



PUBLIC PROTECTOR
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OPENBARE BESKERMER • UMKHUSELI WABANTU • UMIKELI WABANTU

NATIONAL OFFICE
PRIVATE BAG X677 PRETORIA 0001 • HILLCREST OFFICE PARK, 175 LUNNON STREET, HILLCREST, 0083
TEL: (012) 366 7000 FAX: (012) 362 3473

Please quote this reference in your reply: Report No. 3 of 2010/11

14 June 2010

Mr PA Phoku
146 Kwazamokuhle
Middleburg
1098

Dear Mr Phoku

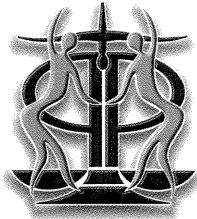
COMPLAINT REGARDING FAILURE OF STEVE TSHWETE LOCAL MUNICIPALITY TO ASSIST WITH THE ACQUISITION OF A TITLE DEED

Please be advised that the investigation into your complaint has been concluded.

A report on the matter is attached hereto for your information.

Best wishes

ADV TN MADONSELA
PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA



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14 June 2010

Mr J Mthembu
246 Kwazamokuhle
Middleburg
1098

Dear Mr Mthembu

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Enquiries: Adv E M Masilela
Tel 012 366 7100
Fax 086 626 0777

14 June 2010

Mr Madala Masuku
MEC for the Department of Human Settlement
Building no 6
Extension 2
No. 7 Government Boulevard
Riverside Park
NELSPRUIT

Dear Mr Masuku

REPORT NO. 3 of 2010/11: REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF POOR SERVICE DELIVERY BY THE STEVE TSHWETE MUNICIPALITY IN FAILING TO ASSIST THE BENEFICIARIES OF LOW COST SUBSIDY HOUSES WITH THE ACQUISITION OF TITLE DEEDS

Attached hereto is my report on an investigation into allegations of maladministration and undue delay relating to the acquisition of title deeds for Messer's P A Phoku and M J Mthembu.

Your attention is directed to our recommendations in paragraph 7. Please keep us informed of the progress made with regard to the implementation of the said remedial action.

Best wishes

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Enquiries: Adv E M Masilela
Tel 012 366 7100
Fax 086 626 0777

14 June 2010

Cllr E F Mathebula
The Speaker
Steve Tshwete Local Municipality
Corner Kerk Street and Wonderers Avenue
Middleburg
1050

Dear Cllr Mathebula

REPORT NO. 3 of 2010/11: REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF POOR SERVICE DELIVERY BY THE STEVE TSHWETE MUNICIPALITY IN FAILING TO ASSIST THE BENEFICIARIES OF LOW COST SUBSIDY HOUSES WITH THE ACQUISITION OF TITLE DEEDS

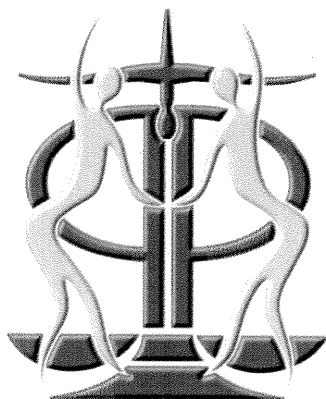
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Best wishes

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PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA

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



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO. 3 OF 2010/11

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF POOR SERVICE DELIVERY BY THE STEVE TSHWETE MUNICIPALITY IN FAILING TO ASSIST THE BENEFICIARIES OF LOW COST SUBSIDY HOUSES WITH THE ACQUISITION OF TITLE DEEDS

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Executive Summary

- (i) The Public Protector investigated complaints that were received from Messrs P A Phoku and MJ Mthembu (the Complainants) against the Steve Tshwete Municipality (the Municipality) in the Mpumalanga Province. The first Complainant, Mr Phoku, alleged that ever since he was allocated a low cost subsidy house in 2000 he had tried to obtain a Title Deed for the property from the Municipality without success. The second Complainant, Mr Mthembu, complained that the Municipality failed to transfer the Title Deed of an RDP house that was allocated to him in 1999 to his name.

- (ii) The investigation revealed that:
 - (a) The first Complainant, Mr PA Phoku was allocated an RDP house in 2000 and that after almost 8 years the Municipality had still not furnished him with a Title Deed to the property; and
 - (b) The RDP house that was allocated to Mr Mthembu in 1999 was already registered in the name of another person and was one of a number of houses that were not allocated correctly. The Municipality had failed to assist in the transfer of the properties to the lawful occupants.

