

**REPORT OF THE PUBLIC PROTECTOR ISSUED 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**



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**INVESTIGATION INTO ALLEGATIONS OF IMPROPER CONDUCT AND  
MALADMINISTRATION RELATING TO THE FAILURE BY FUNCTIONARIES OF THE  
MBHASHE LOCAL MUNICIPALITY TO PROVIDE MR SAKIWO MANITSHANA WITH  
HIS RECONSTRUCTION AND DEVELOPMENT PROGRAMME HOUSE, AS WELL  
AS THE TITLE DEED**

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## LIST OF ACRONYMS AND ABBREVIATIONS

<b>ABBREVIATIONS</b>	<b>DESCRIPTION</b>
<b>Constitution</b>	Constitution of the Republic of South Africa, 1996
<b>CLO</b>	Community Liaison Officer
<b>HSS</b>	Housing Subsidy System
<b>MEC</b>	Member of the Executive Council
<b>Municipality</b>	Mbhashe Local Municipality
<b>Public Protector Act</b>	Public Protector Act, 1994
<b>Public Protector Rules</b>	Rules relating to investigations by the Public Protector and Matters incidental Thereto, 2018 (as amended)
<b>Public Protector</b>	Public Protector of the Republic of South Africa
<b>CSP</b>	Community Support Professional
<b>RDP</b>	Reconstruction and Development Programme
<b>The Department</b>	Eastern Cape Department of Human Settlements

## EXECUTIVE SUMMARY

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of 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, 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 in connection with allegations of improper conduct and maladministration relating to failure by the functionaries of Mbashe Local Municipality (the Municipality) and the Eastern Cape Department of Human Settlements (the Department), to provide Mr Sakiwo Manitshana (the Complainant), with his Reconstruction and Development Programme (RDP) house at number 3331, in Dutywa, Extension 8, as well as the Title Deed, reflecting his details, since 2017.
- (iii) The investigation originates from a complaint lodged on 27 August 2021 at the Eastern Cape Provincial Office of the Public Protector, by the Complainant.
- (iv) In the main, the Complainant alleged that:
  - (a) On 09 May 2006, he applied to the Municipality for an RDP housing subsidy. All relevant documents were submitted together with the application.
  - (b) The application for a housing subsidy for Erf number 3331 was received by the Department on 13 December 2006, processed and approved on 06 February 2007.
  - (c) On 06 February 2017, he came across a notice in the Daily Dispatch newspaper, inviting all people who had successfully applied for Government RDP houses, but had not yet claimed their houses, to come and sign their "*Happy Letters*" at the Municipality.

- (d) He then went to the Housing Section of the Municipality, before the expiry of twenty-one (21) days, which was stated in the newspaper and spoke to Ms Linda Gada (Ms Gada). He was then requested to submit a copy of his identity document (ID) and was informed that he will be contacted in due course. He was supposed to sign the “*Happy Letter*”, but it was never given to him.
- (e) Several months passed without any word from the Municipality and on 02 October 2017, he visited the Municipality to make enquiries.
- (f) Ms Gada informed him that she identified an illegal occupant at the house and that the said occupant is refusing to vacate. He was asked to make an affidavit, stating that the RDP house on Erf number 3331, is legally allocated to him and that someone else is now illegally occupying the RDP house.
- (g) After several phone calls and visits to the Municipality, he was informed by Ms Gada that the municipality will engage the services of their Legal Section to evict the illegal occupier and hand over the keys of the house to him. However, that never happened.
- (h) On 20 July 2018, he visited the municipality and Ms Gada referred him to the Legal Section. Mr Lubabalo Mbelana (Mr Mbelana), an official at the Legal Section promised him that he will finalise the matter. He was again requested to submit an affidavit stating that the RDP house on Erf number 3331, is legally allocated to him and that someone else, not related to him, is illegally occupying the house and is refusing to vacate. He submitted the affidavit together with a copy of his ID to Mr Mbelana.
- (i) Realising that there is no progress in the matter after almost two (02) years, he then reported the matter to the Eastern Cape Provincial Department of Human Settlements (the Department).
- (j) On 05 November 2018, Mr Theo Bruiners (Mr Bruiners), the Deputy Director Developer Driven Projects, Directorate Quality Assurance and Project Management, Human Settlements, wrote a letter to the Municipality about the

matter and also sent a delegation to enquire about the matter, without success.

- (k) On 04 February 2019, Mr Bruiners sent another letter to the Municipality requesting an update on the progress made, however the matter remained unresolved.
- (l) In essence, the Complainant argued that the Municipality and the Department failed to provide him with his RDP house in 2017 and that the conduct of the functionaries of Municipality and the Department was improper, constitutes maladministration and prejudiced him.
- (v) Based on the analysis of the complaint, the following issue was identified to inform and focus the investigation:
  - (a) Whether the functionaries of the Municipality and the Department failed to provide the Complainant with a house on Erf number 3331, in Dutywa, Extension 8, together with the Title Deed, reflecting his details for the said house, during 2017, and if so, whether such conduct was improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration and prejudice in terms of sections 6(4)(a)(i) and (v) of the Public Protector Act.
- (vi) The investigation is conducted in terms of section 182 of the Constitution of the Republic of South Africa, 1996 (the Constitution) and sections 6 and 7 of the Public Protector Act. It included the exchange of written correspondence with officials of the Municipality and the Department, meetings with 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.
- (vii) On 01 September 2023, a Notice in terms of section 7(9)(a) of the Public Protector Act (the Notice), was issued to the following, to provide them with

an opportunity to respond to the interim findings:

- a) the Premier of the Eastern Cape Province, Mr Lubabalo Oscar Mabuyane;
- b) the Member of the Executive Council (MEC) for Human Settlements, Ms Siphokazi Lusithi;
- c) the former Head of Department, Ms Tabisa Poswa;
- d) the current Acting Head of Department of Human Settlements, Mr Edmond Venn;
- e) the Municipal Manager, Mr Mkhululi Nako;
- f) the Executive Mayor, Mr Samkelo Nicholas Janda;
- g) the Speaker, Ms Babalwa Majavu; and
- h) the Complainant, Mr Sakiwo Manitshana.

