

**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 UNDUE DELAY BY THE
CITY OF TSHWANE TO RESOLVE A COMPLAINT RELATED TO AN ILLEGAL
OCCUPATION OF A RECONSTRUCTION AND DEVELOPMENT PROGRAMME
(RDP) HOUSE IN MAPOBANE APPROVED FOR MRS GLORIA LEHOBYE**

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Executive Summary

- (i) This is my report 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.
- (ii) The report relates to an investigation into allegations of undue delay by the City of Tshwane Metropolitan Municipality (CTMM) to resolve a complaint of illegal occupation of a Reconstruction and Development Programme (RDP) house which was approved for Ms Gloria Lehobye (the Complainant).
- (iii) In the main, the Complainant alleged that she applied for an RDP house, Erf 3476 Block U, Mabopane, which was approved by the Gauteng Department of Human Settlements (GDHS) in 2001. However, when she wanted to occupy the house allocated to her, which was to be handed over by the CTMM, someone by the name of Esther Ndlovu, had already moved into her house.
- (iv) The Complainant is unemployed, renting a room, and when she reported the matter to the CTMM officials, she was told that they do not know what to do and to date the CTMM had failed to resolve the matter.
- (v) **Based on an analysis of the allegation, I identified the following issues to inform and focus the investigation:**
 - (a) Whether an RDP house, 3476 Block U, Mabopane, which was approved for the Complainant, was illegally occupied by Ms Esther Ndlovu, and if so, whether the CTMM unduly delayed to resolve the complaint of illegal occupation lodged by the Complainant, and if so, whether this constitutes maladministration;

- (b) Whether the conduct of the CTMM officials improperly prejudiced the Complainant as envisaged in section 6(4) (a) (v) of the Public Protector Act.
- (vi) A formal investigation was conducted through meetings and interviews with the Complainant and the officials from the CTMM, as well as the analysis and application of all relevant laws, policies and related prescripts.
- (vii) Key laws and policies taken into account to determine if there had been undue delay by the CTMM and prejudice to the Complainant were principally those imposing administrative standards that should have been complied with by the CTMM and its officials when a complaint of illegal occupation of an RDP house which was approved for the Complainant was reported. Those are the following:
 - (a) The Constitution of the Republic of South Africa, Act 108 of 1996 (the Constitution).
 - (b) The Public Protector Act 23 of 1994;
 - (c) Batho Pele Principles.
- (viii) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the complaint received as against the concomitant responses from CTMM, I make the following findings:
 - (a) **Regarding whether a RDP house, situated at 3476 Block U Mabopane, that was approved for the Complainant was illegally occupied by Ms Esther Ndlovu and if so, whether the CTMM unduly delayed to resolve the complaint of illegal occupation lodged by the Complainant:**
 - (aa) The allegation herein is substantiated. The CTMM's conduct in this regard amounts to maladministration and undue delay as envisaged in section 6(4)(a)(i) and (ii) of the Public Protector Act and improper conduct as

envisaged in section 182(1) of the Constitution. The CTMM confirmed that according to its records, the Complainant applied for an RDP house, situated at Erf 3476 Block U Mabopane, which was approved in 2001. However, the said property is currently illegally occupied by Ms Esther Sonto Ndlovu. The CTMM further stated that Ms Esther Sonto Ndlovu is supposed to be occupying Erf 3344, Block U Mabopane, which is approved and registered in her name. The CTMM failed to ensure that every person allocated a house in Block U Mabopane occupies the correctly allocated house. Furthermore, the CTMM delayed to resolve the complaint and provide the Complainant with alternative accommodation since it became aware of the illegal occupation of the said house allocated to her.

(b) Regarding whether the conduct of the CTMM officials improperly prejudiced the Complainant as envisaged in section 6(4)(a)(v) of the Public Protector Act:

- (aa) The allegation herein is substantiated. The CTMM improperly handled Ms Lehobye's complaint of illegal occupation of an RDP house, 3476 Block U, Mabopane which is illegally occupied by Ms Esther Sonto Ndlovu.
- (bb) The Complainant is improperly prejudiced in that she is unemployed and currently renting a room and cannot occupy the house allocated to her as it is illegally occupied by another person. Furthermore, she cannot apply for another RDP house or be allocated another house as her details appears on the housing database of the Department of Human Settlements as a beneficiary.

