

**REPORT BY THE PUBLIC PROTECTOR SUBMITTED TO  
PARLIAMENT IN TERMS OF SECTION 182(1)(b) OF THE  
CONSTITUTION, 1996 AND SECTION 8(2)(b) OF THE PUBLIC  
PROTECTOR ACT, 1994**

**REPORT NO 25  
(SPECIAL REPORT)**

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF IMPROPRIETY  
IN CONNECTION WITH THE SALE BY THE DEPARTMENT OF PUBLIC  
WORKS TO MS Z MBEKI OF ERF 1432, SUMMERSTRAND, PORT  
ELIZABETH**

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## **Executive summary**

The Office of the Public Protector investigated a complaint, lodged by a Member of Parliament, in connection with the sale by the Department of Public Works (the Department) to Ms Z Mbeki (the wife of the President) of Erf 1432, Summerstrand, Port Elizabeth (the property). It was alleged that the sale was improper and that the price paid for the property was below market value.

From the investigation, it appeared that the late Mr Mbeki (Ms Mbeki's father-in-law), a former Deputy President of the Senate, leased the property from the State for some time. His application to purchase the property from the Department, at open market value, was approved after a proper valuation was conducted. Mr Mbeki died before a deed of alienation could be signed and an enforceable contract of sale therefore never came into being.

Subsequent to the demise of Mr Mbeki, Ms Mbeki approached the Department with an application to purchase the property in order to secure a home for the surviving spouse, Mrs E Mbeki. The application was approved, subject to the condition that a personal servitude of usufruct is registered in favour of Mrs E Mbeki, against the title deed of the property. The deed of alienation was signed on 16 November 2001 and the property was registered in the name of Ms Mbeki, 7 months later. Media reports in September 2002 suggested that Ms Mbeki attempted to sell the property at twice the price she paid for it, shortly after it was registered in her name. However, according to the Department, Ms Mbeki indicated, prior to media enquiries, that Mrs E Mbeki was waiving her right in terms of the usufruct as she did not want to utilize the residence anymore.

When Ms Mbeki became the owner of the property, she obtained all the rights and privileges that accrue to any owner of an immovable property, subject to any conditions or limitations registered against the title deed. Her alleged decision to sell the property, at whatever price,

was therefore a right she was entitled to. As her ownership of the property is a private matter, any unjustified investigation of the reasons for and details of her decision to sell it on the open market would constitute an unlawful infringement of her constitutional right to privacy. No justification for an enquiry into this matter could be found. What the Public Protector had to and could consider was whether the sale of the property to her was irregular or improper.

In October 2002, Ms Mbeki confirmed that she instructed her attorneys to arrange for a reversal of the sale of the property, at the same price, on the basis of the waiver by her mother-in-law of her rights in terms of the usufruct. The property was sold back to the Department on 11 November 2002.

The Public Protector made the following key findings:

- The decision of the Minister to sell the property to the late Mr Mbeki was not unlawful or improper;
- The decision of the Minister to sell the property to Ms Mbeki was also in accordance with the powers conferred upon her by law and was properly executed and motivated;
- Ms Mbeki's efforts to purchase the property was clearly motivated by the wish of the late Mr Mbeki to secure a home for his wife and family;
- There was nothing improper in Ms Mbeki's selling of the property at a price different from what she paid for it; and

- As the sale of the property to Ms Mbeki was reversed on the same financial terms, the State suffered no prejudice;

# **REPORT ON AN INVESTIGATION BY THE PUBLIC PROTECTOR INTO ALLEGATIONS OF IMPROPRIETY IN CONNECTION WITH THE SALE BY THE DEPARTMENT OF PUBLIC WORKS TO MS Z MBEKI OF ERF 1432, SUMMERSTRAND, PORT ELIZABETH**

## **1. INTRODUCTION**

This report is submitted to Parliament in terms of section 182(1)(b) of the Constitution, 1996 and section 8(2)(b) of the Public Protector Act, 1994. It deals with an investigation by the Public Protector into allegations of impropriety in connection with the sale by the Department of Works to Ms Z Mbeki (Ms Mbeki), the President's wife, of a property known as erf 1432, Summerstrand, Port Elizabeth (the property).

## **2. BACKGROUND**

- 2.1 The investigation was the result of a complaint lodged with the Office of the Public Protector by a Member of Parliament, Mr J P I Blanche.
- 2.2 In his complaint, Mr Blanche referred to media reports in connection with the sale of the property from which it appeared that the transaction was perceived to be suspect. It was alleged that Ms Mbeki tried to sell the property at twice the price she paid for it in a "private deal" with the State, a month after it was registered in her name, and that it was sold to her at a price far below market value "without it going to tender".
- 2.3 It was also reported that subsequent to advertising the property for sale at a price of R875 000 in a local newspaper, Ms Mbeki withdrew it from the market and offered it back to the Department of Works for the original selling price of R440 000.

