

**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 TO PROVIDE MS IRENE PARKINSON WITH AN ERF IN 2016**

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LIST OF ACRONYMS

ACRONYMS AND ABBREVIATIONS	DESCRIPTIONS
ADR	Alternative Dispute Resolution
AGSA	Auditor General of South Africa
COGHSTA	Department of Co-operative Governance, Human Settlements and Traditional Affairs
Constitution	The Constitution of the Republic of South Africa
HSS	Housing Subsidy System
LASA	Legal Aid South Africa
MFMA	Municipal Finance Management Act 56 of 2003
Municipality	Magareng Local Municipality
PPA	Public Protector Act 23 of 1994
PPSA	Public Protector South Africa
PPR	Public Protector Rules relating to Investigations by the Public Protector and Matters Incidental thereto, 2018 as promulgated under section 7(11) of the Public Protector Act as amended
SARS	South African 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) and section 8(1) of the Public Protector Act 23 of 1994 (the Public Protector Act).
- (ii) The report communicates the findings and appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, following an investigation into allegations of improper conduct and maladministration relating to the failure by the Magareng Municipality (Municipality) to provide Ms Irene Parkinson (Complainant) with an Erf in 2016.
- (iii) The investigation originated from a complaint lodged on 1 April 2019, at the Northern Cape Provincial Office of the Public Protector South Africa (PPSA), by the Complainant.
- (iv) In the main, the Complainant alleged that:
 - (a) In 2013 she applied for an Erf at the Magareng Local Municipality in Warrenton;
 - (b) All relevant documents were completed and all successful applicants were called to the Community Hall in Warrenton, where a certain attorney processed all the documents for them;
 - (c) In 2015/2016 when the houses were built, she heard from her neighbour that names were called for successful applicants, but her name was not called out. Instead Mr Moss Landry's name was called (Mr Landry);
 - (d) She then went to the Municipality and spoke to Ms Nomsa Majola (Ms Majola), who informed her that there was a mistake that was made, hence the name of Moss Landry was appearing wrongly on the system;

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- (e) After the building of the houses were completed, officials from the Deed's Office visited Warrenton to issue Title Deeds to the beneficiaries and her name was called out. However, Mr Milton Namelang (Mr Namelang), who is the Manager: Land and Housing Section of the Municipality, refused to hand over her Title Deed with No: T671/2015 for Erf 2620 Warrenton (Erf 2620). Mr Namelang told "COGHSTA" officials that he would be personally dealing with the matter, because there was a dispute;
 - (f) Two weeks, after Title Deeds were issued to beneficiaries, she saw Mr Landry, cleaning the house on Erf 2620. She then approached Mr Namelang to establish why her house was allocated to another person. He told her that he would arrange a meeting between her and Mr Landry. On the day of the meeting, Mr Namelang and Mr Landry were not present. The Complainant then approached the Mayor who advised her to report the matter to court;
 - (g) She reported the matter to Legal Aid South Africa and the Deeds Office in Kimberley for assistance without success;
 - (h) Mr Landry has since rented the house to other people, because he and his girlfriend are residing in another house; and
 - (i) She is currently unemployed and renting a place for five hundred (R500.00) per month. She has done everything to fight for her house, but to no avail.
 - (j) In essence, the Complainant alleged that the Municipality failed to provide her with an Erf in 2016 and that the conduct of the Municipality was improper, constitutes maladministration and prejudiced her.
 - (v) Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:

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- (a) Whether the Municipality failed to provide the Complainant with an Erf 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 (ii) of the Public Protector Act, 1994.
- (vi) The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act 23 of 1994. 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.
- (vii) On 08 December 2022, a notice in terms of section 7(9) of the Public Protector Act (the Notice) was delivered to the Municipality and other respondents to provide them with an opportunity to respond on the likely adverse findings and proposed remedial action. Sections 7(9)(a) and (b) 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.
- (viii) Following the delivery of the Notice, a meeting between the Investigation Team and the Municipality was convened on 07 February 2022. In the aforesaid meeting, Mr Thage agreed with the remedial action proposed by the Public Protector, as contained in the Notice.
- (ix) Having regard to the evidence and regulatory framework determining the standard that the Municipality should have complied with, the following findings are made:
- (a) Regarding whether the Municipality failed to provide the Complainant with an Erf 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 (ii) of the Public Protector Act, 1994:

