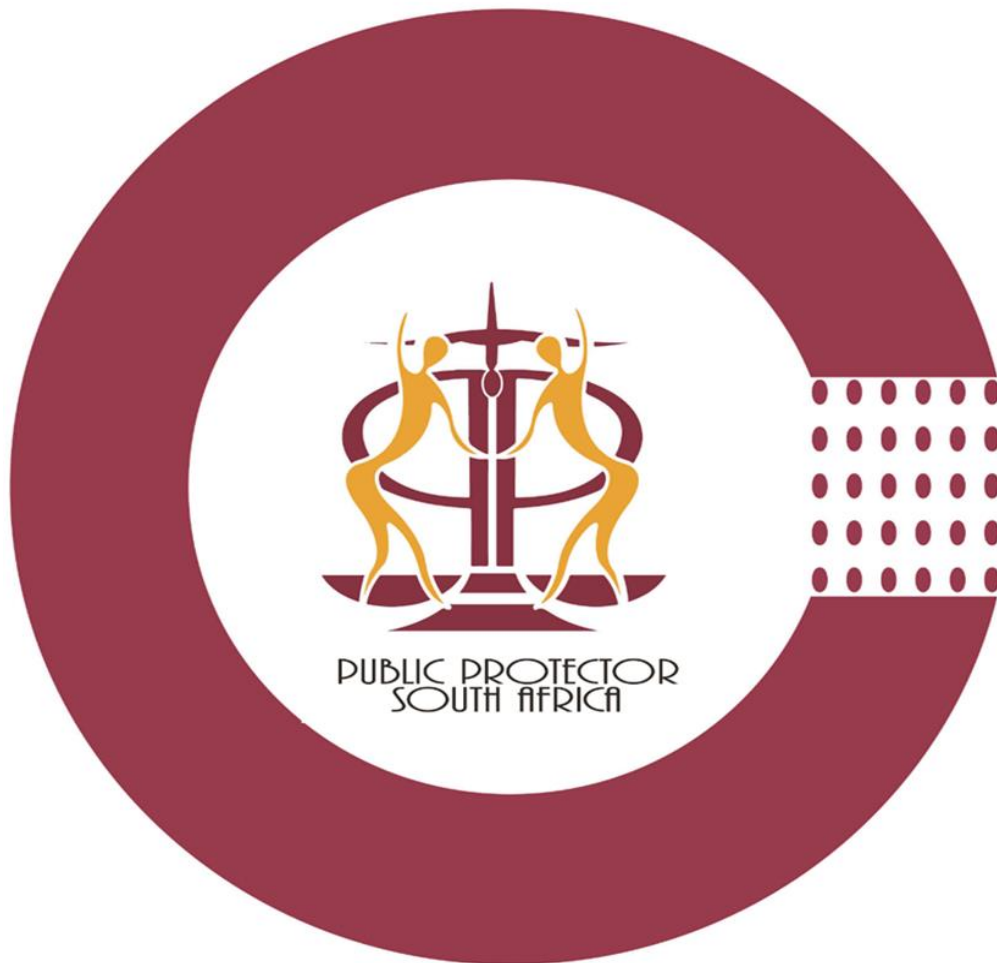


**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE  
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF  
THE PUBLIC PROTECTOR ACT, 1999**



**REPORT NO. 21 OF 2023/2024**

**ISBN NUMBER: 978-1-7764603-5-9**

**INVESTIGATION INTO ALLEGATIONS OF UNLAWFUL RE-ALLOCATION OF ERF  
4770 IN REFENGGOTSE, DENYSVILLE BY THE FUNCTIONARIES OF  
METSIMAHOLO LOCAL MUNICIPALITY**

## TABLE OF CONTENTS

<b>INDEX</b>	<b>DESCRIPTION</b>	<b>PAGE</b>
	<b>LIST OF ACRONYMS AND ABBREVIATIONS</b>	<b>3</b>
<b>1.</b>	<b>INTRODUCTION</b>	<b>4</b>
<b>2.</b>	<b>THE COMPLAINT</b>	<b>5</b>
<b>3.</b>	<b>POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR</b>	<b>5</b>
<b>4.</b>	<b>ISSUE IDENTIFIED FOR INVESTIGATION</b>	<b>6</b>
<b>5.</b>	<b>THE INVESTIGATION</b>	<b>7</b>
<b>6.</b>	<b>THE DETERMINATION OF THE ISSUE IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS</b>	<b>8</b>
<b>7.</b>	<b>OBSERVATIONS</b>	<b>15</b>
<b>8.</b>	<b>INTERVENTION</b>	<b>16</b>
<b>9.</b>	<b>CONCLUSION</b>	<b>16</b>

