

**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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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT
AND MALADMINISTRATION RELATING TO THE FAILURE BY THE MAGARENG
MUNICIPALITY (MUNICIPALITY), TO RESOLVE A DISPUTE REGARDING
OWNERSHIP OF ERF 3274 (ERF 3274), ZONE E, IKHUTSENG TOWNSHIP IN
WARRENTON IN 2019**

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LIST OF ACRONYMS

ACRONYMS AND ABBREVIATIONS	DESCRIPTIONS
ADR	Alternative Dispute Resolution
AGSA	Auditor General South Africa
COGHSTA	Cooperative Governance Human Settlement and Traditional Affairs
Constitution	The Constitution of the Republic of South Africa
HoD	Head of Department
MFMA	Municipal Finance Management Act
Municipality	Magareng Local Municipality
PPA	Public Protector Act, 1994
PPSA	Public Protector South Africa
SARS	South Africa Revenue Services

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, 23 of 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 the failure by the Magareng Municipality (Municipality), to resolve a dispute regarding ownership of Erf 3274 (Erf 3274), Zone E, Ikhutseng Township in Warrenton in 2019.
- (iii) The investigation originates from a complaint lodged on 30 July 2020, at the Northern Cape Provincial Office of the Public Protector South Africa (Public Protector), by Mr Zwelinzima Samson Mente (the Complainant).
- (iv) In the main, the Complainant alleged that:
 - (a) He is a disabled pensioner and had been living at Erf 3274, ever since the erven were presented to them by the Councillor. He went to the Magareng Local Municipality to apply for an RDP House to be built on Erf 3274. His application was approved and the house was built.
 - (b) On 25 March 2019, he received a letter from the Municipality stating that he must move out of his house within ninety (90) days, go build a shack at a new Erf No: 1, fence it and pay for the installation of electricity.

- (c) He stated that he is not able to do any of the things mentioned in the said letter and he will not just give his house to the people who claim that Erf 3274, belongs to their mother and claim to have a Title Deed.
- (d) He further asked, where were those people all these years and how did the Municipality approve his application without conducting a proper investigation? If he had to move out, the Municipality must build him another house rather than asking him to start afresh in another place.
- (v) In essence, the Complainant alleged that the Municipality failed to resolve a dispute regarding ownership of Erf 3274.
- (vi) Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:
 - (a) Whether the Municipality failed to resolve a dispute regarding ownership of Erf 3274, Zone E, Ikhutseng Township in Warrenton, and if so, whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration and improper prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act.
- (vii) 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.

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- (viii) On 29 March 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.
- (ix) Following the delivery of the Notice to the Municipality, the Public Protector did not expect a response from the Municipality since the matter was already discussed in a meeting with Mr Thage on 16 February 2023. During the said meeting it was agreed that Mr Thage would prepare an Item to Council for a resolution, as resolved at the ADR meetings held between the Municipality and the Investigation Team of the Public Protector on 07 December 2021 and 16 February 2023 respectively.
- (x) The resolutions taken at the ADR were duly considered by the Public Protector in relation to the substance of any allegations against the person(s) concerned or the grounds for adverse comments or findings against or remedial action involving them and incorporated into the report as binding remedial action agreed upon by the parties.
- (xi) 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 Municipality failed to resolve a dispute regarding ownership of Erf 3274, Zone E, Ikhutseng Township in Warrenton, and if so, whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration and improper prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act:

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- (aa) The allegation that the Municipality did not resolve a dispute regarding ownership of Erf 3274, Zone E, Ikhutseng Township in Warrenton, is substantiated.
- (bb) The conduct of the Municipality was at variance with the provisions of the Constitution, Code of Conduct for Municipal Staff Members, the Housing Act and the Housing Code.
- (cc) Therefore, the conduct of the Municipality accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration and improper prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act.
- (xii) The appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution is the following:

