021

- 5.1.17 Rule 42(1) of the Public Protector Rules provides that when the Public Protector intends concluding an issue under investigation with no negative findings the Complainant shall be informed in writing accordingly and be given an opportunity to make further representations on why the Public Protector should not proceed to close the issue under investigation.
- 5.1.18 On 31 May 2021, the Complainant responded via email to the discretionary notice issued to him stating that he did not agree with the intended findings. He stated *inter alia* that during the process to obtain the title deed for the site, two copies of the offer to purchase Agreements were submitted to the Municipality by the transferring attorney. One copy was submitted to Adv J Phaladi, the Head of Human Settlement in the Municipality and another copy to Ms PP Thakheli in her capacity as Manager, Project Implementation. He was of the belief that if Adv. Phaladi had the opportunity at that time to correct the purported error on the Agreement, but failed to do so.
- 5.1.19 I have taken note of the Complainants submission herein and I am in agreement with his contentions that the Municipality did at that time have the opportunity to correct the error.

Response to the Section 7 (9) notice dated 14 June 2021

- 5.1.20 During the investigation process, a notice in terms of section 7(9)(a) of the Public Protector Act dated 14 June 2021 was issued to Mr T Mea, to afford him an opportunity to respond to my provisional findings to which Mt T Mea's on 14 June

2021 requested the documents relating to the investigation and shortly thereafter Mr S More was appointed as Acting City Manager.

- 5.1.21 On the 18 August 2021, a further copy of the Section 7(9) Notice was provided to Mr S More to afford the Municipality an opportunity to respond, as subsequent to Mr T Mea vacating his position no response was received from the Municipality
- 5.1.22 The investigation team further engaged Mr S More during a meeting held on 18 August 2021 in respect of the Section 7(9) Notice and gave him an opportunity to submit a written response thereto.
- 5.1.23 On 1 September 2021, Mr More submitted the following written response via email indicating that he acknowledged receipt of the Section 7(9) and that *“... We have perused the report and we are in agreement that some unfairness may have happened to the complainant. We however believe that the issue is far deeper and may require further investigation. I have referred the complaint to our anti fraud division for a further investigation and I humbly request 15 more days for the completion of our own investigation by no later than the 15th of September 2021.”*
- 5.1.24 On the 3 September 2021, the Investigation Team acknowledged via email the response of Mr More and welcomed the initiative by the Municipality to conduct a further investigation especially since the Municipality believed that the issue is far deeper and thus requires investigation.
- 5.1.25 On the 6 September 2021, Mr More submitted a further written response stating that *“We have noted the complaint and the Public Protector's report. The Municipality would like to send its apology to both the buyer and Public Protector for the inconvenience caused by the issue of contract price after the deeds of sale was signed.”*

The measures to be implemented by the Municipality would be to investigate and finalize issue as a matter of urgency. We would request the complainant to submit the following documents to the Office of the Acting City Manager:

- *Proof of Employment (as at the time of sale)*
- *Income and expenditure*

With these documentations we will be in the position to determine whether Mr. MV Lehlokoa, qualifies or do not qualify to purchase land as a Indigent Rate of R500 or at a properly evaluated price.”

5.1.26 Subsequent to this response the Investigation team held a meeting with the Complainant on 14 September 2021 in respect of the documents requested by the Municipality, during the meeting the Complainant indicated that he was not an indigent when the Agreement was concluded. He further highlighted the following issues:

5.1.26.1 That the site was given to him by his aunt and that in 2013 he approached the Municipality in this regard and was given a permission to occupy (PTO) which was duly issued by the Municipality on 7 June 2013;

5.1.26.2 That subsequently during the process to obtain the title deed for the site two copies of the offer to purchase were submitted to the Municipality by the transferring attorney namely, one copy was submitted to Adv J Phaladi, the Head of Human Settlement in the Municipality and another copy to Ms PP Thakheli in her capacity as Manager: Project Implementation;

5.1.26.3 That the transferring attorney received the copy of the signed offer to purchase from Ms PP Thakheli in her capacity as Manager: Project Implementation;

5.1.26.4 That subsequently to the dispute regarding the signed offer to purchase, the complainant paid the R13500.00 that was demanded by the Municipality in

addition to the R500.00 he had already paid in terms of the offer to purchase, however the Municipality issued a clearance certificate reflecting the sale price of R500.00 even after it was aware of the purported error in the offer to purchase;