## LIST OF ACRONYMS AND ABBREVIATIONS

<b>ACRONYMS / ABBREVIATIONS</b>	<b>DESCRIPTION</b>
<b>Constitution</b>	The Constitution of the Republic of South Africa, 1996
<b>Complainant</b>	J Senokoane
<b>Erf</b>	Erf 4770 Refengkgotse, Denysville
<b>Municipal Manager</b>	Adv. LMA Mofokeng
<b>Municipality</b>	Metsimaholo Local Municipality
<b>Public Protector Act</b>	Public Protector Act, 1994
<b>Public Protector</b>	Public Protector of the Republic of South Africa

## 1. INTRODUCTION

- 1.1 This is a report of the Public Protector issued in terms of section 8(1) of the Public Protector Act, 1994, which provides that “*The Public Protector may, subject to the provisions of subsection (3), in the manner he or she deems fit, make known to any person any finding, point of view or recommendation, in respect of a matter investigated by the Public Protector*”.
- 1.2 This Report relates to an investigation into allegations of unlawful re-allocation of Erf 4770 in Refenggotse, Denysville by the functionaries of Metsimaholo Local Municipality (the Municipality).
- 1.3 The report is submitted in terms of sections 8(1) read with section 8(3) of the Public Protector Act, which empowers the Public Protector to make known the findings of an investigation, to affected parties for such persons to note the outcome of the investigation and to implement the recommendations, where applicable:
- 1.3.1 Adv. LMA Mofokeng, the Municipal Manager; and
- 1.3.2 Mr J Senokoane, the Complainant.
- 1.4 The Public Protector’s mandate is derived from section 182(1) of the Constitution of the Republic of South Africa (the Constitution) and the Public Protector Act, 1994 (the Public Protector Act), to promote accountability, transparency and fairness in the public sector. The Public Protector continuously reviews and monitors the information gathered from complaints lodged with the office, with the view to identifying the most probable underlying root causes of the problems, complaints and undesired events within relevant public bodies or authorities.
- 1.5 The aim is to formulate and establish corrective actions to at least mitigate, if not eliminate, those root causes and to produce significant long-term improvements in public administration.
- 1.6 The point of departure is that, any complaint might be a symptom of an underlying organisational failure, *inter alia* in areas such as systems,

procedures and human error. By addressing the underlying deficiencies in the systems that are the causes of the complaints, the Public Protector aims to reduce the number of individual complaints, in turn, working collaboratively with stakeholders to get the problems resolved and provide constructive feedback that will enable it to address the root causes of complaints and prevent recurrence.

## **2. THE COMPLAINT**

2.1 The complaint was lodged with the Public Protector on 10 January 2023, by Mr Jonas Senokoane (the Complainant).

2.2 In essence, the Complainant alleged that:

2.2.1 On 17 May 2019, he was allocated Erf 4770 Refengkgotse, Denysville (the Erf) by the Municipality and a Residential Occupation Right Certificate (PTO) was issued to him;

2.2.2 He erected a shack on the Erf, but in 2020 when he sent his nephew to go check the Erf, he found someone else residing on it. The person residing on the Erf indicated that it was allocated to him by the Municipality;

2.2.3 He then approached the Municipality on numerous occasions from 2020 to 2022, but officials of the Municipality failed to assist him; and

2.3 The Municipality did not inform him that the Erf was reallocated to another person.

## **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 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) directs that the Public Protector has the additional powers and functions prescribed by national legislation.

3.4 Section 6(4)(c)(ii) of the Public Protector Act provides that, the Public Protector *“shall be competent at any time prior to, during or after an investigation, if he or she deems it advisable, to refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting from or make any other appropriate recommendation he or she deems expedient to the affected public body or authority.”*

3.5 The Public Protector Act further confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

3.6 The Municipality is an organ of state in terms of section 239 of the Constitution and its 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.