(a) The Municipal Manager

- (aa) As per the commitment made by the Municipality at an ADR meeting held on 07 December 2021, in terms of section 6(4)(b)(i) of the Public Protector Act, 1994, within sixty (60) calendar days, engage Ms Manyane's daughter in order to offer her an alternative Erf and prepare an Item to Council for a resolution, as resolved at the ADR meeting held on 16 February 2023.
- (bb) Within one hundred and twenty (120) calendar days from the date of the report, ensure that steps are taken for a conveyancer to be appointed, to register Erf 3274 with the Deeds Registries Office to reflect the details of the Complainant, in terms of section 60(a) of the MFMA.
- (cc) Ensure that the Audit Committee of the Municipality, in all its quarterly meetings, consider the internal audit, AGSA and all other investigation reports to ensure that the recommendations are implemented, as envisaged in section 166 of the MFMA.

(dd) Report to the Council on the implementation of the remedial action taken in paragraphs (aa) to (cc) above, within one hundred and eighty (180) calendar days from the date of this report and provide the Public Protector with a copy thereof.

(b) The HOD of COGHSTA

(aa) Within sixty (60) calendar days from the date of receipt of the necessary records from the Municipality, ensure that a conveyancer is appointed, to register Erf 3274 with the Deeds Registries Office to reflect the details of the Complainant.

1. INTRODUCTION

- 1.1. This is a report of the Public Protector, issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act 23 of 1994 (the Public Protector Act).
- 1.2. The report communicates the findings and appropriate remedial action taken by the Public Protector in terms of section 182(1)(c) of the Constitution, following an investigation into allegations of improper conduct and maladministration relating to the failure by the Magareng Municipality (Municipality), to resolve a dispute regarding ownership of Erf 3274 (Erf 3274), Zone E, Ikhutseng Township in Warrenton in 2019.
- 1.3 The report is submitted in terms of sections 8(1) and 8(3) of the Public Protector Act to the following persons, to inform them of the outcome of the investigation and the remedial action taken:
- 1.3.1 Mr Tumelo Thage, the Acting Municipal Manager of the Magareng Local Municipality (Municipality);
- 1.3.2 Mr Bentley Vass, the Member of the Northern Cape Provincial Executive Committee responsible for Cooperative Governance, Human Settlements and Traditional Affairs (COGHSTA);
- 1.3.3 Mr Bafedile Lenkoe, the Head of the Northern Cape Department of COGHSTA;
- 1.3.4 Dr Zamani Saul, the Premier of the Northern Cape Province;
- 1.3.5 Mr Bonakele Plata, the Speaker of the Municipality;

1.3.6 Ms Neo Mase, the Executive Mayor of the Municipality; and

1.3.7 Mr Zwelinzima Samson Mente, the Complainant.

2. THE COMPLAINT

2.1. The investigation originates from a complaint lodged on 30 July 2020, at the Northern Cape Provincial Office of the Public Protector South Africa (Public Protector), by Mr Zwelinzima Samson Mente (the Complainant).

2.2. In the main, the Complainant alleged that:

2.2.1. He is a disabled pensioner and had been living at Erf 3274, ever since the erven were presented to them by the Councillor. He went to the Magareng Local Municipality to apply for an RDP House to be built on Erf 3274. His application was approved and the house was built.

2.2.2. On 25 March 2019, he received a letter from the Municipality stating that he must move out of his house within ninety (90) days, go build a shack at a new Erf No: 1, fence it and pay for the installation of electricity.

2.2.3. He stated that he is not able to do any of the things mentioned in the said letter and he will not just give his house to the people who claim that Erf 3274, belongs to their mother and claim to have a Title Deed.

2.2.4. Further, where were those people all these years and how did the Municipality approve his application without conducting a proper investigation? If he had to move out, the Municipality must build him another house rather than asking him to start afresh in another place.

2.2.5. In essence, the Complainant allege that the Municipality failed to resolve a dispute regarding ownership of Erf 3274.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1. The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution 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. 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.