- 5.1.27 Subsequent to this meeting with the Complainant, the Investigation Team held a meeting with the Mr More, the Acting City Manager and the officials of the Municipality on the 15 September 2021 wherein the submissions of the Complainant were discussed. The inconsistencies in the process that was followed by the Municipality and payments made by the Complainant were brought to their attention. During the meeting the Municipality conceded that there were errors made relating to this transfer process and agreed to remedy the situation.
- 5.1.28 Subsequently in a letter dated 15 September 2021, Mr More, the Acting City Manager made the following under takings:
- 5.1.28.1 To place the Complainant in the same position that that the complainant would have been in, had he not been required to pay the additional R13 500.00. The Municipality therefore undertook to pay back the amount of R13500 to the Complainant;
- 5.1.28.2 To investigate the matter further and take whatever remedial action the Municipality deems necessary under the circumstances;
- 5.1.28.3 To ensure that consequence management is implemented against employees who have cause the above situation; and
- 5.1.28.4 To re-examine its processes for the approval and transfer of immovable property to ensure that corrective action is taken against practices which may have similar outcomes in the future.
- 5.1.29 The responses from Mr More dated 1 September 2021, 6 September 2021 and 15 September 2021 are noted and acknowledged. I welcome the Municipality's

concession to errors it made during the transfer process as well as the undertaking they have made in this regard.

Application of the relevant law

- 5.1.30 In terms of the 2018 Mangaung Supply Chain Management Policy (SCM Policy), paragraph 1.1(c), a capital asset is defined as *the “non-consumable, movable and immovable property, including land of the Municipality”*.
- 5.1.31 Paragraph 2.1 of the contract states *“the purchase price of the Property shall be the amount of R500 (Five Hundred Rand) that is still to be paid to the seller on request”*
- 5.1.32 Paragraph 3.2 of the Offer to Purchase states that *“Should the Seller breach all of any of the aforementioned representations, warranties, undertakings and indemnities, then the Purchaser shall, without prejudice to all or any of the other rights that it may enjoy as a consequence of such breach, not be entitled to cancel this agreement **unless such particular representation, warranty, undertaking or indemnity is both material and goes to the root of the whole contract, and the Purchaser cannot be adequately compensated by monetary award. (own emphasis)**”*

Conclusion

- 5.1.33 The site qualified as the capital asset of the Municipality in terms paragraph 1.1(c) of the 2018 Mangaung Supply Chain Management Policy (SCM Policy)
- 5.1.34 I am persuaded by the evidence and legislative prescripts, to conclude that the Municipality did not adhere to the terms of the Agreement. Paragraph 2 of the contract clearly states the agreed purchase price of the property as R500.00. The Municipality endeavoured to change the terms of the Agreement by demanding a payment of

R13 500.00 from the Complainant even though it never undertook to rectify its purported error through the conclusion of the new agreement.

5.1.35 Although the Complainant had contractual remedies available to him in the event of a breach of the contract per paragraph 3.2 of the agreement, the Municipality failed to correct the material error in the Agreement when it proceeded to conclude the transfer of the site. The Municipality's conduct in this regard prejudiced the Complainant in that he had to pay an additional R13 500.00 in order to obtain the clearance certificate for the site.

5.2 Whether the Municipality failed to evaluate the land sold to the Complainant before disposal and if so, whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.

Common cause issues

5.2.1 It is common cause that on 8 January 2018, the Complainant signed a contract with the Municipality to purchase the property situated at "ERF 843, Botshabelo-E, District Thaba Nchu, Free State Province, in extent 522"(five hundred and twenty two) square meters.

5.2.2 The contract was signed by Ms Puleng Pascalina Thakheli the duly authorised representative of the Municipality, in her capacity as Manager, Project Implementation of the Municipality on 12 January 2018.

5.2.3 On 5 February 2018, the Municipal Valuer, evaluated ERF 843, Botshabelo-E, District Thaba Nchu, Province Free State, in extent 450m² (Four Hundred and Fifty) square meters for R13 500,00.

5.2.4 The Deed of Transfer was registered in the Complainant's name on 21 June 2018.

Issues in dispute

5.2.5 The Municipal Valuer of the Municipality valued Erf 843, Botshabelo-E, and District, Thaba-Nchu, Free State Province in Extent 450 m² (Four-Hundred and Fifty square meters) whereas the Offer to Purchase as well as the Deed of Transfer reflect the size of the Erf as 522 m² (Five-Hundred and Twenty Two square meters).

5.2.6 The valuation of the Erf was only conducted on 5 February 2018, almost a month after the contract was concluded between the parties.

Application of the relevant law

5.2.7 Section 195(1) of the Constitution, 1996, stipulates that public administration must be governed by the democratic values and principles enshrined in the Constitution. It requires *inter alia* a high standard of professional ethics and accountability in public administration.