- (aa) The allegation that the Municipality did not provide the Complainant with an Erf and if so whether the conduct of the Municipality was improper, constitutes maladministration and prejudiced the Complainant, is substantiated.
- (bb) The conduct of the Municipality was at variance with the provisions of the Constitution, Code, the Housing Act and the Housing Code referred to above.
- (cc) Accordingly, the conduct of the Municipality was improper, constitutes maladministration and prejudiced the Complainant. Even though ownership of Erf 2620 was transferred to the Complainant, she was not afforded the opportunity to exercise her rights in that regard.
- (dd) The Municipality's conduct accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration and prejudice as envisaged in section 6(4)(a)(i) and (ii) of the Public Protector Act.
- (x) 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) In line with the commitment made by the Municipality at the ADR meeting held on 30 August 202, in terms of section 6(4)(b)(i) of the Public Protector Act, 1994, engage Ms Parkinson on the allocation of an alternative Erf within sixty (60) calendar days from the date of receipt of the final report;

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- (bb) Within one hundred and twenty (120) calendar days from the date of the report, ensure that a conveyancer is appointed to attend to the registration of the Title Deed of Erf 2620 to reflect the details of Mr Landry, in terms of section 4(1)(b) of the Deeds Registries Act;
 - (cc) Within sixty (60) calendar days from the date of the report, ensure that all the officials of the Municipality that deal with allocation of erven are trained on the applicable laws and other prescripts relating to allocation of erven and how they should be applied, as envisaged in terms of section 10(1) and (2) of the Public Administration Management Act 11 of 2014;
 - (dd) Ensure that the Audit Committee of the Municipality report regularly to the Municipal Council on the audit outcomes relating to the internal audit plan;
 - (ee) Ensure that the Internal Audit Unit on an annual basis, reviews the adequacy and effectiveness of the municipality's system of internal control, risk management and supply chain management. It is further recommended that the Audit Committee must consider in all its meetings, the Internal Audit Unit and the Auditor General of South Africa (AGSA) reports, to ensure that recommendations are implemented; and
 - (ff) Within ninety (90) calendar days from the date of this report, report to Council on the implementation of the remedial action taken in paragraphs (aa) to (ee) above, and provide the Public Protector with a copy of the report.

1. INTRODUCTION

- 1.1. This is a report of the Public Protector, issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act 23 of 1994 (the Public Protector Act).
- 1.2. The report is submitted in terms of sections 8(1) and 8(3) of the Public Protector Act to the following persons to inform them of the outcome of the investigation and the remedial action taken:
 - 1.2.1. Mr Tumelo Thage, the Acting Municipal Manager of the Magareng Local Municipality (Municipality);
 - 1.2.2. Mr Bentley Vass, the Member of Northern Cape Provincial Executive Committee responsible for Cooperative Governance, Human Settlements and Traditional Affairs (COGHSTA);
 - 1.2.3. Mr Bafedile Lenkoe, the Head of the Northern Cape Department of COGHSTA;
 - 1.2.4. Dr Zamani Saul, the Premier of the Northern Cape Province;
 - 1.2.5. Mr Bonakele Plata, the Speaker of the Municipality;
 - 1.2.6. Ms Neo Mase, the Executive Mayor of the Municipality; and
 - 1.2.7. Ms Irene Parkinson, the Complainant.
- 1.3. The report relates to an investigation into allegations of maladministration and improper conduct relating to the failure by the Magareng Municipality (Municipality) to provide Ms Irene Parkinson (Complainant) with an Erf in 2016.