- (iii) The remedial action to be taken by the Municipal Manager is to take urgent steps to:
 - (a) Attend to the registration of stand 4292 Kwazamokuhle Extension 6 in Mr Phoku's name;
 - (b) Implement the resolution of the Mayoral Committee MO2/11/2008 taken on 20 November 2008 regarding Erven 2806, 2809 and 2876 Kwazamokuhle, Extension 4, without delay; and

- (c) It is recommended that the Municipal Manager in terms of Section 182(1)(c) of the Constitution and Section 6(4)(c)(ii) of the Public Protector Act, take steps to:

Ensure that beneficiaries of RDP houses are assisted in obtaining Title Deeds to their properties within a reasonable time after taking lawful occupation.

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF POOR SERVICE DELIVERY BY THE STEVE TSHWETE MUNICIPALITY IN FAILING TO ASSIST THE BENEFICIARIES OF LOW COST SUBSIDY HOUSES WITH THE ACQUISITION OF TITLE DEEDS

1. INTRODUCTION

- 1.1 This report is submitted to Mr P A Phoku and Mr M J Mthembu, the Member of the Executive Council responsible for Human Settlement in the Mpumalanga Provincial Government and the Council of the Steve Tshwete Municipality 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 It deals with an investigation into allegations that the Steve Tshwete Local Municipality (the Municipality) had failed to assist beneficiaries of the government's low cost subsidy houses built in terms of the Reconstruction and Development Programme (RDP) to obtain Title Deeds to their properties.

2. THE COMPLAINTS

- 2.1 Two complaints were lodged during an outreach clinic conducted by the Public Protector in Kwazamokuhle Township, Hendrina on 27 August 2007.
- 2.2 Mr P A Phoku (the First Complainant) of Stand No 4292 Ext 6 Kwazamokuhle alleged that he was allocated a low cost subsidy house in 2000 and that he had on numerous occasions approached the Municipality for a Title Deed without success.

2.3 Mr MJ Mthembu (the Second Complainant) alleged that the Municipality allocated him a low cost subsidy house on stand no 2876 Kwazamokuhle Ext 4 in 1999. He stated that it later transpired that stand 2876 was already registered in the name of another person. He allegedly approached the Municipality to transfer the stand to his name without success.

2.4 The Public Protector decided to intervene because it was evident that both Complainants had, over the years, raised their complaints with the Municipality without achieving any positive results.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINTS

3.1 The institution of the Public Protector was established in terms of Chapter 9 of the Constitution as one of a number of the state institutions supporting constitutional democracy. The operational requirements of the Public Protector are provided for by the Public Protector Act.

3.2 Section 6(4) of the Public Protector Act, provides that the Public Protector has authority to investigate, among other things, any act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person.

3.3 The findings of an investigation by the Public Protector shall, when he or she deems it fit but as soon as possible, be made available to the Complainant and to any person implicated thereby.

3.4 The allegations made by both Complainants against the Municipality fall within the jurisdiction of the Public Protector.

4. THE INVESTIGATION

4.1 The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act and comprised the following:

4.1.1 Assessment of the complaint; and

4.1.2 Correspondence and meetings with Municipal officials.

5. CORRESPONDENCE WITH THE MUNICIPALITY

5.1 With regards to the First Complainant's matter, a written enquiry was sent to the Municipal's Chief Housing Officer on 27 September 2007 to which he failed to respond. Follow-up letters and telephonic reminders were sent to the Chief Housing Officer.

5.2 On 3 April 2008 the Municipality responded in a letter from Ms F E Phiri, the Municipal Executive Manager of Public Services. It was stated that the legal section of the Department of Local Government and Housing had appointed a service provider, Sisonke Development Planners, to register housing beneficiaries in Ezamokuhle Extension 6. The First Complainant's name was on the list that had been forwarded to the service provider.

5.3 Regarding the enquiry concerning the Second Complainant's matter, Ms Phiri reported in a letter of 6 May 2008 that:

“The responsibility of the registration process in Kwazamokuhle Ext. 4 was allocated to Grinaker LTD and the Birman & Serfontein Attorneys. There was a misallocation of houses to beneficiaries by these parties according to municipal records and the deeds office evaluation roll. The misallocation was as follows:

Stand No. 2876 was registered in Ms T S Masango but allocated to Mr M J Mthembu.

Stand No. 2806 was registered in Mr M J Mthembu but allocated to R T Mahlangu.

Stand No. 2809 was registered in Mr R T Mahlangu but allocated to Ms T S Masango.