- (viii) A meeting between the Investigation Team and the Department was convened on 18 September 2023 and on the 19 September 2023 with the Municipality to discuss the Notice. In the aforesaid meeting with the Department, Mr Venn agreed to the remedial action proposed by the Public Protector, as contained in the Notice. Also, Ms B. Majavu, the Speaker of Council agreed to the remedial action proposed by the Public Protector, as contained in the Notice. Mr Nako, the Municipal Manager and Mr S.N.Janda, the Executive Mayor were absent and were represented by Ms Majavu.
- (ix) Written responses to the Notices were received from Ms Thabisa Goniwe-Mafanya (Ms Goniwe-Mafanya), Legal Manager: Municipal Managers Office and from Mr Edmond Venn, the Acting Head of Department of Human Settlements.
- (x) No responses were received from Ms Lusithi, the MEC for Human Settlements, Mr Mabuyane, the Premier, and the Complainant.
- (xi) Having regard to the evidence, the regulatory framework determining the standard that both the Municipality and the Department should have complied with, and the prejudice the Complainant has suffered, the Public Protector makes the following findings:

- (a) **Whether the functionaries of the Municipality and the Department failed to provide the Complainant with a house on Erf number 3331, in Dutywa, Extension 8, together with the Title Deed, reflecting his details for the said house, during 2017, and if so, whether such conduct was improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration and prejudice in terms of sections 6(4)(a)(i) and (v) of the Public Protector Act**
- (aa) The allegation that the functionaries of the Municipality and the Department failed to provide the Complainant with a house on Erf number 3331, in Dutywa, Extension 8, together with the Title Deed, reflecting his details for the said house, is **substantiated**.
- (bb) Neither the Municipality nor the Department disputed that the Complainant's name does appear on the HSS portal system, that his application for a housing subsidy was received on 13 December 2006 and approved on 06 February 2007.
- (cc) Both the Municipality and the Department have been aware of this omission for some time (as early as 2017), but to date the issue remains unresolved. No concrete attempts were made by both the functionaries of the Municipality and the Department to ensure that the Complainant takes occupation of his RDP house.
- (dd) The conduct of the functionaries of the Municipality and the Department does not comply with the values and principles of sound public administration enshrined in section 195 of the Constitution.
- (ee) The failure by the functionaries of the Municipality and the Department to ensure that the Complainant is provided with his RDP house has resulted in the infringement of his Constitutional right to property and his right to access to housing as enshrined in section 25(1) and 26(1) of the Constitution.



- (ff) The conduct of the functionaries of the Municipality and the Department accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration and prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act. The Complainant continues to suffer prejudice as a result of the omission.
- (xii) The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action to redress the conduct referred to in this report upon finalisation of an investigation where adverse findings are made.
- (xiii) 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.
- (xiv) Having regard to the evidence, the regulatory framework determining the standard the functionaries of the Municipality and the Department should have complied with, and the impact on the Complainant, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

### **The Municipal Manager**

- (a) Within **thirty (30) calendar days** of the date of issue of this report, furnish the Complainant with a written apology for the prejudice suffered as a result of the undue delay or failure by the Municipality in giving him lawful occupation of his house and to further inform him of the steps that will be taken by the Municipality to remedy the situation in line with Batho Pele Principle of redress.
- (b) Within **one hundred and eighty (180) calendar days** of the date of issue of this report, take appropriate legal steps in terms of section 5(1) of the PIE Act

to ensure that the Complainant takes lawful occupation of his approved RDP house on Erf number 3331, in Dutywa, Extension 8.

- (c) Within **one hundred and eighty (180) calendar days** of the date of issue of this report, ensure the transfer of ownership of the house on Erf 3331 in terms of section 16 of the Deeds Registries Act, 1937 (as amended), which prescribes how real rights are transferred.
- (d) Within **ninety (90) calendar days** of the date of issue of this report, ensure that the report is submitted to the Council of the Municipality by the Executive Mayor of the Municipality on the implementation of the Remedial Action taken in terms of section 56(1) of the Local Government: Municipal Structures Act No. 117 of 1998.
- (e) Within **one hundred and twenty calendar days (120) days** of the date of issue of this report, conduct an internal audit in respect of the RDP housing projects in Dutywa, Extension 8, establish whether there are other RDP houses that were not allocated to their rightful owners and are illegally occupied and provide a detailed plan on how the Municipality is going to address and rectify the position, in line with the requirement that people's needs must be responded as per section 195(1)(e) of the Constitution.

#### **The Head of the Department for Human Settlements**

- (f) Within **one hundred and twenty (120) calendar days** of the date of issue of this report, assist the Municipality in conducting door-to-door verification, where required by the Municipality, in line with the provisions of section 41(1)(h)(i) of the Constitution which encourages all spheres of government to co-operate with one another, assisting and supporting one another.

## 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) read with section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2 The report is submitted in terms of section 8(1) and section 8(3) of the Public Protector Act, which empower the Public Protector to make known the findings of an investigation, to affected parties (including the Complainant), for such persons to note the outcome of the investigation and to implement the remedial action.
- 1.3 The report is submitted to the following persons:
- 1.3.1 The Premier of the Eastern Cape Province, Mr Lubabalo Oscar Mabuyane;
- 1.3.2 The Member of the Executive Council (MEC) for Human Settlements, Ms Siphokazi Lusithi;
- 1.3.3 The Head of Department of Human Settlements, Mr Edmond Venn;
- 1.3.4 The Speaker, Ms Babalwa Majavu;
- 1.3.5 The Executive Mayor, Mr Samkelo Nicholas Janda;
- 1.3.6 The Municipal Manager, Mbashe Local Municipality (MLM), Mr Mkhululi Nako; and
- 1.3.7 The Complainant, Mr Sakiwo Manitshana.
- 1.4 The report relates to an investigation into allegations of improper conduct and maladministration relating to failure by the functionaries of Mbashe Local Municipality (the Municipality) and the Eastern Cape Department of Human

Settlements (the Department), to provide Mr Sakiwo Manitshana (the Complainant), with his Reconstruction and Development Programme (RDP) house at number 3331, in Dutywa, Extension 8, as well as the Title Deed, reflecting his details for the said house, in 2017.

## 2. THE COMPLAINT

2.1 The investigation originates from a complaint lodged on 27 August 2021 at the Eastern Cape Provincial Office of the Public Protector, by the Complainant.

2.2 In the main, the Complainant alleged that:

2.2.1 On 09 May 2006, he applied to the Municipality for an RDP housing subsidy. All relevant documents were submitted together with the application.

2.2.2 The application for a housing subsidy for Erf number 3331 was received by the Department on 13 December 2006, processed and approved on 06 February 2007.