(ix) Remedial action

The appropriate remedial action that I am taking in terms of section 182(1) (c) of the Constitution, with a view to remedying the improper prejudice and maladministration referred to in this report, is the following:

The City Manager to:

- (a) Ensure that, within fourteen (14) working days of the date of this report, a written apology is sent to the Complainant for the improper prejudice caused to her over the years;
- (b) Conduct an investigation to establish the cause of these illegal occupations of RDP houses in the area and take appropriate action against the municipal officials responsible for this undue delay and maladministration in the allocation of the RDP houses
- (c) Take steps to ensure that the Complainant is placed in her allocated RDP house or to provide her with alternative permanent accommodation, within three (3) months from the date of this report; and
- (d) Ensure that an action plan indicating how the remedial action will be implemented is to be provided to the Public Protector, within thirty (30) working days of the date of this report.

REPORT ON INVESTIGATION INTO ALLEGED UNDUE DELAY BY THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY TO RESOLVE A COMPLAINT OF ILLEGAL OCCUPATION OF AN RDP HOUSE.

1. INTRODUCTION

- 1.1 This is my report as 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(3) of the Public Protector Act to the following people to note the outcome of my investigation: -
 - 1.2.1 The Executive Mayor of the City of Tshwane Metropolitan Municipality (CTMM) Councillor Stephens Mogalapa;
 - 1.2.2 The City Manager of CTMM, Dr Moeketsi Emmanuel Mosola, and
- 1.3 The Complainant, Ms Gloria Lehobye.
- 1.4 This report relates to an investigation into allegations of undue delay by the CTMM to resolve a complaint of illegal occupation of an RDP house which was approved for the Complainant.

2. THE COMPLAINT

- 2.1 When the complaint was lodged by Ms Gloria Lehobye, (the Complainant) on 11 December 2015, she alleged that -
- 2.2 She applied for an RDP house at unit 3476 Block U, Mabopane, which was approved by the Gauteng Department of Human Settlements in 2001 in her

favour. However, when she wanted to occupy the house allocated to her, which house was to be handed over by the CTMM, someone by the name of Ms Esther Ndlovu had already moved into her house;

- 2.3 The illegal occupant, Ms Esther Ndlovu, is the owner of another RDP house situated at 3344 Block U, Mabopane, and she had the title deed to that house. She (Esther Ndlovu), apparently rented out that house to tenants and further, that she is a government employee;
- 2.4 The Complainant is unemployed, renting a room, and when she reported the matter to the CTMM officials, she was told that they do not know what to do and to date the CTMM had failed to resolve the matter.
- 2.5 In response to the allegations of undue delay by the CTMM to resolve a complaint of illegal occupation of an RDP house which was approved for the Complainant, the CTMM conceded to the allegations in a response letter dated 18 October 2016. The CTMM stated that the Complainant applied for an RDP house situated at Erf 3476 Block U, Mabopane, which application was approved in 2001. However, the CTMM stated that the said property is currently illegally occupied by a certain Ms Esther Sonto Ndlovu. Ms Esther Sonto Ndlovu is supposed to be occupying Erf 3344, Block U, Mabopane, which is approved and registered in her name, but her house is also illegally occupied by other unknown person(s).
- 2.6 The CTMM also stated that the illegal occupation of the house situated in Block U, Mabopane, forms part of the two hundred and sixty one (261) houses that are illegally occupied in that area since the year 2001, and that the matter can only be resolved once the illegal occupants and/or officially approved beneficiaries not in occupation of their houses are given alternative accommodation which the CTMM currently cannot provide.

- 2.7 On 28 March 2019, a notice in terms of section 7 (9) (a) of the Public Protector Act was sent to the City Manager advising him of my intended findings and affording him an opportunity to provide me with further evidence, failing which I would issue a report regarding the complaint. The City Manager, however, failed to respond to the notice in terms of section 7 (9) (a) of the Public Protector Act.