- 2.4 Apart from the issues raised by the media, Mr Blanche raised concerns about the propriety of the process that was followed in selling the property to Ms Mbeki and whether Mr Mbeki was entitled to purchase it at a special price simply because he was leasing it from the State.

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

- 3.1 The institution of the Public Protector was established in terms of Chapter 9 of the Constitution, 1996, as one of a number of bodies that support constitutional democracy. The operational requirements of the Office of the Public Protector are provided for by the Public Protector Act, 1994.
- 3.2 The Public Protector is appointed by the President after approval by the National Assembly of a candidate recommended by a joint committee. He/she is independent of government and any political party. The Public Protector receives complaints from aggrieved persons and institutions against government agencies and officials. He/she has the power to investigate these matters, to report on his/her findings and to take appropriate remedial action.
- 3.3 In terms of the Public Protector Act, 'appropriate remedial action' includes mediation, negotiation, conciliation, and the making of recommendations to the affected government agency on how any shortcomings found should be rectified and a recurrence of similar deficiencies could be prevented.
- 3.4 The Public Protector reports on the activities of his/her office to Parliament at least once a year. However, the Public Protector can report to Parliament on the findings of a particular investigation whenever he/she deems it necessary.

#### **4. THE INVESTIGATION**

4.1 The investigation of the allegations, referred to below, was conducted in terms of section 7 of the Public Protector Act, 1994.

4.2 It comprised of:

4.2.1 Consideration of the details of the complaints received and the reports by the media on the matter;

4.2.2 Comprehensive and detailed correspondence with the Department of Public Works during which voluminous documentation relevant to the matter concerned was submitted, studied and scrutinized;

4.2.3 Consultations with officials of the Department of Public Works; and

4.2.4 A study and consideration of the relevant provisions of the Constitution, 1996, and the relevant legislation regulating the alienation of State land.

#### **5. THE MATTERS INVESTIGATED**

In the main, the following matters were investigated:

5.1 The history of the property;

5.2 The value of the property at the time it was decided to sell it to Mr Mbeki;

5.3 The sale of the property to the late Mr Mbeki;

5.4 The sale of the property to Ms Mbeki; and



5.5 The reversal of the sale by Ms Mbeki.

## **6. THE HISTORY OF THE PROPERTY**

From the records of the Department of Public Works it appeared that:

- 6.1 The property originally belonged to the former Republic of Ciskei. After the advent of democracy in April 1994, it became the property of the State of the Republic of South Africa. It was made available to the Eastern Cape Provincial Government and utilized as an official residence of the Premier.
- 6.2 During the period that the property was utilized by the Eastern Cape Provincial Government, it was, erroneously, assumed that the Province had become the owner. In 1998 the Premier, acting on this assumption, decided that the property could be leased to Mr G Mbeki, (the then Deputy President of the Senate) and a formal agreement was signed.
- 6.3 Mr Mbeki subsequently indicated his desire to purchase the property. During the consideration of his application, it was discovered that ownership of the property was under the control of the National Government. Mr Mbeki's application was, consequently, referred to the national Department of Public Works for consideration.

## **7. THE LEGISLATIVE PRESCRIPTS REGULATING THE ALIENATION OF STATE LAND**

### **7.1 The State Land Disposal Act, 1961**

7.1.1 This Act regulates the disposal of certain State land. According to the Department of Public Works, it applied to the disposal of the property.

7.1.2 Section 2 provides that the President may, on such conditions and terms as he/she may deem fit, sell any State land on behalf of the State.

7.1.3 The powers and duties conferred upon the President by the Act can be (and obviously has been) delegated, in terms of section 6, to the Minister of Public Works (the Minister).

### **7.2 The Alienation of Land Act, 1981**

Section 2(1) of this Act provides that no alienation of land shall be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority.

## **8. THE VALUE OF THE PROPERTY**

In January 2001, the national Department of Public Works (the Department) commissioned an independent valuer, registered in terms of the Valuers Act, 1982, to assess the open market value of the property. It was determined at R440 000.

## **9. THE SALE OF THE PROPERTY TO THE LATE MR MBEKI**

- 9.1 According to the records of the Department, the Director-General, in response to Mr Mbeki's application, advised the Minister that the property was deemed superfluous in terms of the needs of the State and that it could be considered for disposal.
- 9.2 In terms of the policy of the Department on the disposal of superfluous State properties, it was, under normal circumstances, sold via public tender. However, in the case of State-owned residences, such property could be sold (at market value) directly to a public servant who occupied the property at the time of the decision to dispose thereof.
- 9.3 Mr Mbeki's application was considered on the basis that he was employed by Parliament as the Deputy President of the Senate at the time when he entered into the lease agreement with the Eastern Cape Provincial Government. He was (erroneously) regarded as a public servant for the purposes of his application conforming to the mentioned policies of the Department. On 24 July 2001, the Minister approved the out of hand sale of the property to Mr Mbeki at the determined market value of R 440 000, in terms of the provisions of the State Land Disposal Act, 1961.
- 9.4 A formal offer to sell the property to Mr Mbeki at the determined market value was accepted by him on 17 August 2001. In his letter of acceptance, Mr Mbeki indicated that Ms Mbeki would represent him in the finalization of the transaction.