4. ISSUE IDENTIFIED AND INVESTIGATED

4.1. Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:

4.1.1. Whether the Municipality failed to resolve a dispute regarding ownership of Erf 3274, Zone E, Ikhutseng Township in Warrenton, and if so, whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration and improper 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. The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

5.2. Approach to the Investigation

5.2.1. The investigation process included email and letter correspondence with officials of the Municipality and the Northern Cape Department of Cooperative Governance, Human Settlements and Traditional Affairs (COGHSTA), an analysis and evaluation of the relevant documents and information obtained during the investigation, and the consideration and application of the relevant law and prescripts.

- 5.2.2. The investigation was approached using an enquiry process that seeks to determine:
- 5.2.2.1. What happened?
 - 5.2.2.2. What should have happened?
 - 5.2.2.3. Is there a discrepancy between what happened and what should have happened and does that deviation amount to improper conduct or maladministration?
 - 5.2.2.4. In the event of improper conduct or maladministration, what would it take to remedy the wrong and what action should be taken?
 - 5.2.2.5. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and evidence independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether the Municipality failed to resolve a dispute regarding ownership of Erf 3274, if so, whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration and improper prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act.
 - 5.2.2.6. The enquiry regarding what should have happened focuses on the law and prescripts that regulate the standard that should have been met by the Municipality to prevent improper conduct, maladministration, and prejudice.
 - 5.2.2.7. The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and/or maladministration where possible and appropriate.

5.3 The Key Sources of Information

5.3.1 Documents and correspondence

- 5.3.1.1 Letter from the Municipality to the Complainant, dated 25 March 2019;
- 5.3.1.2 Letter from the Municipality to the Public Protector, dated 21 September 2021;
- 5.3.1.3 Email from the Public Protector to the Municipality, dated 22 July 2020;
- 5.3.1.4 Email from Mr Namelang to the Public Protector, dated 19 January 2022;
- 5.3.1.5 Deeds Report, dated 21 September 2021;
- 5.3.1.6 Housing Portal, dated 21 September 2021; and
- 5.3.1.7 Undated Housing Subsidy Application of Mr Mente.

5.3.2 Meetings held

- 5.3.2.1 Meeting held between the Municipality and the Investigation Team of the Public Protector on 7 December 2021;
- 5.3.2.2 Meeting held between the Municipality and the Investigation Team of the Public Protector on 6 September 2022; and
- 5.3.2.3 Meeting held between the Municipality and the Investigation Team of the Public Protector on 16 February 2023.

5.3.3 Legislation and other prescripts

- 5.3.3.1 The Constitution of the Republic of South Africa, 1996;

5.3.3.2 The Local Government: Municipal Finance Management Act, 2003;

5.3.3.3 The Local Government: Municipal Systems Act, 2000;

5.3.3.4 The Deeds Registries Act, 1937; and

5.3.3.5 The Housing Act, 1997.

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

5.4.1 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued and served on Mr Thage, the Acting Municipal Manager, on 29 March 2023, affording him an opportunity to respond to the evidence obtained during the investigation.

5.4.2 On 29 March 2023, the said Notice in terms of section 7(9)(a) of the Public Protector Act, was also served on the following persons:

5.4.2.1 Dr Zamani Saul, the Premier of the Northern Cape;

5.4.2.2 Mr Bafedile Lenkoe, the Head of Department of COGHSTA;

5.4.2.3 Mr Bentley Vaas, the MEC for COGHSTA;

5.4.2.4 Mr Bonakele Plata, the Speaker of the Municipality; and

5.4.2.5 Ms Neo Mase, the Executive Mayor of the Municipality.

5.4.3 The resolutions taken at the ADR were duly considered by the Public Protector in relation to the substance of any allegations against the person(s) concerned or the grounds for adverse comments or findings against or remedial action involving them and incorporated into the report as binding remedial action agreed upon by the parties.