3 POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT

- 3.1 The Public Protector is an independent constitutional body 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 additional powers and functions prescribed by legislation.

- 3.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

- 3.5 In the Constitutional Court, in the matter of *Economic Freedom Fighters v Speaker of the National Assembly and Other; Democratic Alliance v Speaker of the National Assembly and Others* (CCT143/15; CCT/15)[2016] ZACC11; 2016 (5) BCLR 618 (CC); 2016 (3) SA580 (CC) (31 March 2016), Chief Justice Mogoeng stated the following with own emphasis, when confirming the powers of the public protector:
- 3.5.1 The remedial action taken by the Public Protector has a binding effect. *“When remedial action is binding, compliance is not optional, whatever the reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences”* (para 73);
- 3.6 Complaints are lodged with the Public Protector **to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles** (para 65);
- 3.6.1 An appropriate remedy must mean **an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced** (para 67);
- 3.6.2 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, **she is constitutionally empowered to take action that has the effect, if it is the best attempt at curing the root cause of the complaint** (para 68);

- 3.6.3 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard of their **nature, context and language**, to determine what course to follow (para 69);
- 3.6.4 Every complaint **requires a practical or effective remedy** that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effects it has on the person, body or institution it is addressed to (para 70);
- 3.6.5 The Public Protector's power to take remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the **subject-matter of investigation and the type of findings made** (para 71);
- 3.6.6 Implicit in the words "*take action*" is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measures. And "*action*" presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in the words suggests that **she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is the power that is by its nature of no consequence** (para 71(c));
- 3.6.7 **She has the power to determine the appropriate remedy and prescribe the manner of its implementation** (para 71(d)); and
- 3.6.8 "Appropriate" means nothing less than effective, suitable, proper or **fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption**, in a particular case (paragraph 71(e)).
- 3.7 In the matter of the **President of the Republic of South Africa v Office of the Public Protector and Others, Case no 91139/2016 (13 December 2017)**, the Court held as follows:

- 3.7.1 The Public Protector has power to take remedial action, which include instructing the Members of the Executive including the President to exercise powers entrusted on them under the constitution where that is required to remedy the harm in question (para 82);
- 3.7.2 The Public Protector, in appropriate circumstances, have the power to direct the president to appoint a commission of enquiry and to direct the manner of its implementation. Any contrary interpretation will be unconstitutional as it will render the power to take remedial action meaningless or ineffective (para 85 and 152);
- 3.7.3 There is nothing in the Public Protector Act or Ethics Act that prohibit the Public Protector from instructing another entity to conduct further investigation, as she is empowered by section 6(4)(c)(ii) of the Public Protector Act (para 91 and 92);
- 3.7.4 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers (para 100 and 101):
- (a) Conduct an investigation;
 - (b) Report on that conduct; and
 - (c) To take remedial action.
- 3.8 The Public Protector is constitutionally empowered to take remedial action on the basis of preliminary findings or prima facie findings (para 104);
- 3.9 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court (para 105);

- 3.10 The fact that there is no firm findings on the wrong doing, this does not prohibit the Public Protector from taking remedial action. The Public Protector's observations constitute prima facie findings that point to serious misconduct (para 107 and 108);
- 3.11 Prima facie evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (para 112).
- 3.12 Regarding the exercise of my discretion in terms of section 6(9) to entertain matters which arose more than two (2) years from the occurrence of the incident, and in deciding what constitute '*special circumstances*', some of the special circumstances that I took into account to exercise my discretion favourably to accept this complaint, includes the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether I would be able to successfully investigate the matter with due consideration to the availability of evidence and/or records relating to the incident(s); whether there are any competent alternative remedies available to the Complainants and the overall impact of the investigation; whether the prejudice suffered by the complainants persists; whether my refusal to investigate perpetuates the violation of section 195 of Constitution; whether my remedial action will redress the imbalances of the past. What constitutes as '*special circumstances*' depends on the merits of each case
- 3.13 The institution mentioned in this report is an organ of state and their conduct amounts to conduct in state affairs, as a result the complaint falls within the ambit of the Public Protector's mandate. Accordingly, the Public Protector has the power and jurisdiction to investigate and take appropriate remedial action in the matter under investigation.
- 3.14 The Public Protector's power and jurisdiction to investigate and take appropriate remedial action was not disputed by any of the parties.