3.7 The Public Protector’s powers and jurisdiction to investigate this matter, was not disputed by the Municipality.

#### **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 unlawfully reallocated Erf 4770 in Refengkgotse, Denysville to another person, despite issuing the Complainant with a PTO, and if so, whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, and maladministration in terms of sections 6(4)(a)(i) of the Public Protector Act, 1994.

## **5. THE INVESTIGATION**

### **5.1 The Investigation Process**

5.1.1 The investigation was conducted in terms of section 182(1) of the Constitution read with sections 6 and 7 of the Public Protector Act. 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.

5.1.2 The investigation process included correspondences exchanged with the Municipality and the Complainant. A meeting was also held by the Municipality with the Complainant. Documents obtained during the course of the investigation were analysed and evaluated, including consideration and application of the relevant law and prescripts.

### **5.2 The approach to the investigation**

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

5.2.1.1 What happened?

5.2.1.2 What should have happened?

5.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to improper conduct and/or maladministration?

5.2.2 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 functionaries of the Municipality unlawfully re-allocated Erf 4770 in Refengkgotse, Denysville, despite issuing the Complainant with a PTO and if so, whether such conduct therefore constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in terms of sections 6(4)(a)(i) of the Public Protector Act, 1994.

### **5.3 Key sources of information**

- 5.3.1 Complaint form, dated 10 January 2023;
- 5.3.2 Allegations letter to Adv. LMA Mofokeng, the Municipal Manager, dated 26 January 2023;
- 5.3.3 Response from the Municipality, dated 09 February 2023;
- 5.3.4 Response and minutes of the meeting held by the Municipality and the Complainant on 23 February 2023; and
- 5.3.5 Copy of the reallocation of the site to Mr Senokoane.

### **5.4 Legislation and other prescripts**

- 5.4.1 Constitution of the Republic of South Africa, 1996.
- 5.4.2 Public Protector Act, 1994.

## **6. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSION MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS**

- 6.1 **Whether the functionaries of the Municipality unlawfully reallocated Erf 4770 in Refengkgotse, Denysville, despite issuing the Complainant with a PTO, and if so, whether such conduct constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution, and maladministration in terms of sections 6(4)(a)(i) of the Public Protector Act, 1994**



*Common cause*

- 6.1.1 On 17 May 2019, he was allocated Erf 4770 Refengkgotse, Denysville (the Erf) by the Municipality and he was issued with a PTO.

*Issue in dispute*

- 6.1.2 The issue for the Public Protector's determination is whether the functionaries of the Municipality unlawfully reallocated the Erf, despite issuing the Complainant with a PTO.

*Complainants' version*

- 6.1.3 The Complainant alleged that he is the rightful occupant of the Erf as he was issued with a PTO by the Municipality, however, the Municipality unlawfully reallocated the Erf to another person and failed to inform him of the reallocation.

*The Municipality's version*

- 6.1.4 The Public Protector sent an allegations letter dated 26 January 2023 to Adv. LMA Mofokeng, the Municipal Manager (the Municipal Manager). The Municipal Manager responded to the allegations in a letter dated 09 February 2023, stating that:

- 6.1.4.1 According to the Municipality's records the Erf was allocated to Chasane Andries on 9 December 2013 who later transferred it to the Complainant on 17 May 2019;

- 6.1.4.2 Subsequently due to the Erf being unoccupied, the Municipality received inquiries/applications for the site. The Municipality conducted numerous site inspections, in order to amongst other reasons, meet with the Complainant to determine his intentions regarding the site, however, the opportunity never presented itself;

- 6.1.4.3 Based on the above, the Municipality reallocated the Erf to the current occupant for residential purposes as the Erf was not occupied for a lengthy period of time and posed a risk of land invasion;
- 6.1.4.4 The Municipality failed to notify the Complainant of its intention to re-allocate the Erf, as they could not reach him;
- 6.1.4.5 The Municipality apologises for the inconvenience caused to the Complainant as a result of the lack of assistance to him from the functionaries of the Municipality; and
- 6.1.4.6 The Municipality is committed to assisting the Complainant in resolving the matter.