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 Municipality failed to resolve a dispute regarding ownership of Erf 3274, Zone E, Ikhutseng Township in Warrenton. If so, whether such conduct constitutes improper conduct as envisaged in section 182 (1)(a) of the Constitution and maladministration and improper prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act, 1994

Common cause

6.3.1 According to the Housing Subsidy Portal, dated 21 September 2020, the Complainant's application for a Project in Ikhutseng (Project No A11080004), was approved on Site Number 3274, Ikhutseng.

6.3.2 In terms of the Deeds Property Report, dated 21 September 2020, the following is evident:

6.3.3 The late Ms Faith Tlaleng Manyane (Ms Manyane), is the owner of Erf 3274 Ikhutseng Warrenton, with Title Deed No: T301/2004;

6.3.4 Erf 3274 was purchased from the Magareng Municipality on 28 October 2003, with an amount of R2.00 (Two Rands), and was registered under the name of Ms Manyane on 27 January 2004; and

6.3.5 The Complainant is currently occupying Erf 3274.

Issue in dispute

- 6.3.6 The issue for the Public Protector's determination is whether the Municipality failed to resolve a dispute regarding the ownership of Erf 3274.

The Complainant's version

- 6.3.7 The Complainant contended that the Councillor handed over Erf 3264 as the property that was allocated to him by the Municipality. He further stated that he has occupied this property for a long period of time and as a pensioner does not have the financial capability to seek alternative accommodation as instructed by the Municipality in their letter dated 25 March 2019.

Municipality's response

- 6.3.8 On 22 September 2020, the allegations were raised with Ms Ellen Moncho (Ms Moncho), the then Municipal Manager (MM), with a view to obtain a response.
- 6.3.9 Ms Moncho responded to the allegations in a correspondence, dated 21 September 2021, stating that:
- 6.3.9.1 Erf 3274 belongs to Ms Manyane's daughter. The Erf in question was not allocated to Ms Manyane's daughter, but to Ms Manyane. For reasons unknown to the Municipality, the Complainant has been staying on Erf 3274 for approximately 7 or 8 years. The Complainant, having full knowledge that the Erf belongs to Ms Manyane, proceeded to apply for a housing subsidy on Erf 3274;
- 6.3.9.2 The Municipality had made a site available and encouraged applicants in need

of housing to make applications. The Municipality, however, does not select who the qualifying applicants are. The process is done by COGHSTA, using an electronic system that would then screen the applicant's HSS form and approve or disapprove the application, based on the information entered into the system;

- 6.3.9.3 The Municipality does not deal with the verification process, because COGHSTA runs the applications through their verification system and then notifies the Municipality of applications that have been approved or not;
- 6.3.9.4 The Housing Unit of the Municipality is responsible for notifying applicants if their applications were successful or not;
- 6.3.9.5 The verification process is run by COGHSTA and the electronic system, which they use. This system is linked to the Deeds Office, Home Affairs and SARS, etc. in order to approve or disapprove application forms submitted and run through the system. Unfortunately, the system can be erroneous and does not always detect where there are duplicate applications or where land is already owned by another or falsified information, etc;
- 6.3.9.6 The Municipality did not appoint contractors to build the houses. The appointment of contractors for the project and the housing admin subsidy process were all carried out by COGHSTA. The only role of the municipality was to identify available sites/erven to build the houses and to supply housing subsidy forms to applicants; and
- 6.3.9.7 The Municipality would engage with both Ms Manyane's daughter and the Complainant to resolve the matter and propose that a different Erf be allocated to the Complainant and ensure that it is registered on his name at the Deeds Office should he be agreeable to the proposal.

- 6.3.10 In a meeting held on 7 December 2021, with Ms Moncho and Mr Milton Namelang (Mr Namelang), the Manager: Housing Land Use of the Municipality, the Municipality undertook to engage Ms Manyane's daughter in order to persuade her to agree to an offer by the Municipality to provide her with an alternative Erf. Ms Moncho stated further that should Ms Manyane's daughter decline the offer, a meeting would then be arranged with the Complainant and Ms Manyane's daughter. The proposed date for the meeting was 14 December 2021.
- 6.3.11 According to an email from Mr Namelang dated 19 January 2022, he indicated that the issue had not officially been placed before the full Council Meeting of Magareng Municipality for a resolution.
- 6.3.12 In a further meeting with held with Mr Tumelo Thage (Mr Thage), the Acting Municipal Manager (AMM), on 6 September 2022, Mr Thage stated that the matter was never discussed in council meetings that he attended. However, he stated that the Municipality could not explain how Erf 3274 was allocated to the Complainant after it had already registered the same Erf in the name of Ms Manyane.