4. THE INVESTIGATION

4.1 Methodology

4.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

4.1.2 The Public Protector Act confers on me the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration. Section 6 of the Public Protector Act gives me the authority to resolve a matter through Alternative Dispute Resolution (ADR) measures such as conciliation, mediation and negotiation.

4.1.3 The complaint was initially classified as a matter capable of resolution by way of a conciliation process or mediation in line with section 6(4)(b) of the Public Protector Act, 1994. However, after several attempts to conciliate the matter, it was escalated into an investigation.

4.2 Approach to the investigation

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?

4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amounts to improper conduct or maladministration?

- 4.2.1.4 In the event of improper conduct or maladministration what would it take to remedy the wrong occasioned by the said improper conduct or maladministration?
- 4.2.2 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. Evidence was evaluated and a determination made on what happened based on a balance of probabilities. In this particular case, the factual enquiry focused on whether and to what extent the CTMM unduly delayed to resolve a complaint of illegal occupation of an RDP house approved for Ms Gloria Lehobye (the Complainant).
- 4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the CTMM or organ of state to prevent maladministration and prejudice. In this case, key reliance was placed on legislation, prescripts and policies that regulate the standard that should have been met by CTMM to ensure that it acted fairly and responsibly to ensure that the Complainant was not improperly prejudiced.
- 4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration. Where a Complainant has suffered prejudice, the objective is to place him or her as close as possible to where they would have been had the CTMM or organ of state complied with the regulatory framework setting the applicable standards for good administration.
- 4.3 **Based on an analysis of the allegations, I identified the following issues to inform and focus this investigation:**
- 4.3.1 Whether an RDP house, 3476 Block U, Mabopane, which was approved for the Complainant, was illegally occupied by one Ms Esther Sonto Ndlovu, and whether

the CTMM unduly delayed to resolve the complaint of illegal occupation lodged by the Complainant; and if so, whether this constitutes maladministration;

4.3.2 Whether the conduct of the CTMM improperly prejudiced the Complainant as envisaged in section 6(4) (a) (v) of the Public Protector Act.

4.4 The Key Sources of Information

4.4.1 Documents

4.4.1.1 Copy of the Complainant's complaint form and supporting documentation;

4.4.1.2 Copy of the letter from CTMM dated, 18 October 2016, confirming the allegations made by the Complainant;

4.4.1.3 Copies of the documents received from the Complainant on 27 July 2017 confirming that she had been approved for Erf number 3476 Block U, Mabopane and that Ms. Esther Ndlovu, had been approved for Erf number 3344 Block U Mabopane; and

4.4.1.4 Copy of the letter from CTMM dated, 20 July 2018, stating that the CTMM had appointed a firm of attorneys to institute evictions with an urgent instruction to prioritise evictions on the two properties (Erf numbers 3476 and 3344 Block U, Mabopane).

4.4.2 Interviews and meetings conducted

4.4.2.1 Interview with the Complainant on 17 May 2016 and again on 25 January 2017;

- 4.4.2.2 Meeting with the officials from the CTMM on 13 November 2017, where they requested a letter that was sent by CTMM dated 18 October 2016 in order for them to follow up on the response;
- 4.4.2.3 Meeting held between the Public Protector and the CTMM on 16 July 2018; and
- 4.4.2.4 Meeting held between the Public Protector, the CTMM and the Gauteng Department of Human Settlements on 08 August 2018.

4.4.3 Correspondence sent and received

- 4.4.3.1 Copies of the letters from the CTMM responding to the enquiries of the Public Protector; and
- 4.4.3.2 Copies of email correspondence between the Public Protector, the CTMM and the Complainant.
- 4.4.3.3 I also provided CTMM with opportunities to take note of and provide additional information or evidence in respect of the issues that I identified in terms of section 7(9) of the Public Protector Act.