2.2.3 On 06 February 2017, he came across a notice in the Daily Dispatch newspaper, inviting all people who had successfully applied for Government RDP houses, but had not yet claimed their houses, to come and sign their "*Happy Letters*" at the Municipality.

2.2.4 He then went to the Housing Section of the Municipality, before the expiry of twenty one (21) days, which was stated in the newspaper and spoke to Ms Linda Gada (Ms Gada). He was then requested to submit a copy of his identity document (ID) and was informed that he will be contacted in due course. He was supposed to sign the "*happy letter*", but it was never given to him.

- 2.2.5 Several months passed without any word from the Municipality and on 02 October 2017, he visited the Municipality to make enquiries.
- 2.2.6 Ms Gada informed him that she identified an illegal occupant at the house and that the said occupant is refusing to vacate the house. He was asked to make an affidavit, stating that the RDP house on Erf number 3331, is legally allocated to him and that someone else is now illegally occupying the RDP house and refuses to vacate same.
- 2.2.7 After several phone calls and visits to the Municipality, he was informed by Ms Gada that the municipality is to engage the services of their Legal Section to evict the illegal occupier and hand over the keys of the house to him. However, that never happened.
- 2.2.8 On 20 July 2018, he visited the municipality and Ms Gada referred him to the Legal Section of the Municipality. Mr Lubabalo Mbelana (Mr Mbelana), an official at the Legal Section promised him that he will finalise the matter. He was again requested to submit an affidavit stating that the RDP house on Erf number 3331, is legally allocated to him and that someone else, not related to him, is illegally occupying the RDP house and is refusing to vacate. He submitted the affidavit together with a copy of his ID to Mr Mbelana.
- 2.2.9 Realising that there is no progress in the matter after almost two (02) years, he then reported the matter to the Eastern Cape Provincial Department of Human Settlements (the Department).
- 2.2.10 On 05 November 2018, Mr Theo Bruiners (Mr Bruiners), the Deputy Director: Developer Driven Projects, Directorate Quality Assurance and Project Management, Human Settlements, wrote a letter and also sent a delegation to the Municipality to enquire about the matter, without success.

- 2.2.11 On 04 February 2019, Mr Bruiners sent another letter to the Municipality requesting an update on the progress, however, the matter remained unresolved.
- 2.2.12 In essence, the Complainant argued that the Municipality and the Department failed to provide him with his RDP house in 2017 and that the conduct of the functionaries of the Municipality and the Department was improper, constitutes maladministration and prejudiced him.

### **3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

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

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

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

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

3.3 Section 182(2) of the Constitution directs that the Public Protector has the additional powers and functions prescribed by national legislation. The Public Protector's powers are regulated and amplified by the Public Protector Act, which states amongst others, that the Public Protector has the powers to investigate and redress maladministration and related improprieties in the conduct of state affairs.

3.4 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.”*

3.5 Since the incident or matter concerned occurred more than two (02) years prior to the reporting of the matter to the Public Protector, the Public Protector has exercised a 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 Rules relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018, as amended (Public Protector Rules):

#### **Nature of the complaint and seriousness of the allegations**

3.5.1 The allegations of failure by the functionaries of the Municipality and the Department to provide the Complainant with his approved RDP house, as well as the Title Deed, reflecting his details for the said house since 2017, are very serious as they impact on the Complainant’s fundamental right of access to adequate housing in terms of section 26<sup>1</sup> and his right to property in terms of section 25<sup>2</sup> of the Constitution;

3.5.2 The nature of the complaint reveals the possibility of unremedied maladministration, as the Complainant has been deprived of the RDP house to date, which suggests that the prejudice suffered by the Complainant continues unabated;

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<sup>1</sup> Section 26(1) of the Constitution. Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) relating to the obligations 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.

<sup>2</sup> See also Article 17 of the Universal Declaration of Human Rights (UDHR), General Assembly, (1948). The African Charter on Human and Peoples Rights guarantees property rights as well. See also Devenish A commentary on the South African Bill of Rights (1994) 344.

3.5.3 The Complainant does not have a home of his own. In 2017, he raised the matter with both the Municipality and the Department. However, despite several attempts by the Complainant to have this matter resolved, both the Municipality and the Department have failed to resolve same.

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 provide the Complainant with his approved house, as well as the Title Deed, reflecting his details, for the said house.

**The information provided by the Complainant and the reasons given by the Complainant for the delay**

3.5.5 The Complainant raised the matter with both the Municipality and the Department. However, despite several attempts by him to have this matter resolved, both the Municipality and the Department have not done so.

3.5.6 He is not able to enjoy occupation of his RDP house and he is not able to receive the Title Deed, reflecting his details, as proof of ownership of the said RDP house.

3.5.7 Having realised that there is no progress in the matter after almost two (2) years, the Complainant decided to escalate the matter to the Department. On the strength of the information provided by the Complainant, he had been attempting to exhaust possible remedies at his disposal in order to resolve the matter prior to lodging his complaint with the Public Protector, however, unsuccessfully so. On 05 November 2018, Mr Bruiners, wrote a letter to the Municipality in connection with the matter and sent a delegation to enquire about it, but the matter remained unresolved.

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



- 3.5.8 At the time of reporting the complaint to the Public Protector on 27 August 2021, it was approximately four (04) years from the time when the incident/event occurred. The Complainant only became aware of his approved RDP house and the fact that it is being occupied by an unapproved person in 2017.
- 3.5.9 The information and evidence that may be required or sought by the Public Protector regarding the alleged failure of the functionaries of the Municipality and the Department, to provide the Complainant with his RDP house, as well as a Title Deed, reflecting his details for the said house, should still be available on the Housing Subsidy Portal (HSS).
- 3.5.10 Having reflected on the above special circumstances, it would have been improper for the Public Protector to not exercise a discretion to accept the matter, because it would have ignored the plight of the Complainant, who does not have the resources to resolve the issue. The Public Protector accordingly decided to exercise a 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 the Department are organs of state in terms of section 239 of the Constitution and their conduct amounts to conduct in state affairs, as a result, the Public Protector is satisfied that the complaint falls within its competency to conduct an investigation as envisaged in section 182(1)(a) of the Constitution and section 6(4) of the Public Protector Act.

#### **4. ISSUE IDENTIFIED FOR INVESTIGATION**

- 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 functionaries of the Municipality and the Department failed to provide the Complainant with a house on Erf number 3331, in Dutywa, Extension 8, together with the Title Deed, reflecting his details for the said house, during 2017, and if so, whether such conduct was improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration and prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act.

