

**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**

REPORT NUMBER: 54 of 2022/23

ISBN NUMBER: 978-1-991244-06-2

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT
AND MALADMINISTRATION RELATING TO THE FAILURE BY THE SOL PLAATJE
LOCAL MUNICIPALITY TO REGISTER THE TITLE DEED OF ERF 18430 SITUATED
AT THAMI ELAND STREET, KUTLWANONG, KIMBERLEY IN 2013 IN FAVOUR OF
THE COMPLAINANT**

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LIST OF ACRONYMS

ACRONYMS AND ABBREVIATIONS	DESCRIPTIONS
COGHSTA	Department of Co-operative Governance, Human Settlements and Traditional Affairs
Constitution	Constitution of the Republic of South Africa, 1996
HOD	Head of Department
HSS	Housing Subsidy System
MEC	Member of Executive Council
MFMA	Local Government: Municipal Finance Management Act, 56 of 2003
Public Protector	Public Protector South Africa
Public Protector Act	Public Protector Act, 23 of 1994
Public Protector Rules	Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018, as amended
Municipality	Sol Plaatje Local Municipality

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 being investigated.
- (ii) The report relates to an investigation into allegations of improper conduct and maladministration relating to the failure by the Sol Plaatje Local Municipality (Municipality) in the Northern Cape Province to register the name of Ms Ellen Selloane Phiri against the Title Deed of Erf 18430 situated at Thami Eland Street, Kutlwanong in Kimberley in 2013 (Erf 18430).
- (iii) The complaint was lodged by Ms Ellen Selloane Phiri (the Complainant), the partner of the late Mr Answar Karabo Frans (Mr Frans) at the Northern Cape Provincial Office of the Public Protector South Africa (the Public Protector) in Kimberley on 10 September 2019.
- (iv) In the main, the Complainant alleged that:
 - (a) During 1999, she applied for a housing subsidy together with Mr Frans with whom she was cohabiting at the time. The housing subsidy was granted in favour of both of them. The house was supposed to be registered in both the names of the Complainant and Mr Frans. However, her name does not appear on the Title Deed. The Title Deed was only registered in the name of Mr Frans; and

- (b) This omission was reported to the Department of Co-operative Governance, Human Settlements and Traditional Affairs (COGHSTA) and the Municipality when Mr Frans was still alive. It was also reported after Mr Frans was deceased but the issue remains unresolved.
- (v) Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:
 - (a) Whether the Sol Plaatje Municipality and/or COGHSTA failed to register the name of Ms Ellen Selloane Phiri against the Title Deed of Erf 18430 situated at Thami Eland Street, Kutlwanong in Kimberley and if so, whether such conduct constitutes improper conduct as envisaged in section 182(1) of the Constitution and amounts to maladministration and improper prejudice in terms of section 6(4)(a) of the Public Protector Act.
- (vi) 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 and an analysis of all the relevant documents, application of relevant law, case law and related prescripts.
- (vii) On 03 December 2022, a notice in terms of section 7(9)(a) of the Public Protector Act (the Notice), was delivered to the Municipality and other stakeholders to provide them an opportunity to respond on the likely adverse findings and proposed remedial action. Sections 7(9)(a) and (b) of the Public Protector Act provide that persons implicated in an investigation by the Public Protector, are to be allowed the opportunity to make representations regarding same.
- (viii) 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 COGHSTA for rectification.

(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) Whether the Sol Plaatje Municipality and/or COGHSTA failed to register the name of Ms Ellen Selloane Phiri against the Title Deed of Erf 18430 situated at Thami Eland Street, Kutlwanong in Kimberley and if so, whether such conduct constitutes improper conduct as envisaged in section 182(1) of the Constitution and amounts to maladministration and improper prejudice in terms of section 6(4)(a) of the Public Protector Act

(aa) The allegation that the Municipality and COGHSTA failed to register the name of the Complainant against the Title Deed of Erf 18430, is substantiated.

(bb) The Municipality, when it gave Power of Attorney to Mr Christian Johannes Theunis Roodt and/or Nicolaas Johannes Gouws and/or Karel Johan Spangenberg to register the transfer of Erf 18430 neglected to ensure that both the names of Mr Frans and the Complainant appeared on the Power of Attorney. This resulted in the details of the Complainant being omitted from the Title Deed. This was not disputed by the Municipality.

(cc) Neither COGHSTA nor the Municipality dispute that the Complainant's name should be registered against the Title Deed of Erf 18430.