Evidence obtained from the Complainant

- 6.3.13 According to a letter dated 25 March 2019 from Ms Moncho, to the Complainant, Ms Moncho informed the Complainant that Site 1, Ikhutseng was allocated to him. In the said letter, the Complainant was further advised that:
- 6.1.13.1. Site 1 was a temporary Erf number and he would be allocated a permanent Erf number once all survey work had been finished.

6.1.13.2. He would be required to fence the property within ninety (90) days of receiving the letter.

Response to the notice in terms of section 7(9)(a) of the Public Protector Act

6.3.14 On 29 March 2023, a Notice in terms of section 7(9)(a) of the Public Protector Act (the Notice), was served on the Municipality, and other respondents to provide them with an opportunity to respond on the likely adverse findings and proposed remedial action.

6.3.15 Following the delivery of the Notice to the Municipality, the Public Protector did not expect a response from the Municipality since the matter was already discussed in a meeting with Mr Thage on 16 February 2023. During the said meeting, it was agreed that Mr Thage would prepare an Item to Council for a resolution as resolved at the ADR meetings held between the Municipality and the Investigation Team of the Public Protector on 07 December 2021 and 16 February 2023 respectively.

Application of the relevant law

The Constitution of the Republic of South Africa, 1996

6.3.16 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 and in terms of section 26(1) of the Constitution everyone has the right to have access to adequate housing. The conduct of the municipality deprived both the Complainant, Ms Manyane and her daughter of their rights to own an Erf and property.

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

- (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 47 of 1937

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

6.3.19 The Title Deed of a property is therefore irrefutable proof of the ownership of the property concerned.

The Local Government: Municipal Systems Act 32 of 2000

6.3.20 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.

6.3.21 A Code of Conduct for Municipal Staff Members is provided for in Schedule 2 to the Municipal Systems Act. Item 2 of the Code provides that a staff member of a municipality must at all times-

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- (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". (sic)*

The Housing Act 107 of 1997

6.3.22 Section 9(1)(a)(i) of the Housing Act provides as follows:

“Every municipality must as part of the municipality’s process of integrated development planning take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to ensure that the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis.” (sic)

6.3.23 The Act enjoins the Municipality to ensure that all reasonable steps are taken to provide access to adequate housing to those individuals who meet the applicable requirements.

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- 6.3.24 The National Housing Code 2009¹ further sets out the underlying policy principles, guidelines, norms and standards, which apply to various governments housing assistance programmes introduced since 1994.
- 6.3.25 The above provisions are applicable to the Municipality in the local sphere of government in as far as it expressly prescribes the obligation to prioritise the needs of the poor in respect of housing development and consultation with affected individuals.

The Local Government: Municipal Finance Management Act 56 of 2003

- 6.3.26 Section 60(a) of the MFMA provides that the municipal manager of a municipality is the accounting officer of the municipality for the purposes of the Act, and as accounting officer must exercise the functions and powers assigned to an accounting officer in terms of this act.
- 6.3.27 In terms of section 62(1)(a) of the MFMA, the accounting officer of a municipality is responsible for managing the financial administration of the municipality, and must for this purpose take all reasonable steps to ensure that the resources of the municipality are used effectively; efficiently and economically; and that the municipality has and maintains effective, efficient and transparent systems of financial and risk management and internal control; and of internal audit operating in accordance with any prescribed norms and standards.
- 6.3.28 According to section 63(2)(c) of the MFMA the accounting officer must for the purposes of subsection (1) take all reasonable steps to ensure that the municipality has and maintains a system of internal control of assets and liabilities, including an asset and liabilities register, as may be prescribed.

