

**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 SOL PLAATJE
LOCAL MUNICIPALITY IN THE NORTHERN CAPE PROVINCE TO RECTIFY THE
WRONGFUL REGISTRATION OF ERF 9051 IN FAVOUR OF THE LATE MR NZIZWA
ANTHONY NXUMALO AND MS HILDA NXUMALO**

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LIST OF ACRONYMS

ACRONYMS AND ABBREVIATIONS	DESCRIPTIONS
COGHSTA	Department of Co-operative Governance, Human Settlements and Traditional Affairs
Constitution	The Constitution of the Republic of South Africa
Municipality	Sol Plaatje Municipality
Public Protector Act	Public Protector Act 23 of 1994
PPSA	Public Protector South Africa

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 Sol Plaatje Local Municipality (the Municipality) in the Northern Cape Province to rectify the wrongful registration of Erf 9051 situated at 4756 Seochoareng Street Vergenoeg in Kimberley (Erf 9051), in favour of the late Mr Nzizwa Anthony Nxumalo (Mr Nxumalo) and Ms Hilda Nxumalo.
- (iii) The complaint was lodged with the Northern Cape Provincial Office of the Public Protector South Africa (the Public Protector) by Ms Hilda Nxumalo (the Complainant), the wife of the late Mr Nxumalo, on 11 February 2020.
- (iv) In the main, the Complainant alleged that:
 - (a) In 2017, she received a valuation letter in respect of Erf 9051 from the Municipality bearing the details of a person unknown to her. She proceeded to report the matter to the Municipality;
 - (b) In 2019, she received another letter from the Municipality titled '*Public Notice Calling for inspection of Supplementary Valuation Roll 2016 and lodging of objections*', in respect of Erf 9051, however, the letter was addressed to the

late Mr Tshabadira Andrew Letshuti (Mr Letshuti), instead of the Complainant;
and

- (c) She went to the Matlalo Municipal Office to report the matter and she was advised that Erf 9051 was erroneously registered under Mr Letshuti and that the error would be rectified in a month, but this was not done.

- (v) In essence, the Complainant alleged that the Municipality failed to ensure that it rectifies the registration of Erf 9051 to reflect her name as the rightful owner of the property.

- (vi) Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:
 - (a) Whether the Sol Plaatje Local Municipality failed to rectify the registration of Erf 9051 situated at 4756 Seochoareng Street Vergenoeg in Kimberley from the name of Mr Tshabadira Andrew Letshuti to that of Ms Hilda Nxumalo, 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) of the Public Protector Act, 1994.

- (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 consideration and application of the relevant laws and prescripts.

- (viii) On 03 December 2022, a notice in terms of section 7(9) of the Public Protector Act (the Notice) was delivered 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, a meeting between the Public Protector and the Municipality was convened on 15 December 2022. In the aforesaid meeting, Mr Thapelo Matlala (Mr Matlala), the Municipal Manager, agreed to the remedial action proposed by the Public Protector, as contained in the Notice and further stated that the matter has already been referred to the Department of Cooperative Governance, Human Settlements and Traditional Affairs (COGHSTA) for rectification.
- (x) 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 Sol Plaatje Local Municipality failed to rectify the registration of Erf 9051 situated at 4756 Seochoareng Street Vergenoeg in Kimberley from the name of Mr Tshabadira Andrew Letshuti to that of Ms Hilda Nxumalo, 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) of the Public Protector Act, 1994:**
- (aa) The allegation that the Municipality failed to attend to the rectification of the registration of Erf 9051 from the name of Mr Letshuti to that of the Complainant and Mr Nxumalo, is substantiated.
- (bb) The Complainant has enjoyed undisturbed use and occupation of the property and upon commencement of the Upgrading of Land Tenure

Rights Act on 05 July 1991, became lawfully entitled to ownership of Erf 9051.

- (cc) The Municipality has conceded that Erf 9051 was erroneously registered under the name of Mr Letshuti instead of the Complainant. Whereas Erf 9099 belonging to Mr Letshuti is registered under the name of the Complainant and Mr Nxumalo.
- (dd) Despite its undertaking to attend to the rectification of the above-mentioned error, the Municipality has failed to ensure that the title deeds of the two properties reflect the details of the rightful owners, i.e. the Complainant in respect of Erf 9051 and Mr Letshuti and/or his beneficiary in respect of Erf 9099.
- (ee) The conduct of the Municipality is accordingly at variance with the provisions of sections 195(1)(a), (e) and (g) of the Constitution and is negatively impacting the Complainant's housing rights as contemplated in section 26 of the Constitution. Furthermore the Municipality violated the code of conduct for Municipal staff.
- (ff) The failure by the Municipality continues to affect the Complainant and Mr Letshuti's beneficiaries' rights to access adequate housing as contemplated in section 26 of the Constitution.
- (gg) The conduct of the Municipality accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act and has prejudiced the Complainant.