2. THE COMPLAINT

- 2.1. The investigation originated from a complaint lodged by Ms Irene Parkinson (the Complainant), on 1 April 2019, at the Northern Cape Provincial Office of the Public Protector South Africa (PPSA).
- 2.2. In the main, the Complainant alleged that:
- 2.2.1. In 2013, she applied for an Erf at the Magareng Local Municipality in Warrenton;
- 2.2.2. All relevant documents were completed and all successful applicants were called to the Community Hall in Warrenton, where a certain attorney processed all the documents for them;
- 2.2.3. In 2015/2016 when the houses were built, she heard from her neighbour that names of successful applicants were called out, but her name was not included. Instead, Mr Moss Landry's (Mr Landry) name was called;
- 2.2.4. She then went to the Municipality and spoke to Ms Nomsa Majola (Ms Majola), who informed her that a mistake had occurred, resulting in Mr Landry's name appearing wrongly on the system;
- 2.2.5. After the building of the houses were completed, officials from the Deed's Office visited Warrenton to issue Title Deeds to the beneficiaries and her name was called out. However, Mr Milton Namelang (Mr Namelang), who is the Manager: Land and Housing Section of the Municipality, refused to hand over her Title Deed with No: T671/2015 for Erf 2620 Warrenton (Erf 2620). Mr Namelang told "COGHSTA" officials that he would be personally dealing with the matter, because there was a dispute;

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- 2.2.6. Two weeks after the Title Deeds were issued to the beneficiaries, she saw Mr Landry cleaning the house on Erf 2620. She then approached Mr Namelang to establish why her house was allocated to another person. He told her that he would arrange a meeting between her and Mr Landry. On the day of the meeting, Mr Namelang and Mr Landry were not present. The Complainant then approached the Mayor who advised her to report the matter to court;
- 2.2.7. She reported the matter to Legal Aid South Africa and the Deeds Office in Kimberley for assistance, without success;
- 2.2.8. Mr Landry has since rented the house to other people, because he and his girlfriend are residing in another house; and
- 2.2.9. She is currently unemployed and renting a place for five hundred rand (R500.00) per month. She has done everything to fight for her house, but to no avail.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

- 3.1. The Public Protector is an independent constitutional institution established under section 181(1)(a) and (b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.
- 3.2. Section 182(1) of the Constitution provides that:

“The Public Protector has the power, as regulated by national legislation –

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice,*
- (b) to report on that conduct; and*

(c) to take appropriate remedial action.”

- 3.3. Section 182(2) of the Constitution provides 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. Section 6(9) of the Public Protector Act provides that, except where the Public Protector in special circumstances, within his or her discretion, so permits, a complaint or matter referred to the Public Protector shall not be entertained unless it is reported to the Public Protector within two years from the occurrence of the incident or matter concerned.
- 3.6. Since the incident concerned occurred more than two years prior to the reporting of the matter to the Public Protector, the Public Protector 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:
- 3.6.1. **Nature of the complaint and seriousness of the allegations**
- 3.6.1.1. The allegations of failure by the Municipality to provide the Complainant with an Erf in 2016, are very serious as they impact on the Complainant’s fundamental property rights and of access to adequate housing as envisaged in sections 25(1) and 26(1) of the Constitution;

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- 3.6.1.2. The Public Protector, whose services are available for free is in a position to assist the Complainant to realise and enforce her fundamental human rights;
- 3.6.1.3. The alleged failure by the Municipality to provide the Complainant with an Erf, is to date still continuing;
- 3.6.1.4. The Complainant does not have a place of her own. She is currently unemployed and renting a place for five hundred rands (R500.00) per month. In 2016, the Complainant raised the matter with the Municipality, however, notwithstanding several attempts by the Complainant to have the error rectified by the Municipality, including seeking assistance of Legal Aid South Africa (LASA) and the Deeds Office in Kimberley, the matter remains unresolved. There is real prejudice suffered by the Complainant as a result of the Municipality's alleged failure; and
- 3.6.1.5. The aforementioned considerations militate for the Public Protector to investigate the state organs concerned to determine their role in the alleged failure to provide the Complainant with an erf. The Public Protector accordingly decided to exercise her discretion in favour of investigating this complaint. 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.
- 3.6.2. **Due consideration of available evidence and other information relating to the incident/event that would enable the Public Protector to successfully investigate the complaint**
- 3.6.2.1. The Complainant stated that she only became aware of the incorrect registration of the Erf in 2016 and reported the matter to the Municipality for rectification. Despite the fact that the error was brought to the attention of the Municipality in 2016, no steps were taken to address her complaint, resulting in the Complainant