## **5. THE INVESTIGATION**

### **5.1 Methodology**

- 5.1.1 The investigation is conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

- 5.1.2 Section 7(1) of 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 the exchange of written correspondence with officials of the Municipality and the Department, meetings with the municipality, the analysis and evaluation of the relevant documents, information obtained during the investigation, 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:

- 5.2.2.1 What happened?

- 5.2.2.2 What should have happened?
- 5.2.2.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to improper conduct or maladministration?
- 5.2.2.4 In the event of improper conduct or maladministration, what would it take to remedy the wrong or to place the Complainant as close as possible to where he would have been, but for the maladministration or improper conduct?
- 5.2.3 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and evidence independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether the functionaries of the Municipality and the Department failed to provide the Complainant with a house on Erf number 3331, in Dutywa, Extension 8, together with the Title Deed, reflecting his details for the said house, during 2017, and whether the conduct of the functionaries of the Municipality and the Department was improper, constitutes maladministration and prejudiced the Complainant.
- 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 and the Department 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 Key Sources of Information**

#### **5.3.1 Documents and e-mail correspondence**

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- 5.3.1.1 Complaint from Mr Sakiwo Manitshana, dated 27 August 2021;
  - 5.3.1.2 Letter from the Public Protector to Mr Manitshana, dated 30 September 2021;
  - 5.3.1.4 Letter from the Public Protector to Mr M.Nako, the Municipal Manager, dated 01 October 2021;
  - 5.3.1.5 Letter from the Public Protector to Mr Manitshana, dated 01 October 2021;
  - 5.3.1.6 Letter from the Public Protector to Ms Nandipha Siguba an official in the office of the Municipal Manager, dated 20 October 2021;
  - 5.3.1.7 A copy of a Housing Subsidy Portal print out, dated 26 October 2021;
  - 5.3.1.8 Letter from Ms Thabisa Goniwe-Mafanya (Ms Goniwe-Mafanya), Legal Manager, Municipal Managers Office (MLM) to the Public Protector, dated 27 October 2021;
  - 5.3.1.9 Letter from the Public Protector to Ms Goniwe-Mafanya, dated 15 November 2021;
  - 5.3.1.10 Letter from Ms Goniwe-Mafanya to the Public Protector, dated 15 November 2021;
  - 5.3.1.11 Approved RDP beneficiary list from Ms Goniwe-Mafanya to the Public Protector, dated 16 November 2021;
  - 5.3.1.12 Letter from the Public Protector to Ms Goniwe-Mafanya, dated 17 November 2021;
  - 5.3.1.13 Letter from Ms Goniwe-Mafanya to the Public Protector, dated 18 November 2021;

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- 5.3.1.14 Email from Ms Goniwe-Mafanya to the Public Protector, dated 10 December 2021;
  - 5.3.1.15 Correspondence from the Public Protector to Mr Manitshana, dated 13 December 2021;
  - 5.3.1.16 Correspondence from the Public Protector to Mr Bruiners, dated 30 March 2022;
  - 5.3.1.17 Correspondence from Mr Bruiners to the Public Protector, dated 03 May 2022;
  - 5.3.1.18 Subsidy application form from Mr Bruiners to the Public Protector, dated 12 May 2022;
  - 5.3.1.19 Correspondence from the Public Protector to Mr Bruiners, dated 16 August 2022;
  - 5.3.1.20 Correspondence from Ms Goniwe-Mafanya to the Public Protector, dated 18 August 2022;
  - 5.3.1.21 Correspondence from Mr Bruiners to the Public Protector, dated 22 August 2022;
  - 5.3.1.22 Correspondence from Mr Bruiners to the Public Protector, dated 01 June 2023; and
  - 5.3.1.23 Funding Agreement from Mr Bruiners to the Public Protector, dated 02 June 2023.

### 5.3.2 Meetings and Interviews

- 5.3.2.1 Meeting held at the Municipality by the Investigation Team with Ms Goniwe-Mafanya and Ms T.Gosani, Municipal Intern, on 14 December 2021;
- 5.3.2.2 Meeting held at the Municipality by the Investigation Team with Ms Goniwe-Mafanya and Ms T.Gosani, on 15 December 2021; and
- 5.3.2.3 Investigative interview with Mr Ndoda Falithenjwa (Mr Falithenjwa) on 15 December 2021.

### 5.3.3 Inspection *in loco* conducted

- 5.3.3.1 On 14 and 15 December 2021, the Investigation Team conducted an *inspection in loco* in the accompany of Ms Goniwe-Mafanya, Ms Gosani and Ms N.Quvile (Ms Quvile), the Ward Councillor.

### 5.3.4 Legislation and other prescripts

- 5.3.4.1 The Constitution of the Republic of South Africa, 1996;
- 5.3.4.2 Public Protector Act, 1994;
- 5.3.4.3 The Housing Act, 1997;
- 5.3.4.4. The Prevention of Illegal Eviction from and Unlawful Occupation of land Act, 1998;
- 5.3.4.5. The Deeds Registries Act, 1937;
- 5.3.4.6. The Local Government: Municipal Systems Act, 2000; and
- 5.3.4.7. The Batho Pele Principles.

### 5.3.5 Case Law

- 5.3.5.1 Government of the Republic of South Africa v Grootboom 2001(1) SA 46 (CC); and

5.3.5.2 Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others (2021) ZACC 45.

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

5.3.6.1 Notices in terms of section 7(9)(a) of the Public Protector, dated 01 September 2023 were issued to the following persons:

- (a) Mr Mabuyane;
- (b) Ms S.Lusithi;
- (c) Ms T.Poswa;
- (d) Mr E.Venn;
- (e) Mr Nako;
- (f) Mr Janda;
- (g) Ms Majavu; and
- (h) Mr Manitshana.

**5.3.7 Responses to the Notices issued in terms of section 7(9)(a) of the Public Protector Act**

5.3.7.1 A response to the Notice in terms of section 7(9)(a) dated 22 September 2023 was received from Ms Goniwe-Mafanya and from Mr Venn on 27 September 2023.