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- (xi) The appropriate remedial action that the Public Protector is taking in terms of section 182(1)(c) of the Constitution is the following:

The Municipal Manager:

- (a) To within **one hundred and twenty (120)** calendar days of the date of the report, in line with the commitment made by the Municipality in a letter dated 02 July 2021, ensure that a conveyancer is appointed to attend to the rectification of the Title Deeds of erven 9051 and 9099 to reflect the details of the rightful owners, in terms of section 4(1)(b) of the Deeds Registries Act.
- (b) To within **ninety (90)** calendar days of the date of the report, in line with section 165(2) of the Local Government: Municipal Finance Management Act, 2003, develop an audit action plan to audit all the pre -1994 Municipal houses and where applicable, to implement the recommendations to redress the control deficiencies.
- (c) To report to the Municipal Council on the implementation of the remedial action taken in paragraphs (a) and (b) on a quarterly basis.

1. INTRODUCTION

- 1.1. This is a report of the Public Protector, issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act 23 of 1994 (the Public Protector Act).
- 1.2. The report is submitted in terms of 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 and for such persons to note the outcome of the investigation and/or to implement the remedial action, where applicable:
- 1.2.1 Mr Matlala, the Municipal Manager;
- 1.2.2 Mr Bentley Vaas (Mr Vaas), the Member of the Northern Cape Provincial Executive Committee responsible for 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 Nomizizi Maputle (Mr Maputle), the Speaker of the Municipality; and
- 1.2.6 Mr Kagisho Dante Sonyoni (Mr Sonyoni), the Executive Mayor of the Municipality.
- 1.3. A copy of the report is also provided to the Complainant, who lodged the complaint with the Public Protector.
- 1.4. The report relates to an investigation into allegations of improper conduct and maladministration relating to the failure by the Municipality in the Northern

Cape Province to rectify the wrongful registration of Erf 9051 in favour of the late Mr Nxumalo and the Complainant.

2. THE COMPLAINT

2.1 The investigation originates from a complaint lodged with the Northern Cape Provincial Office of the Public Protector by the Complainant, the wife of the late Mr Nxumalo, on 11 February 2020. In the main, the Complainant alleged that:

2.1.1 In 2017, she received a valuation letter in respect of Erf 9051 from the Municipality, bearing the details of a person unknown to her. She proceeded to report the matter to the Municipality;

2.1.2 In 2019, she received another letter from the Municipality titled '*Public Notice Calling for inspection of Supplementary Valuation Roll 2016 and lodging of objections*', in respect of Erf 9051, however, the letter was addressed to the late Mr Letshuti, instead of the Complainant; and

2.1.3 She went to the Matlalo Municipal Office to report the matter and she was advised that Erf 9051 was erroneously registered under Mr Letshuti and that the error would be rectified in a month, but this was not done.

2.2 In essence, the Complainant alleged that the Municipality failed to ensure that it rectifies the registration of Erf 9051 to reflect her name as the rightful owner of the property.

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.

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 incident or matter concerned occurred more than two 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 Public Protector Rules:

3.5.1. **Nature of the complaint and seriousness of the allegations:**

- 3.5.1.1. The allegations of failure by the Municipality to rectify the registration of Erf 9051 to reflect the names of the Complainant and Mr Nxumalo are very serious as they impact on the Complainant's fundamental rights of access to adequate housing as enshrined in section 26¹ and property rights in terms of section 25² of the Constitution. The Public Protector, whose services are available for free is in a position to assist the Complainant to realise and enforce her fundamental constitutional rights;
- 3.5.1.2. The alleged failure by the Municipality to ensure the registration of the title deed in respect of Erf 9051 in favour of the Complainant, is to date still continuing; and
- 3.5.1.3. The Complainant may find herself homeless should the family of the late Mr Letshuti raise a claim in respect of the property in terms of any relevant law since the property is still registered under his name. Notwithstanding several attempts by the Complainant to have this matter resolved since 2017, the Municipality has failed to rectify the wrongful registration. Due to the Municipality's failure to resolve this matter, there is a potential prejudice in that, the Complainant may be evicted from her house and real prejudice might ensue as the estate of the late Mr Nxumalo cannot be finalised.