9.5 A deed of alienation was drafted, but before it was signed, Mr Mbeki passed away. No enforceable contract of sale between Mr Mbeki and the Department was therefore concluded.

## **10 THE SALE OF THE PROPERTY TO MS MBEKI**

10.1 On 26 September 2001, Ms Mbeki wrote to the Director-General of the Department and, *inter alia*, stated:

“Mr Govan Mbeki died on the day before we could sign the Agreement of Sale. I shall nonetheless conclude the purchase through his estate to ensure continued accommodation for his surviving spouse and grandchildren.”

10.2 Attorneys representing Ms Mbeki wrote to the Director-General on 28 September 2001 stating that:

“As you know, it was always within the contemplation of the parties that the late G Mbeki would dispose of the said property to Mrs Z Mbeki on behalf of and for the benefit of Mrs Epainette Mbeki.

Our client accordingly wishes to exercise the undermentioned option:

1. Mrs Zanele Mbeki will purchase the said property directly from yourselves for the sum of R 440 000.00;
2. The said sum of R 440 000.00 is immediately available;
3. The amount excludes any/all legal transfer costs;

4. The property will therefore not form part of the Estate of the Late G Mbeki;
5. The sale of the property from yourselves to Mrs Z Mbeki is subject to the proviso that Mrs Epainette Mbeki enjoys the right to reside therein until she dies.
6. Such life usufruct in favour of Mrs Epainette Mbeki, can be registered against the Title Deed of the property.”

10.3 The Minister approved the application by Ms Mbeki in October 2001. The approval was granted in terms of section 2 of the State Land Disposal Act, 1961 and was made subject to the condition that a personal servitude in favour of Mrs Epainette Mbeki is registered against the title deed of the property.

10.4 From the investigation it was clear that the Minister’s decision was motivated by the following:

- 10.4.1 The late Mr Mbeki and his wife lawfully occupied the property at the time of his demise;
- 10.4.2 The property was regarded as superfluous for the needs of the State;
- 10.4.3 A decision to sell the property to Mr Mbeki had already been taken;
- 10.4.4 Mr Mbeki’s intention was to secure a home for his wife and his grandchildren;

10.4.5 Ms Mbeki clearly wanted to ensure the continued occupation of the residence by Mrs E Mbeki; and

10.4.6 The property was to be sold at an open market value.

## **11. THE PERSONAL SERVITUDE REGISTERED IN FAVOUR OF MRS E MBEKI**

11.1 The property was registered in the name of Ms Mbeki on 27 June 2002.

11.2 A Notarial Deed of Cession of Usufruct was registered against the title deed, in favour of Mrs E Mbeki.

11.3 It is trite law that a personal servitude, such as usufruct, is cancelled when the beneficiary expressly waives his/her rights in this regard.

## **12. THE ALLEGED ADVERTISING OF THE PROPERTY BY MS MBEKI AND THE SALE THEREOF BACK TO THE DEPARTMENT**

12.1 It was alleged in media reports that Ms Mbeki attempted to sell the property for almost twice the purchase price, a month after it was registered in her name. She apparently instructed an estate agent to handle the matter on her behalf.

12.2 After having been approached by the media in connection with the matter, Ms Mbeki, allegedly, decided to withdraw the

property from the open market and to sell it back to the Department at the price that she paid for it.

12.3 However, according to the Department, Ms Mbeki indicated to them, before any media enquiries were made, that Mrs E Mbeki no longer wished to utilize the residence and that the property could therefore be sold back to the Department.

12.4 On 7 October 2002, Ms Mbeki confirmed her intention to reverse the sale of the property, in writing. She wrote to the Director-General of the Department:

“This is to confirm that I have given instructions to attorneys Pillay Meyer Boqwana of Port Elizabeth to conclude the reversal of sale of Erf 1432 Summerstrand back to the Department of Public Works taking due account of the related expenses and interest loss during the transfer process.

Thanking you very much for the consideration that was given to the Late G A Mbeki’s wishes and his widow regarding that attachment of the house for her use, notwithstanding the fact that she eventually decided to waive that right.”

12.5 The property was sold back to the Department on 11 November 2002. It was done subject to a condition that the usufruct registered in favour of Mrs E Mbeki is cancelled. The State Attorney handled the transfer.