4.4.4 Legislation and other prescripts

- 4.4.4.1 The Constitution of the Republic of South Africa Act, 1996;
- 4.4.4.2 The Public Protector Act 23 of 1994.

4.4.5 Case law and articles:

4.4.5.1 The Constitutional Court decision in *Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal* (CCT 10/13) [2013] ZACC 49; 2014 (3) BCLR 333 (CC); (2014) 35 ILJ 613 (CC); 2014 (5) SA 579 (CC) (18 December 2013);

4.4.5.2 Batho Pele Principles.

5 THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1 Regarding whether an RDP house, situated at 3476 Block U Mabopane, that was approved for the Complainant was illegally occupied by one Ms Esther Ndlovu and if so, whether the CTMM unduly delayed to resolve the complaint of illegal occupation lodged by the Complainant

Common cause issues

5.1.1 It is common cause that the Complainant made allegations against the CTMM of undue delay to resolve this complaint since 22 January 2010. The CTMM confirmed the allegations in a letter dated 18 October 2016, that the Complainant applied for an RDP house situated at Erf 3476 Block U, Mabopane. This application was approved in 2001. However, the said property is currently illegally occupied by a certain Ms Esther Sonto Ndlovu.

5.1.2 The CTMM further stated that Ms Esther Sonto Ndlovu is supposed to be occupying Erf 3344, Block U, Mabopane, which is approved and registered in her name, but the house is also illegally occupied by other unknown person(s).

- 5.1.3 The CTMM, however, also stated that the illegal occupation of the house situated at Block U, Mabopane, forms part of two hundred and sixty one (261) houses that have been illegally occupied in that area since the year 2001, and that the matter can only be resolved once the illegal occupants and/or officially approved beneficiaries not in occupation of their houses are given alternative accommodation, which the CTMM currently cannot do.

Issues in dispute

- 5.1.4 The issue for my determination is whether the CTMM unduly delayed to resolve the complaint of illegal occupation of an RDP house allocated to the Complainant.
- 5.1.5 The CTMM does not dispute the delay in resolving the complaint of illegal occupation of an RDP house. However, it stated that the illegal occupation of the house in Block U, Mabopane forms part of 261 houses that have been illegally occupied in that area since the year 2001.
- 5.1.6 The CTMM further stated that the matter can only be resolved once the illegal occupants and/or officially approved beneficiaries not in occupation of their houses are given alternative accommodation which the CTMM currently does not have, hence the delay.

Application of the relevant law

- 5.1.7 Section 26 of the Constitution, Act 108 of 1996 (the Constitution), states that everyone has the right to have access to adequate housing. It further states that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- 5.1.8 Section 195 of the Constitution provides that public administration must be governed by the democratic values and principles enshrined in the Constitution,

including that a high standard of professional ethics must be promoted and maintained; give effect to good human resources management practices, provide services as good administration, respond to people's needs and be accountable. Whereas Principle 7 of the Batho Pele Principles provides that if the promised standard of service is not delivered, citizens should be offered an apology, a full explanation and a speedy and effective remedy, and when complaints are made, citizens should receive a sympathetic, positive response.

- 5.1.9 The Constitutional Court reiterated in the matter of *Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal (CCT 10/13) [2013] ZACC 49; 2014 (3) BCLR 333 (CC); (2014) 35 ILJ 613 (CC); 2014 (5) SA 579 (CC) (18 December 2013)* that when, as in this case, a responsible functionary is enlightened of a potential irregularity, section 195 lays a compelling basis for the founding of a duty on the functionary to investigate and, if need be, to correct any unlawfulness through the appropriate avenues. This duty is founded, *inter alia*, in the emphasis on accountability and transparency in section 195(1) (f) and (g) and the requirement of a high standard of professional ethics in section 195(1) (a) of the Constitution.