The Attempts to resolve the problem through the services of Birman and Serfontein Attorneys had not borne fruit.

The attorneys had advised the Municipality that all beneficiaries involved were required to visit the offices of the conveyancers in order to resolve the problem. The process to correct the situation could not proceed due to one of the affected beneficiaries failing to co-operate with the conveyancers.”

- 5.4 On 13 August 2008 a meeting was held with Ms F A Phiri, in order to gain clarity on the reports by the Municipality and to expedite finalisation of the investigation.
- 5.5 It transpired that the appointed service provider had failed to discharge the mandate to register the beneficiaries of low cost subsidy houses in Kwazamokuhle Extension 6.
- 5.6 A proposal regarding the possible transfer of the stands that were not allocated correctly in Kwazamokuhle Extension 4, to the current occupants of those stands, was to be tabled at a Mayoral Committee scheduled for 14 August 2008.
- 5.7 Mr Andries Masilela of the Municipality was to convey the resolution of the Mayoral Committee to the Public Protector by 18 August 2008, but failed to do so.

- 5.8 In a letter dated 15 September 2008 Ms Phiri reported that a meeting was held on 17 June 2008 between the municipal officials and owners of the stands that were not allocated correctly in Kwazamokuhle Extension 4, wherein it was agreed to resolve the matter by recommending to Council that:
- 5.8.1 The occupants of stands 2806, 2809 and 2876 Kwazamokuhle Ext 4 remain in the houses they were currently occupying;
- 5.8.2 The Council's attorneys be instructed to rectify the error with regard to the Title Deeds to the stands; and
- 5.8.3 The Council, as the party responsible for the error in the allocation of the low cost subsidy houses, bear the costs to be incurred in the matter.
- 5.9 With regards to the Second Complainant's matter, it was reported that the process of applying for a new Title Deed was underway through the office of Mr Andries Masilela.
- 5.10 In a letter of 25 November 2008 Mr Masilela reported that the Mayoral Committee, in a meeting of 20 November 2008 per item MO2/11/2008, resolved as follows:

"The occupants of Erven 2806, 2809 and 2876 Kwazamokuhle Extension 4 remain in the RDP houses they were presently occupying;

The Council's attorneys should be instructed to rectify the error with regard to the Title Deeds of Erven 2806 and 2876 Kwazamokuhle Extension 4 as their accounts were up to date;

The Council as the party responsible for the error in allocation of the RDP houses born (sic) the costs to be incurred in resolving the matter;

An arrangement be made with the owner of Erf 2809 Kwazamokuhle Extension 4 to pay the outstanding rates and taxes; and

Once the owner of Erf 2809 Kwazamokuhle Extension 4 has paid the outstanding rates and taxes, the Council attorneys should be instructed to rectify the title deed of Erf 2809 Kwazamokuhle Extension 4 at the cost of the Council.”

6. KEY FINDINGS

- 6.1 The Municipality failed to timeously assist the First Complainant to acquire a Title Deed to stand 4292 Kwazamokuhle Extension 6.
- 6.2 The Municipality failed to effectively and timeously follow up with the Department of Local Government and Housing on the issue of the stands that were not allocated correctly in Kwazamokuhle Extension 4.

7. REMEDIAL ACTION

- 7.1 Specific Remedial Action to be taken

In terms of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, the remedial action to be taken by the Municipal Manager is to take urgent steps to:

- 7.1.1 Attend to the registration of stand 4292 Kwazamokuhle Extension 6 in the First Complainant's name;
- 7.1.2 Implement the resolution of the Mayoral Committee of 20 November 2008 referred to in paragraph 5.10 above.

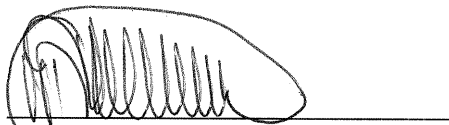
7.2 Additional Recommendation

It is recommended that the Municipal Manager, in terms of Section 182(1)(c) of the Constitution and Section 6(4)(c)(ii) of the Public Protector Act, take steps to:

- 7.2.1 Ensure that beneficiaries of RDP houses are assisted in obtaining Title Deeds to their properties within a reasonable time after taking lawful occupation.

8. CONCLUSION

- 8.1 The Municipal Manager should report to the Public Protector on the implementation of the above remedial action and recommendation within three months of receipt of this report.



ADV TN MADONSELA
PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA

DATE: 04 June 2010

Assisted by: Adv EM Masilela, Senior Investigator