only lodging the complaint with the Public Protector on 1 April 2019, approximately six years from the date of the occurrence of the incident. However, at the time of reporting the complaint to the Public Protector, the Municipality still had not provided the Complainant with her Erf;

- 3.6.2.2. The Municipality had ample time to rectify the error and provide the Complainant with an Erf;
- 3.6.2.3. 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 ostensibly 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 cooperation 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 more than two years after the occurrence of the incident.
- 3.6.3. 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 does not have the resources to resolve the matter.
- 3.6.4. 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:

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- 3.6.4.1. The incident/event complained of affects the principles and values espoused in section 195(1) of the Constitution requiring that public administration must respond to the needs of the people and be accountable, amongst others; and
- 3.6.4.2. The incident 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.
- 3.7. 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)(i) and (ii) 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 Municipality failed to provide the Complainant with an Erf 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 (ii) of the Public Protector Act, 1994

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 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 the consideration and application of the relevant laws and prescripts.

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

(a) What happened?

(b) What should have happened?

(c) 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?

(d) In the event of a violation, what action should be taken?

- 5.2.3. 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 the Municipality failed to provide the Complainant with an Erf 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 (ii) of the Public Protector Act, 1994.
- 5.2.4. 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 order to prevent improper conduct, maladministration and prejudice.
- 5.2.5. 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 Deed of Sale, dated 1 April 2015;
- 5.3.1.2 Deeds Property Report dated 12 May 2021; and
- 5.3.1.3 Housing Subsidy System.

5.4. **Meetings held**

- 5.4.1 Meeting held on 20 July 2021 between the Investigation Team and Mr Pegram, the Deputy Director: Title Deeds at COGHSTA;

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- 5.4.2 Meeting held on 4 August 2021 between the Investigation Team and Mr Namelang, the Housing Manager of the Municipality;
 - 5.4.3 Meeting held on 30 August 2021 between the Investigation Team and Mr Pegram; and
 - 5.4.4 Meeting held on 6 September 2022 between the Investigation Team and with Mr Tumelo Thage (Mr Thage), the Acting Municipal Manager.

5.5. **Legislation and other prescripts**

- 5.5.1 The Constitution of the Republic of South Africa, 1996;
- 5.5.2 The Deeds Registries Act, 47 of 1937;
- 5.5.3 The Local Government: Municipal Finance Management Act 56 of 2003;
- 5.5.4 The Local Government: Municipal Systems Act No 32 of 2000; and
- 5.5.5 The Housing Act 107 of 1997.

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

- 5.6.1 A Notice was issued in terms of section 7(9) of the Public Protector Act to Mr Tumelo Thage, the Acting Municipal Manager on 13 December 2022, affording him an opportunity to respond to the evidence obtained during the investigation.
- 5.6.2 A Section 7(9) Notice was also sent on 08 December 2022 to Dr Saul, the Premier of the Northern Cape, Mr Lenkoe, the Head of Department of COGHSTA, and Mr Vaas, the MEC for COGHSTA, Mr Plata, the Speaker of

the Municipality; and Mrs Mase, the Executive Mayor, providing them with an opportunity to respond.

5.6.3 The responses and information/evidence submitted in response to the notice in terms of section 7(9)(a) of the Public Protector Act were duly considered by the Public Protector in relation to the substance of any allegations against the persons concerned or the grounds for adverse comments or findings or remedial action involving them.