¹ A Simplified Guide to the National Housing Code 2009 {Part 1 of the National Housing Code} 2009, Volume 1 issued in terms of section 4 of the Housing Act 107 of 1997

6.3.29 The accounting officer of the municipality as the custodian of the Municipality's assets and liabilities is therefore obliged to take steps in ensuring that any implemented processes within the municipal structure are audited to ensure that a transparent system of accountability exists. In this case, the Municipality failed to ensure that there was a system in place to prevent duplication of allocation of erven to beneficiaries.

Case Law

6.3.30 In the *Government of the Republic of South Africa v Grootboom* 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 order².

6.3.31 In *Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others*³ 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 26 and 27 which deal with access to housing, health care, food, water and social security". (sic)

6.3.32 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

² *Government of the Republic of South Africa v Grootboom* [2000] ZACC 19; 2001 (1) SA 46 (CC); 2000 (11)

BCLR 1169 (CC).

³ *Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others* [2021] ZACC 45.

explanations regarding 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 rejected⁴.

Analysis of the evidence

- 6.3.33 Ms Manyane bought Erf 3274 for an amount of R 2, 00 from the Municipality, and the Municipality registered the property in her name in terms of the Deeds Registries Act, subsequent hereto she passed away.
- 6.3.34 According to the Housing Subsidy Portal dated 21 September 2020, the Complainant's application for a Project in Ikhutseng (Project No A11080004), was approved for Erf Number 3274, Ikhutseng, and a house was built on Erf 3274.
- 6.3.35 It is evident that the Municipality registered Erf 3274 Warrenton in the name of Ms Manyane on 27 January 2004 and that the Complainant was residing on the Erf for 7–8 years. The Department of COGHSTA approved the Complainant's subsidy on Erf 3274, whilst Ms Manyane purchased the said Erf from the Municipality on 28 October 2003.
- 6.3.36 Due to the conduct of the Municipality, Ms Manyane became the lawful owner of Erf 3274, but the Complainant was allowed to occupy it, depriving Ms Manyane and her daughter from exercising their right of occupation. On the other hand, the Complainant has applied for a housing subsidy on the same Erf, which was

⁴ Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others [2021] ZACC 45 at para 18 and 19.

approved for an RDP house. The Complainant was, at all material times, under the impression that Erf 3274 was legally allocated to him by the Municipality.

- 6.3.37 The current position is that Erf 3274 is the registered property of Ms Manyane. The Complainant currently resides in the said Erf and has been staying on Erf 3274 for approximately 7 or 8 years.
- 6.3.38 The officials that were involved in the allocation of Erf 3274 to the Complainant, as indicated in the evidence above, acted in violation of the standard required of the public administration in section 195 of the Constitution and the Code of Conduct for Municipal Staff Members.
- 6.3.39 The Municipal officials who were responsible for the allocation of the Erf acted contrary to the provisions of section 195 of the Constitution and the Code of Conduct for Municipal Staff Members.
- 6.3.40 The officials that were responsible for the registration of Erf 3274 in the name of Manyane, 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. The officials failed to verify all information relating to the allocation and registration of Erf 3274, before an allocation was made.
- 6.3.41 Furthermore, the Municipality failed to ensure that there are internal controls in place to prevent duplication in the sale and allocation of the Erf as envisaged in section 63(2)(c) of the MFMA.

Conclusion

- 6.3.42 Based on the evidence and information obtained during the investigation, it is clear that the Complainant's subsidy was approved on Erf 3274 and the said Erf was also registered in the Deeds Office in the name of Ms Manyane.