**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 functionaries of the Municipality and the Department failed to provide the Complainant with a house on Erf number 3331, in Dutywa, Extension 8, together with the Title Deed, reflecting his details for the said house, during 2017, and if so, whether such conduct was improper**

**as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration and prejudice in terms of sections 6(4)(a)(i) and (v) of the Public Protector Act**

*Common cause*

- 6.1.1 On 09 May 2006, the Complainant applied for a housing subsidy with the Municipality. The Municipality submitted a list of seven hundred and fifty three (753), beneficiaries/applicants to the Department, including the Complainant.
- 6.1.2 On 06 February 2007, the Department processed and approved the application in the name of the Complainant, with reference number CA06121560, type of subsidy PNC-Project Linked, Dutywa Ext 8-753, subs Phase 1.
- 6.1.3 The Complainant was approved as a beneficiary for a house on Erf number 3331, in Dutywa, Extension 8.
- 6.1.4 Section B of the subsidy application, which contains the details of dependants in respect of the property, reflects only the name Mr S.S. Mpetukana, the son of the Complainant.

*Issue in dispute*

- 6.1.5 The issue for the Public Protector's determination is whether the functionaries of the Municipality and the Department failed to provide the Complainant with a house on Erf number 3331, in Dutywa, Extension 8, together with the Title Deed, reflecting his details for the said house, during 2017.

*Complainant's version*

- 6.1.6 The Complainant contended that:



- 6.1.6.1 On 09 May 2006, he applied to the Municipality for an RDP housing subsidy. His application was approved on 06 February 2007, however, he was not issued with the “*Happy Letter*” for occupation.
- 6.1.6.2 On 02 October 2017, he visited the Municipality to make enquiries. Ms Gada informed him that there was an unapproved occupant residing in his house and refusing to vacate.
- 6.1.6.3 Upon realising that there was no progress in the matter after almost two (02) years, he escalated the matter to the Department and was assisted by Mr Bruiners, who wrote a letter to the Municipality. However, the matter remains unresolved, as the Municipality still failed to evict the unapproved occupant.
- 6.1.6.4 The Municipality made several attempts to force the unapproved occupant to leave the house with the assistance of their Law Enforcement Office, but to no avail.

*The version of Ms Thabisa Goniwe-Mafanya, Legal Manager: Mbhashe Local Municipality*

- 6.1.7 The Public Protector Investigation Team (Investigation Team) wrote to the Municipality through a letter dated 01 October 2021 raising the allegations made by the Complainant and affording the Municipality an opportunity to respond on same.
- 6.1.8 On 27 October 2021, Ms Thabisa Goniwe-Mafanya (Ms Goniwe-Mafanya), the Legal Manager from the Municipality, responded through a letter stating that:
- 6.1.8.1 The Complainant applied to the Municipality and the Department for an RDP house on 09 May 2006. The application was for a house on Erf number 3331, in the Dutywa Extension 8 housing project. The reference number is CA06121560 and the type of subsidy is PNC-Project Linked, Dutywa Ext 8-

753, subs Phase 1. The application was processed and approved on 06 February 2007.

- 6.1.8.2 A Final Unit Report (FUR), dated 04 September 2014, issued by the National Home Builders Registration Council (NHBRC), to certify that the house is completed satisfactorily in terms of the required norms and standards was submitted for the site, indicating that the house construction was complete. The application was processed and approved on 06 February 2007, whereafter payments against the approved subsidy was made on certification.
- 6.1.8.3 A list containing the details of seven hundred and fifty three (753) beneficiaries was submitted to the Department and it was approved. The Complainant was among the approved beneficiaries in respect of the house on Erf number 3331.
- 6.1.8.4 The project is within the functionary and powers of the Department of Human Settlements, therefore, the Municipality's intervention is based on the fact that the beneficiaries applied for RDP houses from the Municipality. Any final action about this matter shall be taken by the aforementioned Department.
- 6.1.8.5 The project was conditionally approved by the Member of the Executive Council (MEC), for housing in 2004 and the construction of houses commenced in 2014. The handing over was done by the Community Liaison Officer and the Building Inspector from the Department of Human Settlements. The Municipality, after noticing that not all the houses were occupied, published an advert notifying the beneficiaries to come and occupy their houses as reflected on the application list.
- 6.1.8.6 The Complainant went to the Municipality, whereafter he was accompanied by a municipal official to his house and they were both surprised to find that the house was locked. An investigation was conducted by the Municipality, which also involved their law enforcement, to remove the illegal occupant from the Complainant's house, but all attempts were in vain. The Municipality requested the Department to assist in making a door-to-door verification

process in order for the unlawful occupier to be identified and evicted, the municipality is still awaiting their response.

*Further submission from Ms Goniwe-Mafanya*

- 6.1.9 In an e-mail dated 16 November 2021, Ms Goniwe-Mafanya informed the Investigation Team, that the Complainant is not the only affected person, but that there are many more beneficiaries who are in the same situation as him. She stated that there are engagements which are ongoing between the Municipality and the Department to rectify and/or to evict the unlawful occupiers of the houses in Dutywa, Extension 8.
- 6.1.10 She further stated that this action cannot be taken unilaterally by the Municipality as the project was within the competency of the Department.

*Meetings with Ms Goniwe-Mafanya*

- 6.1.11 The Investigation Team held a meeting with Ms Goniwe-Mafanya and Ms Gosani, a Legal Intern, on 14 and 15 December 2021, respectively.
- 6.1.12 The Minutes of the meetings for 14 and 15 December 2021, reflect that the Municipality requested the Department to assist it with the verification of beneficiaries and to identify the challenges relating to the illegal occupation of RDP houses in Dutywa, Extension 8. Ms Goniwe-Mafanya further confirmed that the Complainant is the lawful owner of the RDP house in question.

*Inspections in Loco*

- 6.1.13 The Investigation Team embarked on *inspections in loco* to establish whether the allegations by the Complainant are in isolation and/or general and to also establish whether RDP houses in Extension 8 are indeed being illegally occupied.

- 6.1.14 On 14 and 15 December 2021, the Investigation Team, accompanied by Ms Goniwe-Mafanya, Ms Gosani and Ms N. Quvile (Ms Quvile), the Ward Councillor, conducted *inspections in loco* in Dutywa, Extension 8.
- 6.1.15 Face to face interviews were held with occupants of the RDP houses. However, the majority of the occupants did not co-operate with the Investigation Team.

*Version of Mr Ndoda Falithenjwa (the Occupant of the house on Erf number 3331).*

- 6.1.16 On 15 December 2021, the Investigation Team conducted a face to face interview with Mr Falithenjwa, a local taxi driver. He stated that house number 3331, which he is currently occupying, was given to him by the late Ms Manitshana, the wife to the Complainant.
- 6.1.17 According to him, Ms Manitshana applied for the RDP house. He contended that Ms Manitshana gave him the keys of the RDP house and he is not paying rent for residing in the house. He stated that Ms Manitshana has since passed away and he is not certain about the date of Ms Manitshana's passing.