- (dd) Both COGHSTA and the Municipality have been aware of this omission for some time (at least as early as 2013), but to date the issue remains unresolved, despite COGHSTA's commitment to instruct a conveyancer to attend to the issue.
- (ee) As a result of this conduct, the Complainant, who has resided on the property for many years (and who receives statements of account for municipal services), does not have a Title Deed to the property, which would enable her to enjoy security of tenure on Erf 18430. Further thereto, the estate of Mr Frans has also not been finalised due to the delay in rectifying the Title Deed.
- (ff) The actions of the Municipality and COGHSTA are in variance with sections 195(1)(a) and (e) of the Constitution and the conduct of the Municipality also contravened the code of conduct for Municipal staff.
- (gg) The conduct of the Municipality and COGHSTA accordingly constitute improper conduct as envisaged in section 182(1) of the Constitution and maladministration and improper prejudice in terms of section 6(4)(a) of the Public Protector Act.
- (x) The Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:
 - (a) **The Head of the Department of COGHSTA**
 - (aa) **To within one hundred and twenty (120) calendar days** of the date of this report, as per the commitment in the letter dated 28 January 2022 from the Department to the Public Protector, ensure that a firm of attorneys is appointed by COGHSTA to rectify the omission relating to the Title Deed of Erf 18430.

(b) The Municipal Manager

- (aa) To co-operate with COGHSTA by providing any relevant documents for the finalisation of the rectification of the Title Deed by the Registrar of Deeds in terms of section 4(1)(b) of the Deeds Registries Act and any other support, if required.

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) read with section 8(3) of the Public Protector Act, which empower 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 to implement the remedial action, where applicable:
 - 1.2.1. Mr Thapelo Matlala (Mr Matlala), the Municipal Manager of the Sol Plaatje Local Municipality (Municipality);
 - 1.2.2. Mr Bentley Vaas (Mr Vaas), the Member of Northern Cape Provincial Executive Committee responsible for Cooperative Governance, Human Settlements and Traditional Affairs (COGHSTA);
 - 1.2.3. Mr Bafedile Lenkoe (Mr Lenkoe), the Head of the Northern Cape Department of COGHSTA;
 - 1.2.4. Dr Zamani Saul (Dr Saul), the Premier of the Northern Cape Province;
 - 1.2.5. Ms Nomizizi Maputle (Ms 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 to register the details of the Complainant in the Title Deed of Erf 18430.

2. THE COMPLAINT

- 2.1. The investigation originated from a complaint lodged by Ms Ellen Selloane Phiri (the Complainant). She was the partner of the late Mr Answar Karabo Frans (Mr Frans). The complaint was lodged on 10 September 2019, at the Northern Cape Provincial Office of the Public Protector South Africa (the Public Protector) in Kimberley.

- 2.2. In the main, the Complainant alleged that:

- 2.2.1. During the course of 1999, she applied for a housing subsidy together with her now late-partner, Mr Frans. They were cohabiting together. The housing subsidy was granted to both of them. The house was supposed to be registered in both the names of the complainant and the late Mr Frans. However, her name does not appear on the Title Deed. The Title Deed was only registered in the name of Mr Frans; and

- 2.2.2. This omission was reported to COGHSTA and the Municipality when Mr Frans was still alive. It was also reported after Mr Frans was deceased but the issue remains unresolved.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

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

3.2. Section 182(1) of the Constitution provides that:

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

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

3.3. Section 182(2) of the Constitution directs that the Public Protector has the additional powers and functions prescribed by national legislation.

3.4. The Public Protector’s powers are regulated and amplified by the Public Protector Act, which states, *inter alia*, 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. The alleged failure by the Municipality and/or COGHSTA to ensure the registration of the Title Deed in respect of the property in favour of the Complainant, is to date still continuing;

3.5.2. It was considered that the Complainant may find herself homeless should the family of the late Mr Frans raise a claim in respect of the property in terms of any law since the property is still registered under his name only. In 2013, the Complainant raised the matter with both COGHSTA and the Municipality.

However, despite several attempts by the Complainant to have this matter resolved, both COGHSTA and the Municipality have failed to resolve the matter.