¹ Section 26(1) of the Constitution. Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) relating to the obligation that South Africa have in relation to the right to adequate housing. South Africa ratified the ICESCR and is bound by its provisions. See also Article 17 of the UDHR.

² See also Article 17 of the Universal Declaration of Human Rights (UDHR), General Assembly, (1948). The African Charter on Human and People's Rights guarantees property rights as well. See also Devenish A commentary on the South African Bill of Rights (1999) 344.

3.5.2. Due consideration of available evidence and other information relating to the incident/event that would enable the Public Protector to successfully investigate the complaint:

- 3.5.2.1. At the time of the reporting of the complaint to the Public Protector on 11 February 2020, it was approximately 26 years from the time when the incident/event occurred. The Complainant only became aware of the incorrect registration in 2017, when she received the valuation letter in respect of Erf 9051 from the Municipality, bearing the details of a person unknown to her. This prompted her to report the matter to the Municipality;
- 3.5.2.2. Despite the fact that the error was brought to the attention of the Municipality in 2017, the Complainant received another valuation letter in 2019, which confirmed that the error remained unresolved as it still had the details of another person regardless of the Complainant's efforts to have the inaccurate information remedied by the Municipality;
- 3.5.2.3. At the time of reporting the complaint to the Public Protector, the Municipality had not attended to the rectification of Erf 9051 to reflect the names of the Complainant and Mr Nxumalo; and
- 3.5.2.4. In accordance with section 181(3) of the Constitution, organs of state are enjoined to assist the Public Protector to ensure its independence and effectiveness through legislative and other measures. It was therefore considered that the Municipality would assist the Public Protector to ensure its effectiveness in the investigation of this complaint by availing the necessary documentation pertinent to the matter. This would also promote the spirit of co-operation amongst organs of state within all spheres of government as espoused by the Constitution. In this regard, the Public Protector concluded that there were compelling grounds to pursue the investigation of the matter

despite having been reported two years after the occurrence of the incident/event.

3.5.3. Balancing the interest of the Complainant against the obligations and interest of the Municipality as an organ of state and its objectives and the availability of other institutions to handle the complaint:

3.5.3.1. The incident/event complained of affects the principles and values enunciated in section 195(1) of the Constitution requiring that public administration must, amongst others, respond to the needs of the people and be accountable; and

3.5.3.2. The incident/event complained of can be remedied by having the responsible organs of state such as the Municipality, the Deeds Office and other stakeholders within public administration playing their respective roles in ensuring that the Complainant is not prejudiced in perpetuity.

3.5.4. Having reflected on the above special circumstances, it would have been improper for the Public Protector to exercise her discretion in a manner that ignores the plight of the Complainant who did not have the resources to resolve the matter.

3.5.5. The aforementioned considerations compelled the Public Protector to investigate the state organs concerned to determine their role in the alleged failure to correctly register the property in favour of the Complainant as she still resides on the property.

3.5.6. 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.

3.6. The Municipality is an organ of state and its conduct amounts to conduct in state affairs, and as a result, the Public Protector is satisfied that the complaint falls 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. 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 Sol Plaatje Local Municipality failed to rectify the registration of Erf 9051 situated at 4756 Seochoareng Street Vergenoeg in Kimberley from the name of Mr Tshabadira Andrew Letshuti to that of Ms Hilda Nxumalo, 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) of the Public Protector Act, 1994.

5. THE INVESTIGATION

5.1. Methodology

5.1.1. The investigation is 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 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 process included written correspondence with officials of the Municipality, the analysis and evaluation of the relevant documents and information obtained during the investigation and 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 amounts to maladministration, or other improper conduct?

5.2.2.4. In the event of a violation, 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 independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the alleged conduct was inconsistent with the applicable prescripts.

5.2.2.6. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Municipality in changing the registration of the Property, from Mr Letshuti's name to that of the Complainant.