*The version of Mr Bruiners*

- 6.1.18 Mr Bruiners, in his correspondence dated 03 May 2022, stated that:
- 6.1.18.1 The Department received an application for a subsidy from the Complainant on 13 December 2006, whereafter it was processed and approved on 06 February 2007;
- 6.1.18.2 The Complainant visited the Department to bring his case to their attention and to seek assistance or an intervention in getting access to his house. He indicated that he was informed, that in Dutywa, Extension 8, the Municipality was solely responsible for the beneficiary allocation in the project and as such,

they had to deal with the illegal occupation of his property;

- 6.1.18.3 The Department wrote to the Municipality to seek clarity from them in relation to the abovementioned issue and whether any progress was made in addressing it. The first letter was dated 05 March 2018 and a reminder was sent on 04 February 2019. The Department did not receive any acknowledgement of receipt or any response in relation to these letters; and
- 6.1.18.4 The Department sent Ms X.B. Mcatshelwa (Ms Mcatshelwa), Assistant Director at the Regional office of the Department, as well as Mr Bayanda Mdledle (Mr Mdledle), a Community Support Professional (CSP), contracted by the Department, to enquire on any progress made, but they were not successful in getting any update. The Department has recently appointed a conveyancer to deal with the registration and the transfers of Title Deeds in the Dutywa, Extension 8 project. This process includes the verification of the correctly approved beneficiaries to enable the correct registration of the Title Deeds; and
- 6.1.18.5 The duties and obligations of the Department are clearly articulated. In essence, the Department will make funding available for the project, process claims from the contractor and update the Housing Subsidy System (HSS). The Department assured that all the houses were constructed in terms of the approved norms and standards before payment was processed to the contractor. The beneficiary administration was the sole responsibility of the Municipality and as such, they had to ensure that the correctly approved beneficiaries occupy the correct house.

*Records obtained from Mr Bruiners*

Application for a project linked subsidy

- 6.1.19 On 12 May 2022, Mr Bruiners, provided the Investigation Team with copies of an application for a project linked subsidy in which the Complainant is the lawful beneficiary, an agreement between the beneficiary and support

organisation dated 09 May 2006, the Deed of Sale as well as a copy of the ID and the birth certificate of the Complainant.

Email correspondence from Mr M Nako, the Municipal Manager to Mr Desmond Ramonyadiwa the Regional Director Amathole Region

- 6.1.20 On 22 August 2022, Mr Bruiners provided the Investigation Team with an e-mail from Mr M. Nako (Mr Nako), the Municipal Manager addressed to Mr *Ramonyadiwa* the Regional Director Amathole Region confirming that the Municipality fully agree that the house on Erf number 3331, in Dutywa, Extension 8, is occupied by an unapproved person.
- 6.1.21 In the email, Mr Nako confirms that the Complainant visited their offices on several occasions, demanding his house without any success and that the Municipality made several attempts to force the unapproved occupant to vacate the house with the assistance of their Law Enforcement office, but to no avail.
- 6.1.22 Mr Nako further states that beneficiaries of Dutywa, Extension 8, were not properly allocated, thus resulting in houses being illegally occupied and the Municipality is facing difficulty in identifying the culprits, it is on those grounds that the Municipality is requesting assistance in doing a door-to-door verification.
- 6.1.23 Attached to the abovementioned e-mail from Mr Bruiners, is a memorandum which was compiled by Ms Mcatshelwa, Beneficiary Administrator Project Management, dated 27 November 2018 to the Deputy Director: Amathole Region confirming that she was she was instructed to investigate the circumstances pertaining to house number 3331.
- 6.1.24 Ms Mcatshelwa concludes that this matter was no secret to the Municipal housing officials and that it was a long outstanding matter that needs to be resolved.

*Deed of Sale*

- 6.1.25 According to the Deed of Sale, dated 09 May 2016, the Municipality signed and entered into an agreement of purchase and sale with the Complainant in respect of the house on Erf number 3331, to the extent of 358 square meters. At the time of the application for the housing subsidy, the Complainant included Mr Sakiwo Siphesihle Mpetukana, his son, as a dependant.

*Housing Subsidy System (HSS) Information*

- 6.1.26 The HSS information on the application status, dated 06 February 2007, confirms that the total subsidy qualified for on the property was in the amount of sixty four thousand six hundred and sixty six rand (R 64 666) and it reflected the name of the Complainant.

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

- 6.1.27 A Notice in terms of section 7(9)(a) of the Public Protector Act, dated 31 August 2023 was issued to all the affected parties.
- 6.1.28 A meeting between the Investigation Team and the Department was convened on 18 September 2023 and on the 19 September 2023 with the Municipality to discuss the Notice. In the aforesaid meeting with the Department, Mr Venn agreed to the remedial action proposed by the Public Protector, as contained in the Notice. Ms B.Majavu, the Speaker representing the Municipality agreed to the remedial action proposed by the Public Protector, as contained in the Notice. Mr Nako the Municipal Manager and Mr S.N.Janda, the Executive Mayor were absent and represented by Ms Majavu.

*Response from Ms Goniwe-Mafanya*

- 6.1.29 Ms Goniwe-Mafanya responded to the notice on 22 September 2023, and

stated *inter alia* as follows:

- 6.1.29.1 The Municipal Manager confirms that a written apology will be furnished to Mr Manitshana within thirty (30) calendar days of issuing of the Final Report for the prejudice suffered as outlined in paragraph 8.3.1 of the Notice;
- 6.1.29.2 While the Municipal Manager understands that in the matter of *Economic Freedom Fighters vs. Speaker of the National Assembly and others*; *Democratic Alliance vs. Speaker of the National Assembly and Others*: The Constitutional Court held that the remedial action taken by the Public Protector has a binding effect, the Municipal Manager brings to the attention of the Public Protector that the ninety (90) days period as outlined in paragraph 8.3.2 of the Notice would be practically impossible as the court processes will not be determined by the municipality and therefore the municipality appeals to the Public Protector to extend the ninety (90) calendar days period to one hundred and eighty (180) calendar days;
- 6.1.29.3 The Municipal Manager shall ensure that transfer of ownership of the house on Erf number 3331 to Mr Manitshana is done within one hundred and eighty (180) calendar days as per the provisions of paragraph 8.3.3 of the Notice and any handicaps when dealing with that process shall be brought to the attention of the Office of the Public Protector;
- 6.1.29.4 The final report shall be tabled to the Council by the Executive Mayor within ninety (90) calendar days from the date of issue as contemplated in paragraphs 8.3.1, 8.3.2 and 8.3.3 respectively; and
- 6.1.29.5 Verification in respect of the RDP housing project in Dutywa, Extension 8 shall be concluded within the prescribed time as per the provisions of paragraph 8.3.5.