3.5.3. It was also considered that due to COGHSTA and the Municipality's failure to resolve this matter, there is a potential and real prejudice to the Complainant that might ensue, should this matter remain unresolved. Potential prejudice in that the Complainant may be evicted from her house and real prejudice in that the estate of the late Mr Frans cannot be finalised;

3.5.4. The aforementioned considerations required the Public Protector to investigate the state organs concerned to determine their role in the alleged failure to register the property in favour of the Complainant as she applied for a housing subsidy in relation to the property jointly with Mr Frans, which subsidy was ultimately granted to both of them. 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. The Municipality and COGHSTA are organs of state and their 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 Municipality and/or COGHSTA failed to register the name of Ms Ellen Selloane Phiri against the Title Deed of Erf 18430 situated at Thami Eland Street, Kutlwanong in Kimberley and if so, whether such conduct constitutes improper conduct as envisaged in section 182(1) of the Constitution and amounts to maladministration and improper prejudice in terms of section 6(4)(a) of the Public Protector Act.

5. THE INVESTIGATION

5.1. Methodology

- 5.1.1. The investigation is conducted in terms of section 182(1) 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 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 the Municipality and/or COGHSTA failed to register the Title Deed of the property in favour of the Complainant during 2013, and whether the conduct of the Municipality and/or COGHSTA was improper, constitutes maladministration and prejudiced the Complainant.
- 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 and/or COGHSTA in order 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 Mr Lenkoe to the Public Protector dated 03 December 2021;
- 5.3.1.2 Letter from Mr Lenkoe, Public Protector the Head of the Department of COGHSTA, dated 28 January 2022;

- 5.3.1.3 Copy of the Housing Subsidy System information (HSS) dated 31 March 2015.
- 5.3.1.4 Copy of the letter from Ms G Botha, the former Head of Department of COGHSTA, addressed to the Master of the High Court dated 19 February 2014;
- 5.3.1.5 Copy of the Deed of Transfer Report dated 18 April 2001;
- 5.3.1.6 Copy of the Power of Attorney to Pass Transfer dated 12 April 2001; and
- 5.3.1.7 Copy of the handwritten note dated 18 April 2013, from Mr Alfred Pegram (Mr Pegram), who is the Manager at COGHSTA, addressed to Mr SG Mothelesi (Mr Mothelesi), the Head of Housing Administration of the Municipality.

5.3.2 Meetings held

- 5.3.2.1 Meeting held on 25 October 2019 between the Public Protector and the MEC of COGHSTA.
- 5.3.2.2 Meeting held on 03 March 2022 between the Public Protector and Mr Nolan van der Merwe (Mr van der Merwe), Housing Officer of the Municipality.

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 Deeds Registries Act, 47 of 1937; and
- 5.3.3.3 The Local Government: Municipal Systems Act, 32 of 2000.

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

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

5.3.4.2 Copies of the Notice were also sent on 03 December 2022 to Dr Saul 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 Municipality and/or COGHSTA failed to register the name of Ms Ellen Selloane Phiri against the Title Deed of Erf 18430 situated at Thami Eland Street, Kutlwanong in Kimberley and if so, whether such conduct constitutes improper conduct as envisaged in section 182(1) of the Constitution and amounts to maladministration and improper prejudice in terms of section 6(4)(a) of the Public Protector Act**

Common cause issues

6.1.1. On 17 November 1999, Mr Frans and the Complainant submitted a joint application to COGHSTA for a housing subsidy in respect of Erf 18430.

6.1.2. On 17 August 2002 COGHSTA approved the application in both their names.

6.1.3. According to the Housing Subsidy System information (HSS), dated 31 March 2015, the approved housing subsidy for Erf 18430 was in the amount of seventeen thousand two hundred and fifty rand (R17 250, 00).

- 6.1.4. Mr Frans and the Complainant were unmarried but resided on Erf 18430 jointly until Mr Frans was deceased in 2013.
- 6.1.5. The Title Deed in respect of Erf 18430 reflects only the name of Mr Frans, but the name of the Complainant does not appear on the Title Deed despite the joint application approved by COGHSTA.
- 6.1.6. The statement of account for municipal services of Mr Frans was changed to indicate the details of the Complainant.

Issue in dispute

- 6.1.7. The issue for the Public Protector's determination is whether COGHSTA and/or the Municipality failed to register the name of the Complainant against the Title Deed of Erf 18430 despite the joint application for the housing subsidy on 17 November 1999 and its subsequent approval.