- 6.3.43 In this case, the Municipal Manager failed to ensure that proper processes were followed when Erf 3274 was allocated to the Complainant, whilst it was already registered under the name of Ms Manyane.
- 6.3.44 The Erf belonging to Ms Manyane was situated in an area which was zoned for housing purposes. The allocation of Erf 3274 to the Complainant should not have happened, since the Erf was already sold and registered in the name of Ms Manyane in 2004.
- 6.3.45 The facts of this matter show that the officials of the Municipality responsible for housing, caused Erf 3274 to be allocated to the Complainant, but failed to assist him to resolve the issue of the same Erf being sold and registered to Ms Manyane, as was expected of them in terms of section 195 of the Constitution and the Code of Conduct for Municipal Staff Members.

7. FINDINGS

7.1 Having regard to the evidence, the regulatory framework determining the prejudice the Complainant has suffered, the Public Protector is making the following adverse findings:

7.1.1 Whether the Municipality failed to resolve a dispute regarding ownership of Erf 3274, Zone E, Ikhutseng Township in Warrenton, and if so, whether such conduct constitutes improper conduct as envisaged in section 182 (1)(a) of the Constitution and maladministration and improper prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act, 1994

7.1.1.1 The allegation that the Municipality did not resolve a dispute regarding ownership of Erf 3274, Zone E, Ikhutseng Township in Warrenton, is substantiated.

- 7.1.1.2 The Department of COGHSTA approved the Complainant's subsidy on Erf 3274, resulting in the construction of an RDP house which the Complainant has been residing in for a period 7–8 years. Whereas, the Municipality sold the same ERF to Ms Manyane on 28 October 2003. As a result of the conduct of the Municipality, Ms Manyane became the lawful owner of Erf 3274, while the Complainant was allowed to occupy it, depriving Ms Manyane and her daughter from exercising their right of occupation.
- 7.1.1.3 The Complainant also suffered prejudice in that at all material times, he was under the impression that Erf 3274 was legally allocated to him by the Municipality.
- 7.1.1.4 Therefore, the conduct of the Municipality was at variance with the provisions of the Constitution, Code of Conduct for Municipal Staff Members, the Housing Act and the Housing Code.
- 7.1.1.5 Accordingly, the conduct of the Municipality accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration and improper prejudice in terms of section 6(4)(a)(i) and (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 notice upon the conclusion of an investigation where adverse findings are made.
- 8.2 In terms of 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 and the regulatory framework determining the standard the Municipality should have complied with and the impact on the Complainant, the Public Protector taking the following remedial action, in terms of section 182(1)(c) of the Constitution:

The Municipal Manager

- 8.3.1 As per the commitment made by the Municipality at the ADR meeting held on 07 December 2021, in terms of section 6(4)(b)(i) of the Public Protector Act, 1994, within sixty (60) calendar days, engage Ms Manyane's daughter in order to offer her an alternative Erf and prepare an Item to Council for a resolution, as resolved at the ADR meeting held on 16 February 2023.
- 8.3.2 Within one hundred and twenty (120) calendar days from the date of the report, ensure that steps are taken for a conveyancer to be appointed, to register Erf 3274 with the Deeds Registries Office to reflect the details of the Complainant, in terms of section 60(a) of the MFMA.
- 8.3.3 Ensure that the Audit Committee of the Municipality, in all its quarterly meetings, consider the internal audit, AGSA and all other investigation reports to ensure that the recommendations are implemented, as envisaged in section 166 of the MFMA.
- 8.3.4 Report to the Council on the implementation of the remedial action taken in paragraphs 8.3.1.1. to 8.3.1.3. above, within one hundred and eighty (180) calendar days from the date of this report, and provide the Public Protector with a copy thereof.

The HOD of COGHSTA

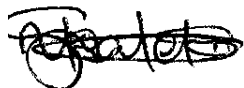
8.3.5 Within sixty (60) calendar days from the date of receipt of the necessary records from the Municipality, ensure that a conveyancer is appointed, to register Erf 3274 with the Deeds Registries Office to reflect the details of the Complainant.

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 9 above.

9.2 The Municipal Manager to submit within 150 calendar days of the date of this report a close out report indicating the implementation of the remedial action and evidence thereof

9.3 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: 31 MARCH 2023

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