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 Municipality failed to provide the Complainant with an Erf 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 (ii) of the Public Protector Act, 1994**

Common cause

6.1.1. On 11 November 2013, Mr Landry applied for a housing subsidy with COGHSTA and the application with number 400085757, was approved on 19 February 2014.

6.1.2. In terms of the Deeds Property Report dated 12 May 2021, the Complainant is the owner of Erf 2620 with Title Deed No: T671/2015.

Issue in dispute

- 6.1.3. The issue for the Public Protector's determination is whether the Municipality failed to provide the Complainant with an Erf after being approved for an RDP house.

The Complainant's version

- 6.1.4. The Complainant contended that the Municipality failed to resolve a dispute regarding the ownership of Erf 2620, in Warrenton.
- 6.1.5. The Complainant stated that in 2016, the Municipality allocated her Erf 2620 to Mr Landry.

COGHSTA's response

- 6.1.6. On 30 July 2019, the allegations were raised with Mr Alfred Pelgram (Mr Pelgram), the Deputy Director: Title Deeds, COGHSTA, with a view to obtaining a response in respect of the complaint. The allegations were also raised with Mr H Robertson (Mr Robertson), the Director Housing: Housing Asset Management of the Department of COGHSTA.
- 6.1.7. In a response dated 24 August 2020, Mr Robertson stated that:
- 6.1.7.1. The original Title Deed No: T671/2015 of Erf 2620, is in the name of the Complainant;
- 6.1.7.2. The Complainant was not the approved beneficiary for Erf 2620;

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- 6.1.7.3. More time was needed to investigate the matter and meet with the relevant municipal officials; and
- 6.1.7.4. The Department could not find any proof that the Complainant was approved as a beneficiary on the Housing Subsidy System.
- 6.1.8. According to a letter dated 26 March 2019, from Mr B S Lenkoe (Mr Lenkoe), the Head of the Department of COGHSTA, addressed to LASA, he stated that the Department was in the process of appointing attorneys to address the issue raised and as soon as they are appointed, the case of the Complainant would be sent to them to address it.
- 6.1.9. In a further response dated 30 September 2019, Mr Robertson stated that:
- 6.1.9.1. The Supply Chain Management process to appoint the attorneys, was well underway and a compulsory meeting was held on 27 September 2019;
- 6.1.9.2. Quotes were to be submitted to the Department by 11 October 2019; and
- 6.1.9.3. The Department was going to appoint a conveyancer by 15 October 2019.
- 6.1.10. A virtual meeting was held on 20 July 2021 with Mr Pegram, the Deputy Director: Title Deeds, wherein he stated that:
- 6.1.10.1. The Department never received the Complainant's subsidy application for Erf 2620;
- 6.1.10.2. Mr Landry is the approved beneficiary of Erf 2620 on the HSS;

6.1.10.3. When Erf 2620 was registered in the name of the Complainant, Mr Landry's application for subsidy was already approved on the HSS, whilst Erf 2620 was registered under the name of the Municipality; and

6.1.10.4. The Department has the original Title Deed of the Complainant, which was received from the Municipality.

The Municipality's response

6.1.11. During a meeting that was held on 4 August 2021, Mr Namelang, the Housing Manager at the Municipality, stated that the Complainant's application for subsidy was never received by the Municipality in 2015;

Alternative Dispute Resolution (ADR)

6.1.12 During an ADR held on 30 August 2021, with Mr Pelgram and Mr Namelang, the latter stated that the Municipality would investigate to establish whether land is available in order to assist the Complainant with an alternative Erf and that COGHSTA should also assist the Complainant to apply for a housing subsidy.

Response from Mr Mr Tumelo Thage

6.1.13 In meeting held with Mr Tumelo Thage (Mr Thage), the Acting Municipal Manager, on 6 September 2022, he stated that the matter was never discussed in Council meetings that he had attended and that the matter has not been resolved by the Municipality.

6.1.14 The Municipality could not explain how Erf 2620 was registered in the name of the Complainant, if according to their records, she had not even applied for an RDP house.