The Complainant's version

- 6.1.8. The Complainant contended that in 1999, she applied for a housing subsidy together with Mr Frans and the housing subsidy was granted in favour of both of them. Consequently, the house was supposed to be registered in both the names of the Complainant and Mr Frans. However, her name does not appear on the Title Deed of Erf 18430, save for the name of Mr Frans.
- 6.1.9. The Complainant also submitted that this omission was reported to COGHSTA and the Municipality before and after Mr Frans was deceased, but the issue remains unresolved.

COGHSTA's response

- 6.1.10. On 25 October 2019, the Public Protector's Investigation Team (Investigation Team) held a meeting with COGHSTA to discuss the allegations and Mr Vaas assigned the matter to the Head of Legal Services, Mr Mashilo to look into the matter.
- 6.1.11. In a response to the allegations as per a letter dated 03 December 2021, Mr Lenkoe stated that the matter was under discussion between COGHSTA and the Municipality.
- 6.1.12. COGHSTA referred to a letter dated 19 February 2014, from Ms G Botha, the former Head of Department of COGHSTA, addressed to the Master of the High Court in Kimberley, which stated that:
- 6.1.12.1. Mr Frans died intestate and left a fixed property, House 18430 Thami Eland Street, Kutlwanong in Kimberley as part of his estate;
- 6.1.12.2. His property was built through the State subsidy after the approval of the application submitted by both Mr Frans and Ms Phiri, as cohabiting partners;
- 6.1.12.3. The qualifying criterion for a state subsidy dictates, amongst others, that a beneficiary must be "*habitually cohabiting or have financial dependants*";
- 6.1.12.4. The Department's records showed that the late Mr Frans cohabited with one Ms Phiri during his lifetime and they have both applied for the housing subsidy, which was approved and consequently, a house was built;
- 6.1.12.5. Ms Phiri appears as the '*spouse*' of Mr Frans in the Application Form;

- 6.1.12.6. The rationale behind stating who the applicant's spouse is and whether there are financial dependants or not, was to ensure that in the event the beneficiary predeceases the spouse or the dependants, the latter must inherit the house; and
- 6.1.12.7. She further requested the Master of the Northern Cape High Court to consider the financial status of Ms Phiri and treat this case as an exception and direct that the house be transferred to Ms Phiri.
- 6.1.13. In a letter dated 28 January 2022, from Mr Lenkoe, addressed to the Public Protector in response to the resolutions of the meeting that was held on 21 January 2022, Mr Lenkoe stated that Nico Gouws Inc. who is on the panel of conveyancers of COGHSTA, would be handling the rectification of the Title Deed relating to Erf 18430.

Evidence obtained during the investigation

- 6.1.14. According to the Deed of Transfer Report dated 18 April 2001, it was established that on 08 May 2001, the Municipality transferred the property in question to Mr Frans, under Deed of Title Number T002080/2001.
- 6.1.14.1. The following information could be established from the Property Enquiry Details, dated 31 March 2015:
- (i) The property is registered under the name of Mr Frans;
 - (ii) At the time of the application for the housing subsidy, Mr Frans was single, but habitually cohabited with the Complainant; and
 - (iii) The Complainant appears under the '*Spouse Details*'.

- 6.1.15. According to the *Power of Attorney to Pass Transfer* dated 12 April 2001, the Senior Housing Officer of the Municipality, Mr Jerry Radiphepha Manjinja (Mr Manjinja), nominated Christian Johannes Theunis Roodt and/or Nicolaas Johannes Gouws and/or Karel Johan Spangenberg to transfer the property to Mr Frans. Mr Manjinja left out the name of the Complainant when he submitted transfer documents to Nicolaas Johannes Gouws Attorneys.
- 6.1.16. In a handwritten note dated 18 April 2013, from Mr Pegram, addressed to Mr Mothelesi, Mr Pegram advised Mr Mothelesi to inform the Complainant on the way forward in this matter. He stated that:
- 6.1.16.1. He discussed the matter with the Complainant and her name was never on the Title Deed and it must be remedied; and
- 6.1.16.2. The Municipality must first appoint and instruct attorneys.

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

- 6.1.17. On 03 December 2022, a notice in terms of section 7(9)(a) of the Public Protector Act (the Notice), was delivered to the Municipality, COGHSTA and other stakeholders to provide an opportunity for responses on the likely adverse findings and proposed remedial action.
- 6.1.18. COGHSTA acknowledged receipt of the Notice and indicated that their offices were closed for business until 03 January 2023, no request for an extension was made by COGHSTA. Notwithstanding the fact that they did not provide a substantive response to the Notice, on 28 January 2022, they provided a written undertaking that they would appoint a Conveyancer from their panel of attorneys to rectify the registration of the Title Deed to reflect the name of the Complainant.