*Response from Mr E. Venn*

- 6.1.30 Mr E.Venn, responded to the Notice in a letter dated 27 September 2023 and stated *inter alia* as follows:



- 6.1.30.1 The Department has appointed the attorneys or conveyancers for registration of the remaining Title Deeds and have been completed;
- 6.1.30.2 All seven hundred and fifty three (753) units for this project, Dutywa Extension 8, 753 subsidies have been registered to the approved beneficiaries, as reflected on the Housing Subsidy System (HSS);
- 6.1.30.3 Six hundred and eleven (611) title deeds including one of Mr Sakiwo Manitshana are in the possession of the Department awaiting handing over;
- 6.1.30.4 The list containing all beneficiaries with their title deeds number was provided to the Investigation Team;
- 6.1.30.5 It must be noted that, it is the municipality's role to ensure that correct beneficiaries receive their title deeds and occupy their houses as per signed agreement between the department and the Municipality; and
- 6.1.30.6 The Department together with the municipality conducted the door-to-door verification on 01 to 03 March 2023, to conduct beneficiary correct occupation. Mr Venn provided the Investigation Team with the verification report.

*Applicable law*

**The Constitution of the Republic of South Africa, 1996**

- 6.1.31 Section 195(1) of the Constitution, provides that public administration in every sphere of government must be governed by the democratic values and principles enshrined in the Constitution, including 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;

- (c) Public administration must be accountable;
- (d) Services must be provided impartially, fairly, equitably and without bias;
- (e) People's needs must be responded to, and the public must be encouraged to participate in policy-making; and
- (f) Public Administration must be accountable.

6.1.32 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.

6.1.33 In terms of section 26(1) of the Constitution, everyone has the right to have access to adequate housing.

#### **The Housing Act, 1997**

6.1.34 Section 9(1)(a)(i) of the Housing Act<sup>3</sup>, 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”.*

6.1.35 The National Housing Code 2009<sup>4</sup> further sets out the underlying policy principles, guidelines, norms and standards, which apply to various government housing assistance programmes, introduced since 1994.

6.1.36 The aforementioned provisions are applicable to the Municipality in the local sphere of government in as far as it expressly prescribes the obligation to prioritise the needs of the poor in respect of housing development and

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<sup>3</sup> Act 107 of 1997

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

consultation with affected individuals.

### **The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998**

6.1.37 Section 3(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE)<sup>5</sup>, provides that:

*“No person may directly or indirectly receive or solicit payment of any money or other consideration as a fee or charge for arranging or organising or permitting a person to occupy land without the consent of the owner or person in charge of that land”.*

6.1.38 Section 4 of the PIE Act, further provides that:-

*“(1) Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier,*

*(2) At least 14 days before the hearing of the proceedings contemplated in subsection (1), the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction.”*

6.1.39 Section 5(1) of the PIE Act provides that, notwithstanding the provisions of section 4, the owner or person in charge of land may institute urgent proceedings for the eviction of an unlawful occupier of that land pending the outcome of proceedings for a final order, and the court may grant such an order if it is satisfied that-

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<sup>5</sup> Act No. 19 of 1998.

(a) *The likely hardship to the owner or any other affected person if an order for eviction is not granted, exceeds the likely hardship to the unlawful occupier against whom the order is sought, if an order for eviction is granted.*”

6.1.40 Section 6(1) (a) of the PIE Act further provides that:

*“An organ of state may institute proceedings for the eviction of an unlawful occupier from land which falls within its area of jurisdiction, except where the unlawful occupier is a mortgagor and the land in question is sold in a sale of execution pursuant to a mortgage, and the court may grant such an order if it is just and equitable to do so, after considering all the relevant circumstances, and if-*

(a) *The consent of that organ of state is required for the erection of a building or structure on that land or for the occupation of the land, and the unlawful occupier is occupying a building or structure on that land without such consent having been obtained.*

6.1.41 Subsection (4) provides that *“An organ of state contemplated in subsection (1) may, before instituting such proceedings, give not less than 14 days written notice to the owner or person in charge of the land to institute proceedings for the eviction of the unlawful occupier”*.

6.1.42 Section 7(1) of the PIE Act, further provides:

*“if the municipality in whose area of jurisdiction the land in question is situated is not the owner of the land the municipality may, on the conditions that it may determine, appoint one or more persons with expertise in dispute resolution to facilitate meetings of interested parties and to attempt to mediate and settle any dispute in terms of this Act: Provided that the parties may at any time, by agreement, appoint another person to facilitate meetings or mediate a dispute on the conditions that the municipality may determine”*.

### **The Deeds Registries Act, 1937**

6.1.43 Section 16 of the Deeds Registries Act<sup>6</sup>, 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, 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.

### **The Local Government: Municipal Systems Act, 2000**

6.1.44 Section 55(1) of the Local Government Municipal Systems Act<sup>7</sup>, 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 service to the local community in a sustainable and equitable manner.

6.1.45 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, purport 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*

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<sup>6</sup> Act No. 47 of 1937

<sup>7</sup> Act No.32 of 2000

- (e) *act impartially and treat all people, including other staff members, equally without favour or prejudice.”*

## **The Batho Pele Principles**

### Redress

- 6.1.46 The Batho Pele principles are all about putting people first. Batho Pele is rooted in the legislative framework. This was started as a means or initiative meant to work on transforming the public service regardless of the level.
- 6.1.47 Redress is a pointer that directs civil servants to offer all citizens an apology as well as a solution in instances where standards fail to be met.

### **Case Law**

- 6.1.48 In the *Government of the Republic of South Africa v Grootboom*<sup>8</sup> 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 constitutional order.<sup>9</sup>
- 6.1.49 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.
- 6.1.50 In *Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others*<sup>10</sup>, the Court 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*

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<sup>8</sup> *Government of the Republic of South Africa v Grootboom* 2001(1) SA 46 (CC).

<sup>9</sup> In this regard see paragraphs 19, 34, 35,36,37,38,45,93,94 and 99 of the said judgment.

<sup>10</sup> *Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others* {2021} ZACC 45.