### **13. OBSERVATIONS AND FINDINGS**

The following observations and findings have been made from the investigation:

- 13.1 State land can be disposed of by the Minister, on behalf of the State, to any person or institution and on such conditions and terms she/he deems fit.
- 13.2 Any policy developed and applied by the Department in connection with the disposal of State land would be subject to the Minister's discretion to act in accordance with the general powers and duties conferred upon her/him by the provisions of the State Land Disposal Act, 1961.
- 13.3 There appears to have been a misconception on the part of officials of the Department that the property could be sold to the late Mr Mbeki in terms of the policies of the Department, on the basis of him having been a public servant. Mr Mbeki was formerly employed by Parliament and was not a public servant at the time the decision was taken to sell the property to him. Nevertheless, the Director-General recommended to the Minister that consideration be given to dispose of the property, in terms of the provisions of section 2(1) of the State Land Disposal Act, 1961, either to Mr Mbeki, out of hand at open market value, or by public tender in terms of the policies of the Department relevant to superfluous State-owned residences. The Minister approved the first recommendation.



- 13.4 Although a deed of alienation was drafted, it was never signed by Mr Mbeki or his agent (Ms Mbeki). The sale of the property to Mr Mbeki was therefore, in terms of the provisions of section 2(1) of the Alienation of Land Act, 1981, of no force or effect.
- 13.5 The value of the property was determined, at the request of the Department, by a valuer, registered in terms of the Valuers Act, 1982. It was sold to Mr Mbeki and later to Ms Mbeki for a price equal to the determined value. No reliable substance was provided for allegations that the property was sold below open market value.
- 13.6 After the demise of Mr Mbeki, Ms Mbeki initially indicated to the Department that she would conclude the purchase through the estate in the interest of the surviving spouse and Mr Mbeki's grandchildren. No indication could be found that she intended to represent the estate in this regard. These issues are, in any event, academic, as no executable agreement existed between Mr Mbeki and the Department, as indicated above.
- 13.7 Two days after her initial approach to the Department, Ms Mbeki's attorneys made an offer, on her behalf, to purchase the property "for the benefit of Mrs E Mbeki".
- 13.8 The Minister approved the sale to Ms Mbeki in terms of the provisions of the State Land Disposal Act, 1961. Her decision to do so was properly motivated.

13.9 The Deed of Alienation was signed on 16 November 2001. The property was only registered in the name of Ms Mbeki on 27 June 2002, i.e. more than 7 months later.

13.10 When Ms Mbeki became the owner of the property, she obtained all the rights and privileges that apply to any owner of fixed property, subject to any conditions or limitations registered against the title deed. Her alleged decision to sell the property, at whatever price, was therefore a right she was entitled to. As her ownership of the property is a private matter, any unjustified investigation of the reasons for and details of her decision to sell it on the open market would constitute an unlawful infringement of her constitutional right to privacy. No justification for an enquiry into this matter could be found. What the Public Protector had to and could consider was whether the sale of the property to her was irregular or improper. Nevertheless, the fact of the matter is that it was eventually sold back to the Department.

13.11 It appeared from the investigation that the reason why Ms Mbeki initiated a reverse of the sale of the property was that Mrs E Mbeki decided to waive her rights in terms of the registered usufruct. This happened approximately 10 months after the deed of alienation of the property was signed. From the investigation it is, furthermore, clear that Ms Mbeki's intention for purchasing the property was to secure a home for the family of the late Mr Mbeki, according to his wish. When Mrs E Mbeki decided that she did not want to live in the residence anymore, the reason for purchasing the property was cancelled, hence Ms Mbeki's

decision to sell it. She was, obviously, under the circumstances not obliged to sell it back to the Department.

13.12 During the investigation, the Director-General of the Department indicated that the Department is aware of possible misconceptions that could occur in respect of the policies of the Department and that consideration shall be given to review these policies to prevent any prejudice that could result from its application.

#### **14. KEY FINDINGS**

The Public Protector made the following key findings:

14.1 The decision of the Minister to sell the property to the late Mr Mbeki was not unlawful or improper;

14.2 The decision of the Minister to sell the property to Ms Mbeki was also in accordance with the powers conferred upon her by the law and was properly executed and motivated;

14.3 Ms Mbeki's efforts to purchase the property was motivated by the wish of the late Mr Mbeki to secure a home for his wife and family;

14.4 There was nothing improper in Ms Mbeki's selling of the property at a price different from what she paid for it; and

14.5 As the sale of the property to Ms Mbeki was reversed on the same financial terms, the State suffered no prejudice.

**MR M L MUSHWANA**  
**THE PUBLIC PROTECTOR OF**  
**THE REPUBLIC OF SOUTH AFRICA**  
**21 October 2003**