- 6.1.19. 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 Matlala, agreed with 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

- 6.1.20. 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.

(3) ... ”

- 6.1.21. The implication of the above provisions is that the Complainant’s property right to Erf 18430 is not fully secured, because of the outstanding rectification of the Title Deed in respect the Erf.

- 6.1.22. Sections 195(1)(a) and (e) of the Constitution provide 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) People’s needs must be responded to...

(f) ...”

- 6.1.23. These principles enjoin the Municipality and its officials to exercise a high level of professionalism and ethics including accountability in the performance of their duties. The Municipality and its officials should also strive to be above reproach and respond to the people's needs as provided for in the above section.
- 6.1.24. In this matter, the Municipality and COGSTHA failed to promote and maintain a high standard of professional ethics by firstly ensuring that the Complainant's name appeared in the Power of Attorney that was submitted to the attorneys during 2001 for the registration of Erf 18430 in both Mr Frans and the Complainant's names in line with their application and approval of the housing subsidy.
- 6.1.25. Secondly, the Municipality also failed to take appropriate steps to remedy the situation when the discrepancy was reported to them by Mr Frans and the Complainant. According to the handwritten note dated 18 April 2013 from Mr Pegram, both the Municipality and COGHSTA were aware of the error as early as 2013 (over nine years ago), but to date the omission has not been rectified.

The Deeds Registries Act, 47 of 1937¹

- 6.1.26. Section 16 of the Deeds Registries Act provides that the ownership of land may be conveyed from one person to another only by means of a deed of transfer executed or attested by the registrar, and other real rights in land may be conveyed from one person to another only by means of a deed of cession attested by a notary public and registered by the registrar.
- 6.1.27. The Title Deed of a property is irrefutable proof of the ownership thereof. In this case, it is not in dispute that the Complainant and Mr Frans made a joint

¹ As amended.

application for a housing subsidy, but that the Complainant's name does not appear on the Title Deed and to date it has not been rectified despite enquiries with the Municipality and COGHSTA. The Complainant is not able to enjoy security of tenure over the property in question, because the issue of the Title Deed has not been resolved, despite Mr Lenkoe's commitment to instruct conveyancers to attend to same.

- 6.1.28. The Complainant has resided on the property since 2002. Neither the Municipality nor COGHSTA has disputed that the Complainant's name should appear in the Title Deed of Erf 18430.

The Local Government: Municipal Systems Act, 32 of 2000

- 6.1.29. 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”.*

- 6.1.30. The officials that were responsible for the transfer of the property acted in violation of the Code of Conduct for Municipal Staff Members in that they failed to perform the functions of their office diligently. Mr Manjinja did not verify that the Complainant's name appeared on the Power of Attorney to pass the transfer of the property. In addition, the Municipality and COGHSTA were required to act diligently by correcting the omission when it was first brought to their attention during 2013.

Case Law

- 6.1.31. In the ***Government of the Republic of South Africa v Grootboom***² 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.³
- 6.1.32. 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.
- 6.1.33. In ***Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others***⁴ 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.

² *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC).

³ In this regard see paragraphs 19, 34, 35, 36, 37, 38, 45, 93, 94 and 99 of the said judgment.

⁴ *Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others* [2021] ZACC 45.

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”⁵.

- 6.1.34. 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.

Conclusion

- 6.1.35. According to the evidence, Mr Frans and the Complainant submitted a joint application to COGHSTA for a housing subsidy during November 1999, which was subsequently approved by the latter during August 2002. This fact was not disputed by COGHSTA or the Municipality.
- 6.1.36. The Complainant and Mr Frans occupied and used Erf 18430 from around 2002, until the latter’s demise in 2013. The Complainant still resides at Erf 18430.
- 6.1.37. Notwithstanding the joint application by both the Complainant and Mr Frans, only the name of the latter appears on the Title Deed, but not that of the Complainant. This was due to an error by the Municipality (Mr Manjinja), to submit the Complainant’s details to the attorneys who were tasked with effecting the transfer and the registration of the Title Deed as far back as April 2001. This fact was conceded to by the Municipality. Furthermore, neither the

⁵. *Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others* [2021] ZACC 45 at para 18 and 19.

Municipality nor COGHSTA has disputed the fact that the Complainant's name should appear on the Title Deed in respect of Erf 18430.