5.3. The Key Sources of Information

5.3.1. Documents and correspondence

5.3.1.1 Copy of the Letter of Authority Number: 1501/2006 dated 07 September 2006;

5.3.1.2 Copy of the Letter of Authority Number 21/2009;

5.3.1.3 Copy of the Property Enquiry Details, dated 07 December 2017;

5.3.1.4 Letter from the Public Protector to the Municipality dated 10 June 2021;

5.3.1.5 Letter from Mr AN Pitso, Legal Advisor of the Municipality to the Public Protector dated 07 July 2021;

5.3.1.6 Copy of the Deeds Web Property Report, dated 24 February 2022.

5.3.2. Meeting held

5.3.2.1 Meeting held on 15 December 2022 between the Public Protector and Mr Matlala.

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 Upgrading of Land Tenure Rights Act, 112 of 1991;

5.3.3.3 The Deeds Registries Act, 47 of 1937; and

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

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

5.3.4.1 A notice in terms of section 7(9)(a) of the Public Protector Act (Notice) dated 23 November 2022 was delivered to Mr Matlala, on 03 December 2022 affording him an opportunity to respond to the evidence obtained during the investigation.

5.3.4.2 Notices were also delivered on 03 December 2022 to Dr Saul, Mr Lenkoe and Mr Vaas, for noting.

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

6.1. **Whether the Sol Plaatje Local Municipality failed to rectify the registration of Erf 9051 situated at 4756 Seochoareng Street Vergenoeg in Kimberley from the name of Mr Tshabadira Andrew Letshuti to that of Ms Hilda Nxumalo, 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) of the Public Protector Act, 1994**

Common cause issues

6.1.1. The Complainant and Mr Nxumalo acquired ownership of Erf 9051 in accordance with section 2(1)(a) of the Upgrading of Land Tenure Rights Act, 1991.

- 6.1.2. Mr Nxumalo was deceased on 10 June 1997. At the time of his death, he was married to the Complainant and they both resided at Erf 9051. The Complainant still resides on the property.
- 6.1.3. In terms of the Municipality's statement of account obtained during the investigation, the Complainant is the registered account holder of Erf 9051.

Issue in dispute

- 6.1.4. The issue for the Public Protector's determination is whether the Municipality failed to rectify the registration of Erf 9051 in favour of the Complainant and Mr Nxumalo.

The Complainant's version

- 6.1.5. The Complainant contends that the Municipality failed to rectify the wrongful registration of Erf 9051 in order to reflect her details and that of her late husband.
- 6.1.6. According to the Complainant, the letter from the Municipality titled '*Public Notice Calling for inspection of Supplementary Valuation Roll 2016*', dated 21 February 2019³, states that Mr Letshuti is the registered owner of Erf 9051.

Municipality's response

- 6.1.7. On 10 June 2021, the allegations were raised with the Municipality with a view to obtaining a response in respect of the complaint.

³ Obtained by the Public Protector during the investigation.

6.1.8. The Municipality in correspondence dated 07 July 2021, responded to the allegations through its Legal Advisor, Mr AN Pitso (Mr Pitso). He stated that the matter would be referred to the Municipality's conveyancers to rectify the registration of Erf 9051, to reflect the details of the Complainant and Mr Nxumalo.

Evidence obtained during the investigation

6.1.9. In terms of the *Deeds Web Property Report* obtained during the investigation, dated 24 February 2022, Erf 9051 was registered on 26 March 1993 in the name of Mr Letshuti, under Deed of Title Number TE2652/1993.

6.1.10. According to the *Property Enquiry Details* obtained from COGHSTA, dated 07 December 2017, Erf 9099 was registered under the names of the Complainant and Mr Nxumalo on 27 April 1993.

6.1.11. In terms of the *Letter of Authority Number 21/2009*, issued to the Complainant by the Master of the High Court, Northern Cape Division, Erf 9051 is listed as the only immovable property of Mr Nxumalo.

6.1.12. In another *Letter of Authority Number 1501/2006* dated 07 September 2006, issued to Mr Teboho Victor Makaloane by the Master of the High Court, Northern Cape Division, Erf 9099, is listed as the only immovable property of the late Mr Letshuti. According to the said Letter of Authority, Mr Letshuti was deceased on 18 July 2009.

6.1.13. In essence, an error occurred during the registration of the different properties, resulting in Erf 9051 being registered under Mr Letshuti and Erf 9099 being registered under the Complainant and Mr Nxumalo.

