

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1)
OF THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

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**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION
IN THE ALLOCATION AND REGISTRATION OF RECONSTRUCTION AND
DEVELOPMENT PROGRAMME (RDP) HOUSES BY THE MPUMALANGA
DEPARTMENT OF HUMAN SETTLEMENTS**

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LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS / ABBREVIATIONS	DESCRIPTIONS
ADR	Alternative Dispute Resolution
AHoD	The Acting Head of the Department of Human Settlements
Constitution	The Constitution of the Republic of South Africa, 1996
Department	Mpumalanga Department of Human Settlements
HSS	Housing Subsidy System
RDP	Reconstruction and Development Programme
Public Protector Act	Public Protector Act, 1994
Public Protector	Public Protector of South Africa

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, 1994 (the Public Protector Act).
- 1.2 The report is submitted in terms of section 8(1) read with section 8(3) of the Public Protector Act, which empowers the Public Protector to make known the findings and remedial action to the affected parties, including the Complainant, for such persons to note the outcome of the investigation and to implement the remedial action, where applicable.
- 1.3 The complaint was resolved through mediation and conciliation, in terms of section 6(4)(b)(i) of the Public Protector Act.
- 1.4 The findings and remedial actions of the Public Protector are as a result of the outcome of the mediation and conciliation process.
- 1.5 A copy of the report is provided to the Complainant, Mr A Grobbelaar, who is acting on behalf of Ms Regina Sophie Radebe (Ms Radebe) and to the Mpumalanga Department of Human Settlements.
- 1.6 The report relates to an investigation into allegations of maladministration in the allocation and registration of the Reconstruction and Development Programme (RDP) houses by the Mpumalanga Department of Human Settlements, where the RDP house was built on Stand Number 4937 Botleng Extension 04, Delmas.

2. THE COMPLAINT

- 2.1 The complaint was lodged with the Public Protector by Mr A Grobbelaar (the Complainant), acting on behalf of Ms Radebe on 16 March 2022.

2.2 The Complainant, in essence alleged that:

2.1.1. During the year 1997, Ms Regina Sophie Radebe applied for an RDP house with the Mpumalanga Provincial Department of Housing and Land Administration, which is now called the Department of Human Settlements and her application was approved. A house was built on Stand No. 4937, Botleng Ext 4, Delmas, Mpumalanga;

2.1.2. Before she could be issued with a “happy letter” to accept occupancy, her house was illegally occupied by one Mr Moelamedi. His application for an RDP house was also approved and built around the same year, in 1997, at Stand No. 5019, Botleng Ext 4, Delmas;

2.1.3. The Contractor by the name of Vipcon (Pty) Ltd, allocated Ms Radebe the RDP house built on Stand No. 5019, Botleng Ext 4, Delmas, where she has been residing ever since; and

2.1.4. Mr Moelamedi passed away on 02 February 2005 and survived by his daughter, Ms Refiloe Moelamedi. The daughter approached Ms Radebe in 2017 and she demanded that Ms Radebe should vacate the RDP house on Stand No. 5019, Botleng Ext 4, Delmas, because it is registered in her late father’s name.

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 South Africa, 1996 (the Constitution) to strengthen constitutional democracy through amongst others, 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) take appropriate remedial action”.*

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

3.4 The Public Protector’s powers are regulated and amplified by the Public Protector Act which states, amongst others, that the Public Protector has the powers to investigate and redress maladministration and related improprieties in the conduct of state affairs.

3.5 Section 6(4)(b)(i) of the Public Protector Act provides that *“the Public Protector shall, be competent to endeavour, in his or her sole discretion, to resolve any dispute or rectify any act or omission by mediation, conciliation or negotiation”*

3.6 Section 6(9) of the Public Protector Act, 1994 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 (2) years from the occurrence of the incident or matter concerned”.*

3.7 Since the incident or matter concerned occurred more than two years prior to the reporting of the matter to the Public Protector, the Public Protector has exercised her discretion in terms of section 6(9) of the Public Protector Act to entertain the complaint based on the following special circumstances as envisaged in Rule

10(1) of the Public Protector Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018, as amended (the Rules):

- a) The Complainant provided sufficient and compelling information of alleged or suspected improper or prejudicial conduct, such as communication between the Complainant's attorneys and the Municipality.
- b) The Complainant provided a reasonable explanation for the delay in reporting the matter to the Public Protector in that she has been engaged in continuous efforts to resolve the matter since the date of occurrence.
- c) The alleged failure by the Department to ensure that Ms Radebe was either allocated her rightful house at Stand No. 4937, Botleng Ext 4, or alternatively that she was lawfully made the rightful owner of the RDP house she is currently occupying, at Stand No. 5019, Botleng Ext 4, is still continuing. The Public Protector also formed a view, based on the information presented, that circumstances might be prejudicial to the Complainant if she is constantly threatened with eviction from the house she is occupying as it is registered in someone else's name.
- d) It was therefore in the interest of justice and good governance for the Public Protector to exercise her discretion by accepting this matter.