Conclusion

- 5.1.10 The Complainant alleged that she applied for an RDP house, which was approved in her favour in 2001. The CTMM did not dispute the allegations as it confirmed that according to its records, the Complainant's application was approved and she was supposed to be occupying Erf 3476 Bock U, Mabopane. The CTMM also confirmed that the said property is currently illegally occupied by one Ms Esther Sonto Ndlovu, as alleged by the Complainant.
- 5.1.11 The CTMM further confirmed that Ms Ndlovu is supposed to be occupying Erf 3344 Block U, Mabopane, which is approved and registered in her name, as

alleged by the Complainant, but her house is also illegally occupied by other unknown person(s).

5.1.12 The CTMM delayed to resolve the complaint which was reported to it by the Complainant on 22 January 2010 and after six (6) years (on 18 October 2016), the CTMM still stated that the illegal occupation of the Complainant's house, situated at Block U, Mabopane, forms part of 261 houses that are illegally occupied in that area since the year 2001. Furthermore that the matter can only be resolved once the illegal occupants and/or officially approved beneficiaries not in occupation of their houses, are given alternative accommodation which the CTMM currently does not have.

5.2 Regarding whether the conduct of the CTMM improperly prejudiced the Complainant as envisaged in section 6(4) (a) (v) of the Public Protector Act

Common cause issues

5.2.1 It is common cause that the Complainant applied for an RDP house, which was approved in her favour in 2001 by the Gauteng Department of Human Settlements. She was supposed to occupy the house allocated to her, which was to be handed over by the CTMM, however, she found that someone by the name of Ms Esther Sonto Ndlovu had already moved into her house. The Complainant is unemployed and has to rent a room as a place to stay. The Complainant had reported the matter to the CTMM and thereafter referred this matter to the Public Protector to intervene.

5.2.2 The Complainant cannot apply for an alternative RDP house, as she is already reflected as a beneficiary on the housing data base of the Department of Human Settlements.

5.3 Application of the relevant law

5.3.1. Section 195 of the Constitution provides the basic values and principles governing public administration.

5.3.2 The Constitutional Court reiterated in the matter of *Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal* (CCT 10/13) [2013] ZACC 49; 2014 (3) BCLR 333 (CC); (2014) 35 ILJ 613 (CC); 2014 (5) SA 579 (CC) (18 December 2013) that when, as in this case, a responsible functionary is enlightened of a potential irregularity, section 195 lays a compelling basis for the founding of a duty on the functionary to investigate and, if need be, to correct any unlawfulness through the appropriate avenues. This duty is founded, *inter alia*, in the emphasis on accountability and transparency in section 195(1) (f) and (g) and the requirement of a high standard of professional ethics in section 195(1) (a) of the Constitution.

5.3.3 Conclusion

5.3.4 The standards demanded of state organs per section 195 of the Constitution and the Constitutional Court decision in *Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal*, as stated in paragraph 5.3.2 above, apply to the CTMM. Although the CTMM investigated the allegations made by the Complainant of illegal occupation of her house, it failed to address and correct any unlawfulness through the appropriate avenues.

5.3.5 The Complainant suffered improper prejudice due to the undue delay by the CTMM to resolve her complaint of illegal occupation of an RDP house, situated at 3476 Block U, Mabopane which is illegally occupied by Ms Esther Sonto Ndlovu, in that she is still without a house, to date, after her application had been approved in 2001. Furthermore, she cannot apply for another RDP house or be allocated another house as she appears as a beneficiary on the housing

database of the Department of Human Settlements to already have benefited or been allocated a house.

6. FINDINGS

Having considered the evidence obtained during the investigation as against the relevant regulatory framework, I make the following findings:

6.1 Regarding whether an RDP house, situated at 3476 Block U Mabopane, that was approved for the Complainant was illegally occupied by Ms Esther Ndlovu and if so, whether the CTMM unduly delayed to resolve the complaint of illegal occupation lodged by the Complainant, I find that:

6.1.1 The allegation herein is substantiated.

6.1.2 The CTMM acknowledged that an RDP house, situated at 3476 Block U Mabopane, which was approved for the Complainant, is illegally occupied by Ms Esther Sonto Ndlovu, whose house is also illegally occupied by other unknown person(s).