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- 6.1.14. Despite several enquiries made by the Public Protector, with the Legal Unit of the Municipality, the matter remains unresolved, contrary to the undertaking by Mr Pitso that the matter would be referred to the Municipality's conveyancers to rectify the erroneous registration of the Complainant's and Mr Letshuti respective title deeds.
- 6.1.15. Following the delivery of the Notice on 03 December 2022 to the Municipality, a meeting was convened between the Investigation Team and the Municipality on 15 December 2022. In the aforesaid meeting, Mr Matlala agreed to the remedial action proposed by the Public Protector, as contained in the Notice and further stated that the matter has already been referred to COGHSTA for rectification.

Application of the relevant law to the merits

The Constitution of the Republic of South Africa, 1996

- 6.1.16. Section 26(1) of the Constitution stipulates that:

“(1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.”

- 6.1.17. 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.

(e) *Peoples needs must be responded to...*

(g) *Transparency must be fostered by providing the public with timely, accessible and accurate information.*

(h) ...”

6.1.18. In this case, the Municipality failed to promote and maintain a high standard of professional ethics in that the Municipality did not ensure that the transfer documents contained the correct details of the beneficiaries.

6.1.19. Although the Complainant raised the matter with the Municipality in 2017, the complaint has not been timeously attended and responded to as contemplated in sections 195(1)(a), (e) and (g) of the Constitution.

6.1.20. Despite the matter being reported to the Municipality by the Complainant, the Municipality has failed to cause the rectification of Erf 9051 to reflect the details of the Complainant in order to secure the Complainant’s property rights.

The Upgrading of Land Tenure Rights Act, 112 of 1991

6.1.21. Section 2(1)(a) of the Upgrading of Land Tenure Rights Act,1991 read with Schedule 1 provides that any land tenure right mentioned in Schedule 1 and which was granted in respect of any Erf or any other piece of land in a formalized township or which a township register was already opened at the commencement of this Act, shall at such commencement be converted into ownership.

6.1.22. In this case, the Complainant and Mr Nxumalo acquired ownership in terms of the Act. The municipal house in question was built before the Act came into

operation and the Complainant acquired Erf 9051 in line with section 2(1)(a) of the Act.

The Deeds Registries Act, 47 of 1937⁴

- 6.1.23. 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.
- 6.1.24. The Title Deed is therefore irrefutable proof of ownership of a property. However, in this case, the Complainant is not able to enjoy security of tenure of Erf 9051 since the title deed still reflects the details of another person instead of hers and/or that of Mr Nxumalo.
- 6.1.25. The complaint remains unresolved despite the Municipality's commitment to instruct conveyancers to attend to same. The Municipality also did not dispute, during the course of the investigation that Mr Nxumalo and the Complainant should be provided with the title deed of Erf 9051, reflecting their details.

The Local Government: Municipal Systems Act, 32 of 2000

- 6.1.26. 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.

⁴ As amended.

- 6.1.27. In this case, the Municipal Manager failed to ensure that the property was correctly registered reflecting the details of Mr Nxumalo and the Complainant.
- 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 provides that a staff member of a municipality must at all times-
- (a) *“loyally execute the lawful policies of the municipal council;*
 - (b) *perform the functions of office in good faith, diligently, honestly and in a transparent manner;*
 - (c) *act in such a way that the spirit and objects of section 50 are promoted;*
 - (d) *act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and*
 - (e) *act impartially and treat all people, including other staff members, equally without favour or prejudice.”*
- 6.1.29. In this case, the Municipal Officials dealing with the registration of erven 9051 and 9099 at the Municipality, failed to perform their functions diligently.

Case Law

- 6.1.30. In the ***Government of the Republic of South Africa v Grootboom***⁵ matter, the Court held that the state’s constitutional obligations in relation to the right to have access to adequate housing as a constitutional issue of fundamental importance to the development of South Africa’s new constitutional order.⁶

⁵ *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC).

⁶ In this regard see paragraphs 19, 34, 35, 36, 37, 38, 45, 93, 94 and 99 of the said judgment.

6.1.31. At paragraph 36, the Constitutional Court held that the poor are particularly vulnerable and that their needs require special attention. It is in this context that the relationship between sections 26 and 27 of the Constitution and the other socio-economic rights is most apparent.

6.1.32. In ***Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others***⁷ 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”⁸.

6.1.33. 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 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 rejected.

⁷. *Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others* [2021] ZACC 45.

⁸. *Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others* [2021] ZACC 45 at para 18 and 19.