3.8 The Mpumalanga Department of Human Settlements is an organ of state and its conduct amounts to conduct in state affairs, and as a result, the Public Protector is satisfied that the complaint falls within her competency to conduct an investigation as envisaged in section 182(1)(a) of the Constitution and section 6(4) of the Public Protector Act.

3.9 The Public Protector's powers and jurisdiction to investigate this matter was not disputed by the Mpumalanga Department of Human Settlements.

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 Mpumalanga Department of Human Settlements failed to properly allocate Ms Radebe an RDP house, Number 4937, Botleng Ext 4, Delmas after her application was approved and a house built and if so, whether such conduct constitutes improper conduct in terms of section 182(1) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994.

5. THE INVESTIGATION

5.1 Methodology

5.1.1 The investigation is conducted in terms of section 182 of the Constitution and 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 how to resolve a dispute of alleged improper conduct or maladministration. Section 6 of the Public Protector Act authorises the Public Protector to resolve a matter or remedy an act or omission through Alternative Dispute Resolution (ADR) measures such as conciliation, mediation and negotiation.

5.1.3 The complaint was classified as a Service Delivery matter capable of resolution by way of a conciliation or mediation process in line with section 6(4)(b)(i) of the Public Protector Act, in order to help the parties reach a settlement.

5.1.4 The outcome of the mediation was for the Complainant to consider the offer made by the Department to rectify the Housing Subsidy System (HSS) Records in the

2022/2023 financial year. The Department will further petition the Deeds Registrar with a view to effect the transfer of Erf 5019 Botleng Extension 4, from Mr Moelamedi in favour of Ms Radebe.

5.2 Approach to the investigation

5.2.1 The approach to the investigation included the exchange of documents, analysis of the relevant documentation and consideration and application of the relevant laws, regulatory framework and prescripts.

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

- (a) What happened?
- (b) What should have happened?
- (c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration, abuse of power or other improper conduct?
- (d) 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 they 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 independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the Department improperly allocated and registered Ms Radebe's house to another person, resulting in her being allocated an RDP house which does not belong to her in terms of the HSS.

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 Department of

Human Settlements to prevent improper conduct and/or maladministration as well as prejudice.

- 5.2.5 The question regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and maladministration; what it would take to remedy the wrong or, where appropriate, to place Ms Radebe as close as possible to where she would have been had the Department complied with the regulatory framework setting the applicable standards for good administration.

6. MEDIATION AND CONCILIATION

- 6.1 Having considered the evidence at hand against the above regulatory framework, the Public Protector decided to resolve the matter through a mediation and conciliation process in accordance with section 6(4)(b)(i) of the Public Protector Act.
- 6.2 The outcome of the above-mentioned mediation and conciliation is recorded in the attached Settlement Agreement, facilitated by the Public Protector and concluded between the Complainant (representing Ms Radebe, the beneficiary) and the Department, duly represented by Ms N.H. Zitha (Ms Zitha), in her capacity as the Acting Head of the Department of Human Settlements.

7. SETTLEMENT AGREEMENT

- 7.1 It is common cause that Ms Radebe's subsidy application was approved during the year 1997. On or about 1999, her house was built by the developer registered as Vipcon Pty Ltd, on Stand No. 4937, Botleng Ext 4, Delmas.
- 7.2. It is not in dispute that her house was illegally occupied by one Mr Moelamedi, whose application for an RDP house was also approved and his house was built around the same period at Stand No. 5019, Botleng Ext 4, Delmas.

7.3. Ms Radebe was then allocated the RDP house built for Mr Moelamedi on Stand No. 5019, Botleng Ext 4, Delmas, by the Contractor Vipcon (Pty) Ltd, where she has been residing ever since.

7.4. The parties have agreed to rectify the omission as follows:

7.4.1. The Department shall petition the Deeds Registrar with a view to effect the transfer of Stand No. 5019 Botleng Extension 4, from Mr Moelamedi to Ms Radebe, and also to ensure that the HSS Records are rectified in the 2022/2023 financial year.

8. THE APPLICABLE LEGAL PRESCRIPTS

8.1 Key laws and policies taken into account to determine if there had been maladministration by the Department and prejudice to Ms Radebe, were principally those imposing administrative standards that should have been complied with, by the Department when it failed to ensure that Ms Radebe was correctly allocated the right RDP house and that it was registered and handed over to her.