6.1.3 The CTMM confirmed that according to its records, the Complainant applied for an RDP house, situated at Erf 3476 Block U Mabopane, which was approved in her favour in 2001. However, the said property is currently illegally occupied by Ms Esther Sonto Ndlovu. The CTMM further stated that Ms Esther Sonto Ndlovu is supposed to be occupying Erf 3344, Block U Mabopane, which is approved and registered in her name. The CTMM failed to ensure that every person allocated a house in Block U, Mabopane occupied the correctly allocated house.

6.1.4 The CTMM also stated that the illegal occupation of the house situated in Block U, Mabopane forms part of the 261 houses that are illegally occupied in that area since the year 2001, and that the matter can only be resolved once illegal

occupants and/or officially approved beneficiaries not in occupation of their houses are given alternative accommodation, which the CTMM currently does not have.

6.1.5 The CTMM failed to meet the standards required by section 195 of the Constitution, which makes provision that the public administration must be governed by the democratic values and principles enshrined in the Constitution including that a high standard of professional ethics must be promoted and maintained, give effect to good human resources management practices, provide services as good administration, respond to people's needs and be accountable. The CTMM failed to ensure that every person allocated a house in Block U Mabopane occupied the correct allocated house. Furthermore, the CTMM delayed to resolve the complaint and provide the Complainant with alternative accommodation since it became aware of the illegal occupation of the said house allocated to her.

6.1.6 The CTMM's conduct in this regard amounts to improper conduct in state affairs as envisaged in section 182(1) of the Constitution and maladministration and undue delay as envisaged in section 6(4)(a)(i) and (ii) of the Public Protector Act.

6.2 Regarding whether the conduct of the CTMM improperly prejudiced the Complainant as envisaged in section 6(4) (a) (v) of the Public Protector Act, I find that:

6.2.1 The allegation herein is substantiated. The CTMM improperly handled the Complainant's complaint of illegal occupation of an RDP house, 3476 Block U, Mabopane which is illegally occupied by Ms. Esther Sonto Ndlovu.

6.2.2 The conduct herein by the CTMM resulted in improper prejudice to the Complainant in that she is still to date without a house, which entitlement is confirmed by the CTMM. The said house is illegally occupied by another person,

Ms Esther Sonto Ndlovu, who is supposed to be occupying Erf 3344, Block U Mabopane, which is approved and registered in her name but her house, too, is also illegally occupied by other unknown person(s). Furthermore, the Complainant cannot apply for another house or be allocated another house as she appears on the housing database system of the Department of Human Settlements to already have benefited or been allocated a house.

- 6.2.3 As indicated above, the CTMM's conduct in this regard amounts to improper conduct in state affairs as envisaged in section 182 (1) of the Constitution and improper prejudice to the Complainant as envisaged in section 6 (4) (a) (v) of the Public Protector Act.

7. REMEDIAL ACTION

The appropriate remedial action that I am taking in terms of section 182(1)(c) of the Constitution, with a view to remedying the improper prejudice and maladministration referred to in this report, is the following: -

7.1 The City Manager to:

- 7.1.1 Ensure that, within fourteen (14) working days of the date of this report, a written apology is sent to the Complainant for the improper prejudice caused to her over the years;
- 7.1.2 Conduct an investigation to establish the cause of these illegal occupations of RDP houses in the area and take appropriate action against the municipal officials responsible for this undue delay and maladministration in the allocation of the RDP houses
- 7.1.3 Take steps to ensure that the Complainant is placed in her allocated RDP house or to provide her with alternative permanent accommodation, within three (3) months from the date of this report; and

- 7.1.4 Ensure that an action plan indicating how the remedial action will be is provided to the Public Protector, within thirty (30) days of the date of this report.

8. MONITORING

- 8.1 The City Manager must furnish a report on the state of affairs with regard to progress on providing the alternative accommodation, within sixty (60) days of issuing this report.
- 8.2 Unless the remedial actions taken by the Public Protector are reviewed and set aside by the Court of law, compliance is not optional and same must be complied with within the stated period.



ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 01 / 07 / 2019