Conclusion

- 6.1.34. It was not disputed that the Erf 9051 was allocated to the Nxumalo's through section 2(1) of Upgrading of Land Tenure Rights Act, 1991 and to date they remain in occupation thereof without registration of the title deed, reflecting their details.
- 6.1.35. It appears from the evidence and information obtained during the investigation that the Municipality did not attend to the rectification of the title deed of Erf 9051.
- 6.1.36. Despite the Complainant and Mr Nxumalo having been allocated the property, they have not been issued with a title deed to Erf 9051, in order to secure her tenure and enjoy the benefits of ownership. The estate of the late Mr Nxumalo can also not be finalised, due to the failure by the Municipality to attend to this issue.
- 6.1.37. It was also evident during the investigation that since the Nxumalo's took occupation of Erf 9051, no dispute arose with Mr Letshuti or his family in respect of the property. The rectification of the registration of Erf 9051 in favour of Mr Nxumalo and the Complainant would be administrative in nature and for the purpose of confirming the Complainant's existing rights over the property. This would benefit the Complainant, but not prejudice any person inclusive of the Letshuti family.
- 6.1.38. The Municipality committed in a letter dated 07 July 2021, to address the issue of the correct registration of Erf 9051 to reflect the details of Mr Nxumalo and the Complainant, through the assistance of a Municipal appointed conveyancer. To date, there is no evidence that this has been done.

6.1.39. The Municipality has also not provided evidence to indicate that it has taken effective and decisive steps to assist the Complainant in this matter.

7. FINDINGS

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

7.1.1. **Whether the Sol Plaatje Local Municipality failed to rectify the registration of Erf 9051 situated at 4756 Seochoareng Street Vergenoeg in Kimberley from the name of Mr Tshabadira Andrew Letshuti to that of Ms Hilda Nxumalo, 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) of the Public Protector Act, 1994**

7.1.1.1. The allegation that the Municipality failed to attend to the rectification of the registration of Erf 9051 from the name of Mr Letshuti to that of the Complainant and Mr Nxumalo, is substantiated.

7.1.1.2. The Complainant has enjoyed undisturbed use and occupation of the property and upon commencement of the Upgrading of Land Tenure Rights Act on 05 July 1991, became lawfully entitled to ownership of Erf 9051.

7.1.1.3. The Municipality has conceded that Erf 9051 was erroneously registered under the name of Mr Letshuti instead of the Complainant. Whereas Erf 9099 belonging to Mr Letshuti is registered under the name of the Complainant and Mr Nxumalo.

- 7.1.1.4. Despite its undertaking to attend to the rectification of the above-mentioned error, the Municipality has failed to ensure that the Title Deeds of the two properties reflect the details of the rightful owners, i.e. the Complainant in respect of Erf 9051 and Mr Letshuti and/or his beneficiary in respect of Erf 9099.
- 7.1.1.5. The conduct of the Municipality is accordingly at variance with the provisions of sections 195(1)(a), (e) and (g) of the Constitution and negatively impacts the Complainants housing rights as contemplated in section 26 of the Constitution. Furthermore the Municipality violated the code of conduct for Municipal staff.
- 7.1.1.6. The failure by the Municipality continues to affect the Complainant and Mr Letshuti's beneficiaries' rights to access adequate housing as contemplated in section 26 of the Constitution.
- 7.1.1.7. The conduct of the Municipality accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration in terms of section 6(4)(a) of the Public Protector Act and has prejudiced the Complainant.

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 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 is likely to take the following remedial action, in terms of section 182(1)(c) of the Constitution:

The Municipal Manager:

- 8.4. To within **one hundred and twenty (120)** calendar days of the date of the report, in line with the commitment made by the Municipality in a letter dated 02 July 2021, ensure that a conveyancer is appointed to attend to the rectification of the title deeds of erven 9051 and 9099 to reflect the details of the rightful owners, in terms of section 4(1)(b) of the Deeds Registries Act.
- 8.5. To within **ninety (90)** calendar days of the date of the report, in line with section 165(2) of the Local Government: Municipal Finance Management Act, 2003, develop an audit action plan to audit all the pre -1994 Municipal houses and where applicable, to implement the recommendations to redress the control deficiencies.
- 8.6. Report to the Municipal Council on the implementation of the remedial action taken in paragraphs 8.4 and 8.5 on a quarterly basis.

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 DECEMBER 2022

Assisted by: Mr Mlungisi Khanya
Provincial Representative: Northern Cape