- 6.1.38. The Municipality could not provide an explanation as to how the error occurred, considering that the Complainant was clearly defined as the '*spouse*' in the joint application for the housing subsidy and the subsequent approval thereof. The subsidy was also granted with the acknowledgement that it was in favour of both parties concerned.
- 6.1.39. The evidence also indicates that both the Municipality and COGHSTA were aware of the issue as early as 2013 and knew how to remedy it. In this regard, the solution required the appointment of a conveyancer to attend to the rectification of the registration of the Title Deed to reflect the details of the Complainant, however, to date, the omission remains unresolved.
- 6.1.40. The effect of the conduct of the Municipality has resulted in prejudice to the Complainant as well as the estate of the late Mr Frans, which cannot be finalised as a result of the omission in question. The Complainant is not able to effectively secure her tenure by means of a Title Deed bearing her name and she can therefore not enjoy the benefits that derive from such security. There is also a risk that she might be evicted from her house.
- 6.1.41. In a letter dated 28 January 2022 from the HoD of COGHSTA to the Public Protector, COGHSTA committed to address the issue through the assistance of a conveyancer, but to date there is no evidence that this has occurred.

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 Municipality and/or COGHSTA failed to register the Title Deed of the property situated on Erf 18430, Thami Eland Street, Kutlwanong in Kimberley in favour of the Complainant during 2013, and if so, whether their conduct was improper as envisaged in section 182 of the Constitution and amounts to maladministration and prejudice in terms of section 6(4)(a) of the Public Protector Act**

7.1.1.1. The allegation that the Municipality and COGHSTA failed to register the name of the Complainant against the Title Deed of Erf 18430, is substantiated.

7.1.1.2. The Municipality, when it gave Power of Attorney to Mr Christian Johannes Theunis Roodt and/or Nicolaas Johannes Gouws and/or Karel Johan Spangenberg to register the transfer of Erf 18430 neglected to ensure that both the names of Mr Frans and the Complainant appeared on the Power of Attorney. This resulted in the details of the Complainant being omitted from the Title Deed. This was not disputed by the Municipality.

7.1.1.3. Neither COGHSTA nor the Municipality disputes that the Complainant's name should be registered against the Title Deed of Erf 18430.

7.1.1.4. Both COGHSTA and the Municipality have been aware of this omission for some time (at least as early as 2013), but to date the issue remains unresolved, despite COGHSTA's commitment to instruct a conveyancer to attend to the issue.

- 7.1.1.5. As a result of this conduct, the Complainant, who has resided on the property for many years (and who receives statements of account for municipal services), does not have a Title Deed to the property, which would enable her to enjoy security of tenure on Erf 18430. Further thereto, the estate of Mr Frans has also not been finalised due to the delay in rectifying the Title Deed.
- 7.1.1.6. The actions of the Municipality and COGHSTA are in variance with sections 195(1)(a) and (e) of the Constitution and the conduct of the Municipality also contravened the code of conduct for Municipal staff.
- 7.1.1.7. The conduct of the Municipality and COGHSTA accordingly constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration and improper prejudice in terms of section 6(4)(a) 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 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. Notwithstanding the fact that the Public Protector has identified wrongdoing on the part of Mr Manjinja as a result of his failure to include the Complainant's details in the documents submitted to the attorneys during April 2001, who were

tasked with effecting the transfer and registration of the Title Deed, any finding and/or remedial action the Public Protector may decide to take against Mr Manjinja as envisaged in section 182(1)(c) of the Constitution, would serve no judicious purpose, as the abovementioned official is no longer in the employ of the Municipality and this incident occurred over twenty (20) years ago.

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

The Head of the Department of COGHSTA

- 8.4.1. **To within one hundred and twenty (120) calendar days** of the date of this report, as per the commitment in the letter dated 28 January 2022 from the Department to the Public Protector, ensure that a firm of attorneys is appointed by COGHSTA to rectify the omission relating to the Title Deed of Erf 18430.

The Municipal Manager

- 8.4.2. To co-operate with COGHSTA by providing any relevant documents for the finalisation of the rectification of the Title Deed by the Registrar of Deeds in terms of section 4(1)(b) of the Deeds Registries Act and any other support, if required.

9. MONITORING

- 9.1. The Municipal Manager to submit an implementation plan to the Public Protector **within thirty (30) calendar days** from the date of this report on the measures taken to implement 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