5.2.8 Section 14(2) (b) of the MFMA states that *"a Municipality may transfer ownership or otherwise dispose of a capital asset but only after the Municipal Council has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset"*

Conclusion

5.2.9 I am persuaded by the evidence and legislative prescripts to conclude that the Municipal Valuer of the Municipality valued the land **after** the Offer to Purchase was signed by the parties instead of determining same before the Offer to Purchase was concluded.

- 5.2.10 The Conduct of the Municipality was inconsistent with the high standard of professional ethics and accountability in public administration as envisaged in Section 195(1) of the Constitution, 1996.
- 5.2.11 This is contrary to Section 14(2) (b) of the MFMA which states that “*a Municipality may transfer ownership or otherwise dispose of a capital asset but only after the Municipal Council has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset*”. (**own emphasis added**)

6. FINDINGS

Having regard to the evidence, the regulatory framework determining the standard that should have been complied with by the Municipality and the impact on the Complainant, I make the following findings:

- 6.1 **Regarding Whether the Municipality failed to adhere to the terms of the Contract entered into between Complainant and itself and if so, whether such conduct was improper and amounted to maladministration and prejudice to the Complainant as contemplated by section 6(4) of the Public Protector Act, 1994.**
- 6.1.1 The allegation that the Municipality failed to adhere to the terms of the contract entered into between Complainant and itself, is substantiated.
- 6.1.2 Although the Complainant had contractual remedies available to him in the event of a breach of the contract per paragraph 3.2 of the agreement, the Municipality failed to correct the material error in the Agreement when it proceeded to conclude the transfer of the site. The Municipality’s conduct in this regard prejudiced the

Complainant in that he had to pay an additional R13 500.00 in order to obtain the clearance certificate for the site.

- 6.1.3 The conduct of the Municipality in this regard constitutes improper conduct as envisaged by Section 6(4)(a)(iii) of the Public Protector Act 23 of 1994, however I have taken note of the Municipality's undertakings to remedy the wrong and refund the Complainant the amount of R13 500.00.
- 6.2 **Regarding Whether the Municipality failed to evaluate the land sold to the Complainant before disposal and if so, whether such conduct was improper and amounted to maladministration as contemplated by section 6(4) of the Public Protector Act, 1994.**
- 6.2.1 The Municipal Valuer of the Municipality valued the land **after** the Offer to Purchase was signed by the parties instead of determining same before the Offer to Purchase was concluded. This is contrary to Section 14(2) (b) of the MFMA which states that *"a Municipality may transfer ownership or otherwise dispose of a capital asset but only after the Municipal Council has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset"*. **(own emphasis added)**
- 6.2.2 The Conduct of the Municipality was inconsistent with the high standard of professional ethics and accountability in public administration as envisaged in Section 195(1) of the Constitution, 1996.
- 6.2.3 The conduct of the Municipality in failing to value the land sold to the Complainant before disposal amounts to maladministration as envisaged in section 6(4) (a) (i) of the Public Protector Act, 1994.
- 6.2.4 I have also taken note of the Municipality's undertaking in respect of it re-examining the processes for the approval and transfer of immovable property and to ensure

corrective action is taken against practises which may have similar outcomes in the future.

7. REMEDIAL ACTION

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

The Acting City Manager of Mangaung Metro Municipality to:

- 7.1 Take cognisance of the findings on the acts of maladministration and improper conduct identified in the investigation;
- 7.2 Ensure that the Complainant is refunded the amount of R13 500.00 as undertaken;
- 7.3 Ensure that the undertakings by the Municipality to conduct an investigation process and consequence management is carried out expeditiously;
- 7.4 Ensure that all valuations of capital assets are concluded before Municipal assets are disposed of. This should be included in the Municipality's Policy on Disposal of Land and Other Immovable Assets;
- 7.5 Ensure that internal complaints mechanisms dealing with complaints are strengthened; and
- 7.6 Extend a written apology to the Complainant for the inconvenience caused by raising the contract price after the deed of sale was signed.

8. MONITORING

Report of the Public Protector

- 8.1 The Acting City Manager to submit an implementation plan of how the remedial action in paragraph 7 will be implemented within 60 days from the date of receipt of this report.
- 8.2 The Acting City Manager to submit the report of the investigation it has undertaken to conduct and submit proof of refund to the Complainant within 60 days from the date of receipt of this report.



**ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA**

DATE: 30/09/2021

Assisted by: Mr Vincent Maseko - Investigator.