*Meeting between the Municipality and the Complainant*

- 6.1.5 A meeting was scheduled between the Municipality and the Complainant on 23 February 2023.
- 6.1.6 In a letter dated 01 March 2023 to the Public Protector, the Municipality indicated that it successfully engaged the Complainant on 23 February 2023.
- 6.1.7 The following is noted from the minutes of the meeting dated 23 February 2023, between the Municipality and the Complainant:
  - 6.1.7.1 The Complainant was allocated the Erf by the Municipality and occupied the Erf, but later vacated it with the intention to construct a house;
  - 6.1.7.2 The Complainant was unable to construct the house as initially planned due to losing his job as a result of the COVID-19 pandemic;
  - 6.1.7.3 The Municipality reallocated the Erf to another person after she enquired about the Erf and it being unoccupied for more than a year;
  - 6.1.7.4 The Municipality cannot reallocate the Erf back to the Complainant as the other person has already been issued with a title deed for the Erf;

- 6.1.7.5 Both the Municipality and Complainant conceded to the procedural irregularities regarding the matter;
- 6.1.7.6 The Complainant conceded that he did not notify the Municipality that he vacated the site, however, he indicated that he was not aware of such a requirement;
- 6.1.7.7 The Municipality conceded that it also failed to notify the Complainant in the original PTO that he had a responsibility to notify the Municipality should he vacate the site with intentions to return;
- 6.1.7.8 The Municipality further conceded that it did not notify the Complainant of its intention to reallocate the site; and
- 6.1.7.9 Both parties agreed to work together to resolve the matter by allocating the Complainant an alternative site.

*Further correspondence from the Municipality*

- 6.1.8 On 04 May 2023, the Municipality submitted a copy of the letter dated 03 May 2023 to the Public Protector that was sent to the Complainant informing him that he had been allocated an alternative site at 5159 Thembakubheka in Refenggotso.
- 6.1.9 On 5 May 2023, the Investigation Team informed the Complainant of the letter submitted by the Municipality. The Complainant confirmed that he visited the municipal office to formally accept the offer for the alternative site.

*Application of the relevant law*

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

- 6.1.15 The Constitution is the supreme law of the Republic of South Africa and any law inconsistent with it, is invalid<sup>1</sup>. Section 195(1) of the Constitution lays down the basic values and principles governing public administration as follows:

---

<sup>1</sup> Section 2 of the Constitution.

- (1) *“Public administration 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) *...;*
  - (c) *....;*
  - (d) *....;*
  - (e) *People’s needs must be responded to, and the public be encouraged to participate in policy making;*
  - (f) *Public administration must be accountable;*
  - (g) *Transparency must be fostered by providing the public with timely, accessible and accurate information;*
  - (h) *...*

(2) *The above principles apply to-*

- (a) *administration in every sphere of government;*
- (b) *organs of state; and*
- (c) *public enterprises.”*

6.1.16 Section 237 of the Constitution states that *“All constitutional obligations must be performed diligently and without delay”*.

### **The Promotion of Administrative Justice Act 3 of 2000 (PAJA)**

6.1.17 In terms of section 1 of PAJA *“administrative action”* is defined as any decision taken, or any failure to take a decision by an organ of state, when exercising a power in terms of the Constitution or a provincial constitution; or exercising a public power or performing a public function in terms of any legislation; or which adversely affects the rights of any person and which has a direct, external legal effect.

6.1.18 Section 3(1) provides that administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.

6.1.19 Section 3(2)(b) provides that in order to give effect to the right to procedurally fair administrative action, an administrator, subject to subsection (4) must give a person referred to in subsection (1) adequate notice of the nature and purpose of the proposed administrative action; a reasonable opportunity to make representations; a clear statement of the administrative action; adequate notice of any right of review or internal appeal, where applicable; and adequate notice of the right to request reasons in terms of Section 5.

**Policy on service delivery: *Batho Pele* principles**

6.1.20 The White Paper on Transforming Public Service Delivery issued by the Government in 1997 identified eight *Batho Pele* Principles for transforming public service delivery. The principles relevant to the present complaint are:

6.1.21 Courtesy: Public servants have to remember that they are employed to help the people and to give them access to the services that are their rights.

6.1.22 Information: All citizens should be given full information about the services that they have a right to get.

6.1.23 Best Value: This principle includes giving customers the best service we can using all our resources.

6.1.24 Customer Impact: Impact means looking at the benefits which we have provided for our customers both internal and external.