Evidence obtained during the investigation

- 6.1.15 COGHSTA provided a report from the Housing Subsidy System (HSS) to substantiate its contention that ERF 2620 was not allocated to the Complainant. According to the undated HSS printout the following is evident:
- 6.1.15.1 Mr Landry applied for a subsidy on 11 November 2013 and the application 400085757, was approved on 19 February 2014;
- 6.1.15.2 Mr Landry's subsidy application was approved for Erf 2620;
- 6.1.15.3 The Property type is a new site and building bought from the developer; and
- 6.1.15.4 The total approved subsidy for Erf 2620 was eighty six thousand, six hundred and thirty nine rand and sixty three cents (R86 639.63).
- 6.1.16 However, in terms of the Deeds Property Report dated 12 May 2021, the Complainant appears as the owner of Erf 2620, with Title Deed No: T671/2015.
- 6.1.17 According to the Property Report, the purchase date of Erf 2620, was 13 March 2015.
- 6.1.18 According to the Deed of Sale dated 1 April 2015, the Municipality sold by Private Treaty and transferred Erf 2620 in the extent of 395 square metres, to the Complainant, on 15 March 2015, and it was registered in the name of the Complainant on 17 April 2015.

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

- 6.1.19 On 13 December 2022, a notice in terms of section 7(9)(a) of the Public Protector Act (the Notice), was delivered to Mr Thage and other respondents to provide them with an opportunity to respond on the likely adverse findings and proposed remedial action.
- 6.1.20 Following the delivery of the Notice, a meeting between the Investigation Team and the Municipality was convened on 07 February 2022. In the aforesaid meeting, Mr Thage agreed with the remedial action proposed by the Public Protector, as contained in the Notice.

Application of the relevant law and prescripts

The Constitution of the Republic of South Africa, 1996

- 6.1.21 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.
- 6.1.22 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

- 6.1.23 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.
- 6.1.24 The Title Deed of a property is therefore irrefutable proof of the ownership of the property concerned. The current position therefore is that Erf 2620 is the registered property of the Complainant and that Mr Landry, who at first resided on the Erf, is currently renting it out.

The Local Government: Municipal Systems Act No 32 of 2000

- 6.1.25 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.
- 6.1.26 The 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”.*

The Housing Act 107 of 1997

6.1.27 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.”

6.1.28 It is expected that the Municipality ensures that steps are taken in providing access to adequate housing to those individuals who meet the applicable requirements.

6.1.29 The National Housing Code 20093 further sets out the underlying policy principles, guidelines, norms and standards, which apply to various government housing assistance programmes, introduced since 1994.

6.1.30 The aforementioned provisions are applicable to the Municipality in the local sphere of government in as far as it expressly prescribes the obligation to prioritize 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

- 6.1.31 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.
- 6.1.32 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.

Case Law

- 6.1.33 In *Government of the Republic of South Africa v Grootboom*, the Court described the state's constitutional obligations in relation to the right to adequate housing as a constitutional issue of fundamental importance to the development of South Africa's new constitutional order.
- 6.1.34 In *Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others* 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".

6.1.35 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.

Analysis of evidence

6.1.36 Based on the evidence and information obtained during the investigation, it is evident that, the Complainant is the registered owner of Erf 2620.

6.1.37 Although Mr Namelang contended that the Complainant's application for subsidy was never received by the Municipality in 2015, however, evidence obtained during the investigation indicates that the Municipality sold Erf 2620 to the Complainant, but that COGHSTA granted the housing subsidy for an RDP house on Erf 2620 to Mr Landry.

6.1.38 Furthermore, COGHSTA approved Mr Landry's subsidy in 2014, but the Municipality sold and transferred the property to the Complainant in 2015.

6.1.39 Due to the conduct of the Municipality, the Complainant became the rightful owner of Erf 2620, but Mr Landry was granted a housing subsidy for a RDP house to be built on the same Erf, which he occupied after the completion of the construction of the house, thereby depriving the Complainant of exercising her right of ownership.