8.2 The following key legislation influenced the process followed in this report:

The Constitution of the Republic of South Africa 1996

8.2.1 Section 195 of the Constitution makes provision for the principles of good administration in all spheres of government. The Department's conduct thus needs to be tested against these administrative principles. The following are, amongst others, provisions of section 195(1):

“(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...;*
- (f) *Public administration must be accountable;*
- (g) *Transparency must be fostered by providing the public with timely, accessible and accurate information..."*

8.2.2 The Department was expected to maintain a high standard of professional ethics when it dealt with the Complainant's matter. It was further expected of the Department to respond to Ms Radebe's enquiries when she enquired about when her approved stand and house would be registered in her name. In line with Batho Pele Principles, which require public servants to maintain a high service standards and if the standard is not kept, to provide the customer with an explanation (Principle 2). Transparency would be fostered if the Department responded promptly to the Complainant's enquiries. The Department was also expected to conduct itself in an accountable manner. However, this has not been the case, considering the manner in which it dealt with the Complainant's matter.

8.2.3 The Department's failure to ensure that Ms Radebe is provided with ownership of an RDP house, is inconsistent with the principles espoused in section 195(1) of the Constitution.

8.2.4 Section 26(1) provides that "*everyone has the right to have access to adequate housing.*" Subsection (2) further provides that: "*the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right.*"

8.2.5 In this particular matter, the Department has an obligation to register the RDP house to reflect the details of Ms Radebe.

The Housing Act, 1997

8.2.6 Section 7(1) of the Act provides that “*every provincial government must do everything in its power to promote and facilitate the provision of adequate housing in its province within the framework of national housing policy.*”

8.2.7 According to this section, the Department is required to provide Ms Radebe with adequate housing. Therefore, the Department was expected to take all reasonable steps to ensure that Ms Radebe’s constitutional right to access to adequate housing was complied with by ensuring that the constructed and completed RDP house for her was rightfully allocated and registered in her name and to ensure further that she physically take occupation of the house.

8.2.8 The Act, therefore, creates a legal obligation for the Department to do everything in its power to promote and facilitate the provision of adequate housing, especially to approved beneficiaries such as Ms Radebe.

8.2.9 The Department allowed the service provider to effect the construction and conveyancing services including the registration of Title Deeds, which led to the misallocation of stands between two beneficiaries. As a result, the Department abdicated its responsibilities under section 26(1) of the Constitution and section 7(1) of the Housing Act.

9. CONCLUSION

9.1 The Mpumalanga Department of Human Settlements failed to properly allocate an RDP house to Ms Radebe that was built for her.

- 9.2 Ms Radebe's subsidy application was approved during the year 1997, and by 1999 her house was built by the developer registered as Vipcon Pty Ltd, on Stand No. 4937, Botleng Ext 4, Delmas, Mpumalanga.
- 9.3 The subsidy was approved, the RDP house was constructed and completed, however, the stands were misallocated between Ms Radebe and Mr Moelamedi. The Department confirmed during mediation that it will ensure that Ms Radebe is given lawful ownership of the RDP house she is currently occupying after being registered with the Deeds Registry and also on the HSS portal.
- 9.4 The Settlement Agreement concluded between the Complainant on behalf of Ms Radebe and the Department, in accordance with section 6(4)(b)(i) of the Public Protector Act, constitutes a binding agreement.

10. REMEDIAL ACTION

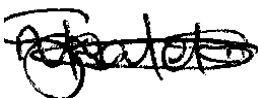
- 10.1 The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action with a view of redressing the conduct referred to in this report.
- 10.2 In the matter of the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* ([2016] ZACC 1 at para 76 and 105) the Constitutional Court held that the remedial action taken by the Public Protector has a binding effect.
- 10.3 Having regards to the evidence, the regulatory framework determining the standard that the Department should have complied with and the Settlement Agreement dated 17 February 2023 concluded between the parties, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution, as agreed by the parties to the Settlement Agreement:

The Acting Head of Department

- 10.3.1 Within ninety (90) calendar days of this report, to ensure that registration of the RDP house on Stand No. 5019 Botleng, Extension 4, in the name of Ms Radebe is effected by the Deeds Registrar and that the HSS is accordingly rectified; and
- 10.3.2 Within thirty (30) calendar days after the registration and handover of the Title Deed to Ms Radebe, provide the Public Protector with proof of such registration and ownership of the house by Ms Radebe.

11. MONITORING

- 11.1 The Acting Head of Department must within thirty (30) calendar days of this report, submit to the Public Protector, an Implementation Plan of the remedial action contained in paragraph 10.3.1 and 10.3.2 above; and
- 11.2 The Acting Head must within one hundred (100) calendar days of this report, submit a close out report, providing proof of the implementation of the remedial action to the Public Protector.



ADV KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR OF
THE REPUBLIC OF SOUTH AFRICA
DATE: 31 MARCH 2023

Assisted by: Adv De Waal

Acting Executive Manager: PII Inland