6.1.25 Redress: This principles stipulates that when people do not get what they are entitled to from the Public Service, they have a right to redress. Thus requires that the public servant should immediately apologise to the affected people and also tell them what solution they are offering to their problem.

## *Analysis*

- 6.1.26 The evidence at the disposal of the Public Protector indicates that the Complainant was allocated the Erf on 17 May 2019 and thereafter took occupation of the Erf.
- 6.1.27 When the Complainant vacated the Erf, he did not notify the Municipality of his intention to return, as he was not aware of this requirement. The PTO did not state that the Complainant had a responsibility to notify the Municipality of his occupational intentions pertaining to the Erf.
- 6.1.28 The Municipality conducted sites visits in an attempt to consult the Complainant regarding his intentions, however, the Municipality was unable to get hold of the Complainant, and later re-allocated the Erf, after receiving enquires about it being unoccupied for more than a year.
- 6.1.29 The Complainant was unable to get assistance from the Municipality regarding the matter, despite approaching the Municipality on numerous occasions from 2020 to 2022.
- 6.1.30 The Municipality is a public administration authority envisaged in terms of section 195 of the Constitution and is required to promote and maintain a high standard of professional ethics, transparency and accountability when rendering services to the public. However, in this instance the Municipality did not inform the Complainant that he had the responsibility to notify the Municipality should he vacate the site, nor did the Municipality notify the Complainant of its intention to re-allocate the site.
- 6.1.31 Whilst the Municipality has conceded that it inconvenienced the Complainant by failing to assist him, the delay to rectify the situation is not in accord with the provisions of section 195(e) of the Constitution which enjoins state organs to respond to people's needs and section 237 of the Constitution which imposes a duty on state officials to perform their constitutional obligations diligently and without delay. Furthermore, the failure by the Municipality to advise the Complainant about the implications of vacating the site without informing the Municipality and to timeously address his complaint is contrary to the Batho

Pele principle requiring public servants to provide full information to all citizens and to give customers the best service, using all resources.

- 6.1.32 The Municipality was also obliged to provide the Complainant with adequate notice of its intention to reallocate the Erf to another person and the reasons for such a decision as well as a reasonable opportunity to make representations as prescribed in section 3(2)(b) of PAJA.

### *Conclusion*

- 6.1.33 Based on evidence at the Public Protector's possession, it is concluded that the functionaries of the Municipality reallocated the Erf, despite issuing the Complainant with a PTO, without informing the Complainant of its intention prior to implementing this decision.
- 6.1.34 On the strength of the evidence obtained during the investigation and the application of the legal framework to the facts of the matter, the Municipality did not fulfil its constitutional obligations and the provisions of PAJA when it failed to inform the Complainant about the requirements when vacating the Erf and reallocating same.
- 6.1.35 The Municipality further delayed to address the Complainant's complaint, despite him having been raising the matter with the Municipality since 2020.

## **7. OBSERVATIONS**

- 7.1 The PTO issued by the Municipality does not contain any clause which requires the occupant of the site to notify the Municipality of the intention to vacate the site, or the implication that would result should the occupant vacate the site.
- 7.2 As a result of the occupants being unaware of this requirement, the Municipality assumes the site to be permanently vacated and reallocates it.
- 7.3 Through the intervention of the Public Protector, communication between the Municipality and the Complainant was established. This intervention has ultimately resulted in the Municipality allocating another vacant site to the Complainant.

## 8. INTERVENTION

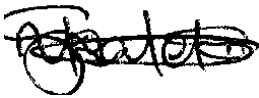
8.1 It is therefore recommended, in terms of section 6(4)(c)(ii) of the Public Protector Act, that:

### **The Municipal Manager**

8.1.1 To include in the PTO specific clauses which specify the obligations of both parties, in respect of occupants vacating the site for a certain period and the Municipality's right to reallocate the site.

## 9. CONCLUSION

9.1 The Public Protector considers this matter as finalised and cannot take the matter any further. Should any party wish to challenge this decision they are at liberty to explore legal remedies at their disposal.



---

**ADV KHOLEKA GCALEKA**  
**ACTING PUBLIC PROTECTOR**  
**OF THE REPUBLIC OF SOUTH AFRICA**  
**DATE: 29 SEPTEMBER 2013**

*Assisted by: Ms Vanessa Mundree*  
*Provincial Representative: Free State*