6.1.40 The conduct of the municipality deprived the Complainant her rights to own property and use of the property as envisaged in section 25(1) and 26(1) of the Constitution.

- 6.1.41 The officials involved in the wrong allocation of Erf 2620, 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.
- 6.1.42 In this case, the Municipal Manager failed to ensure that proper processes were followed when Erf 2620 was sold to the Complainant, whilst it was allocated to Mr Landry, which resulted in the Erf being registered in the name of the Complainant. The officials who were responsible for the transfer and registration of Erf 2620 in the name of the Complainant, 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 of Erf 2620, before it was sold to the Complainant.

Conclusion

- 6.1.43 Evidence before the Public Protector indicates that, the RDP House belongs to Mr Landry whose house was built on Erf 2620. The area in question was zoned for housing purposes. The sale of the Erf to the Complainant in 2015 should not have happened, since the Erf was already allocated to Mr Landry in 2013.
- 6.1.44 The facts of this matter show that the officials of the Municipality responsible for housing, caused Erf 2620 to be sold to the Complainant, whilst it was allocated to Mr Landry. Furthermore, the Municipality failed to assist the Complainant to resolve the issue of the sale of the Erf to her, as was expected of them in terms of section 195 of the Constitution and the Code.

- 6.1.45 In this case, 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.

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 findings:

7.1.1. Whether the Municipality failed to provide the Complainant with an Erf 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 (ii) of the Public Protector Act

- 7.1.1.1. The allegation that the Municipality did not provide the Complainant with an Erf and if so whether the conduct of the Municipality was improper, constitutes maladministration and prejudiced the Complainant, is substantiated.
- 7.1.1.2. The conduct of the Municipality was at variance with the provisions of the Constitution, Code, the Housing Act and the Housing Code referred to above.
- 7.1.1.3. Accordingly, the conduct of the Municipality was improper, constitutes maladministration and prejudiced the Complainant. Even though ownership of Erf 2620 was transferred to the Complainant, she was not afforded the opportunity to exercise her rights in that regard.
- 7.1.1.4. The Municipality's conduct accordingly constitutes improper conduct as envisaged by section 182(1) of the Constitution and maladministration and

prejudice as envisaged in section 6(4)(a)(i) and (ii) of the Public Protector Act in that.

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, the regulatory framework determining the standard the Municipality should have complied with and the impact on the Complainant, the Public Protector is 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 30 August 2021, in terms of section 6(4)(b)(i) of the Public Protector Act, engage Ms Parkinson on the allocation of an alternative Erf within sixty (60) calendar days from the date of receipt of the final report;

8.3.2. Within one hundred and twenty (120) calendar days of the date of the report, ensure a conveyancer is appointed to attend to the registration of the Title

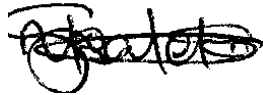
Deed of Erf 2620 to reflect the details of Mr Landry, in terms of section 4(1)(b) of the Deeds Registries Act;

- 8.3.3. Within sixty (60) calendar days from the date of the report, ensure that all the officials of the Municipality who deal with the allocation of erven are trained on the applicable laws and other prescripts relating to the allocation of erven and how they should be applied, as envisaged in terms of section 10(1) and (2) of the Public Administration Management Act 11 of 2014;
- 8.3.4. Ensure that the Audit Committee of the Municipality reports regularly to the Municipal Council on the audit outcomes relating to the internal audit plan;
- 8.3.5. Ensure that the Internal Audit Unit on an annual basis, reviews the adequacy and effectiveness of the municipality's system of internal control, risk management and supply chain management. It is further recommended that the Audit Committee must consider in all its meetings, the Internal Audit Unit and the Auditor General of South Africa (AGSA) reports, to ensure that recommendations are implemented; and
- 8.3.6. Within ninety (90) calendar days from the date of this report, report to Council on the implementation of the remedial action taken in paragraphs 8.3.1 to 8.3.5 above, and provide the Public Protector with a copy of the report.

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.

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- 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.



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