*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 section 26 and 27 which deals with access to housing, health care, food, water and social security”<sup>11</sup>*

- 6.1.51 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*

- 6.1.52 Evidence at the disposal of the Public Protector confirmed that on 09 May 2006, the Complainant applied for a housing subsidy with the Municipality, which was processed and approved by the Department on 06 February 2007.
- 6.1.53 The house was subsequently built on erf number 3331, Dutywa, Extension 8, however, the Complainant could not take occupation thereof due to an illegal occupation by Mr Falithenjwa.
- 6.1.54 Despite the Municipality being made aware of the illegal occupation as far back as 2017, the matter remains unresolved. Mr Falithenjwa, continues to occupy the property.
- 6.1.55 The failure by the Municipality to ensure that the illegal occupant is evicted from the Complainant’s property and secure his legal occupation and ownership, goes against the values espoused in the Code.

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<sup>11</sup> *Ibid at para 18 and 19.*

- 6.1.56 The contention by Mr Falithenjwa that he was granted occupation of the RDP house by the late Ms Manitshana cannot be sustained in that, evidence in the Public Protector's possession reveals that the application and subsequent approval for a housing subsidy was in the Complainant's name only. Accordingly, the Complainant is the lawful owner of the property. Furthermore, the subsidy application reflects that the Complainant nominated his son Mr S.S. Mpetukana, as a dependant.
- 6.1.57 The Public Protector takes note that the Department has completed the registration of Title Deeds to the approved beneficiaries, including the Complainant. The Title deeds, including that of the Complainant are in the possession of the Department awaiting handing over. The Department furnished the Public Protector with proof of registration of the Title Deed in the name of the Complainant.
- 6.1.58 The Municipality has undertaken to take legal steps as prescribed in section 5(1) of the PIE Act to ensure that the Complainant takes lawful occupation of his approved RDP house.
- 6.1.59 Section 195(1) of the Constitution enjoins the Municipality and the Department to exercise a high level of professionalism and ethics including accountability in the performance of their duties. The Municipality and the Department should also strive to be above reproach and respond to the people's needs as provided for in the above section.

#### *Conclusion*

- 6.1.60 The conduct of the Municipal functionaries in not instituting proceedings for the eviction of the unlawful occupier and ensuring that the Complainant is given occupation of his house was in conflict with the Constitutional and legislative prescripts as set out above.



## 7. FINDINGS

Having regard to the evidence, the regulatory framework determining the standard that both the Municipality and the Department should have complied with and the prejudice the Complainant has suffered, the Public Protector makes the following findings:

### 7.1 **Whether the functionaries of the Municipality and the Department failed to provide the Complainant with a house on Erf number 3331, in Dutywa, Extension 8, together with the Title Deed, reflecting his details for the said house, during 2017, and if so, whether such conduct was improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration and prejudice in terms of sections 6(4)(a)(i) and (v) of the Public Protector Act**

7.1.1 The allegation that the functionaries of the Municipality and the Department failed to provide the Complainant with a house on Erf number 3331, in Dutywa, Extension 8, together with the Title Deed, reflecting his details for the said house, is **substantiated**.

7.1.2 Neither the Municipality nor the Department disputed that the Complainant's name does appear on the HSS portal system, that his application for a housing subsidy was received on 13 December 2006 and approved on 06 February 2007.

7.1.3 Both the Municipality and the Department have been aware of this omission for some time (as early as 2017), but to date the issue remains unresolved. No concrete attempts were made by both the functionaries of the Municipality and the Department to ensure that the Complainant takes occupation of his RDP house.

- 7.1.4 The conduct of the functionaries of the Municipality and the Department does not comply with the values and principles of sound public administration enshrined in section 195 of the Constitution.
- 7.1.5 The failure by the functionaries of the Municipality and the Department to ensure that the Complainant is provided with his RDP house has resulted in the infringement of his Constitutional right to property and his right to access to housing as enshrined in section 25(1) and 26(1) of the Constitution.
- 7.1.6 The conduct of the functionaries of the Municipality and the Department accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration and prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act. The Complainant continues to suffer prejudice as a result of the omission.

## **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 Report 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 functionaries of the Municipality and the Department should have complied with, and the impact on the Complainant, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution.

## The Municipal Manager

- 8.3.1 Within **thirty (30) calendar days** of the date of issue of this report, furnish the Complainant with a written apology for the prejudice suffered as a result of the undue delay or failure by the Municipality in giving him lawful occupation of his house and to further inform him of the steps that will be taken by the Municipality to remedy the situation in line with Batho Pele Principle of redress.
- 8.3.2 Within **one hundred and eighty (180) calendar days** of the date of issue of this report, take appropriate legal steps in terms of section 5(1) of the PIE Act to ensure that the Complainant takes lawful occupation of his approved RDP house on Erf number 3331, in Dutywa, Extension 8.
- 8.3.3 Within **one hundred and eighty (180) calendar days** of the date of issue of this report, ensure the transfer of ownership of the house on Erf 3331 in terms of section 16 of the Deeds Registries Act, 1937 (as amended), which prescribes how real rights are transferred.
- 8.3.4 Within **ninety (90) calendar days** of the date of issue of this report, ensure that the report is submitted to the Council of the Municipality by the Executive Mayor of the Municipality on the implementation of the Remedial Action taken in terms of section 56(1) of the Local Government: Municipal Structures Act No. 117 of 1998.
- 8.3.5 Within **one hundred and twenty calendar days (120) days** of the date of issue of this report, conduct an internal audit in respect of the RDP housing projects in Dutywa, Extension 8, establish whether there are other RDP houses that were not allocated to their rightful owners and are illegally occupied and provide a detailed plan on how the Municipality is going to address and rectify the position, in line with the requirement that people's needs must be responded as per section 195(1)(e) of the Constitution.


## The Head of the Department for Human Settlements

8.3.6 Within **one hundred and twenty (120) calendar days** of the date of issue of this report, assist the Municipality in conducting door-to-door verification, where required by the Municipality, in line with the provisions of section 41(1)(h)(i) of the Constitution which encourages all spheres of government to co-operate with one another, assisting and supporting one another.

## 9. MONITORING

9.1 The Municipal Manager to provide a report to the Public Protector on the implementation of the remedial action within sixty (60) calendar days from the date of this report.

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.



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**ADV KHOLEKA GCALEKA**  
**ACTING PUBLIC PROTECTOR**  
**OF THE REPUBLIC OF SOUTH AFRICA**  
**DATE: 29 SEPTEMBER 2023**

*Assisted by: Adv Deon Barnard*

*Executive Manager: PII Inland*