



METRO

BUILDING & CIVIL CONTRACTORS cc

9 RELTON STREET
SIDWELL
PORT ELIZABETH, 6001
☎ : 041 451 0088 / 09
FAX : 041 451 0098

CK 1989/10762/23

✉ 4254
KORSTEN
PORT ELIZABETH
6014

E-mail: metro2pe@mweb.co.za

04 March 2015

**THE PUBLIC PROTECTOR SOUTH AFRICA
EASTERN CAPE PROVINCIAL OFFICE
BHISHO
SOUTH AFRICA**

Dear Madam,

MOTHERWELL TJOKS HOUSING RECTIFICATION PROJECT- REQUEST FOR INVESTIGATION

Background

On or about 17 June 2010 Michael Gorgonzolo a Financial Officer of Nelson Mandela Bay Municipality advised David Toyis a then Acting Director for housing delivery in Nelson Mandela Bay Municipality (NMBM) of an available amount of R 1 131 373.00 when a cessionary agreement was going to be entered into between Abamelwane Contractors and Metro Builders for rectification of 49 defective houses that were built by others. I annex A.

On 19 March 2010 Metro Building and Civil Contractors (MBCC) and Abamelwane Construction entered into a cessionary agreement whereby MBCC would construct houses for the benefit of NMBM and in turn NMBM would make direct payments to MBCC for certified work. I annex B. On 23 June 2010, the NMBM acknowledged receiving a cession between MBCC and Abamelwane. I annex C.

Between July 2010 and June 2012, the officials of the Nelson Mandela Bay Municipality inspected and certified work on the 49 houses that had to be rectified as the work was continuously done by MBCC. This work was certified at all material times as work performed by MBCC.



METRO

BUILDING & CIVIL CONTRACTORS cc

9 RELTON STREET
SIDWELL
PORT ELIZABETH, 6001
☎ : 041 451 0088 / 09
FAX : 041 451 0098

CK 1989/10762/23

✉ 4254
KORSTEN
PORT ELIZABETH
6014

E-mail: metro2pe@mweb.co.za

NMBM made the following payments to MBCC for work done by MBCC:

1. R 315 404.24 on 22 December 2010,
2. R 306 462.12 on 14 October 2010,
3. R 85 489.00 on 06 September 2014,
4. R 162 957.00 on 15 September 2014.

At the time when the last payment was made all the work had been completed by MBCC. Works Completion Certificates shall be submitted at your request. The above amounts amount to R 870 312.35. This is despite the fact that the work was costed at R 1 131 373.00.

I also wish to stress the fact that between 14 October 2010 and 06 September 2014, MBCC had struggled to receive payment from NMBM without any sound and reasonable explanation from NMBM. This forced MBCC to enquire as to why it suddenly became an issue for it to receive payment, in its search the MBCC found that an amount of R 188 608.16 had been paid to Nombriyti Construction from money that should have paid MBCC. I annex D. I am advised that Nombriyti construction had been paid in excess of R 800 000.00 in this project although the NMBM had acknowledged the cession between the original contractor and MBCC and had inspected all the houses and certified them in favour of MBCC and yet they paid some of the funds to another contractor that never did any work in this project and which in law could not have done any work subsequent to NMBM inspectors certifying the work in favour of MBCC. As a result of what appears to be mismanagement of subsidy funds and possible corruption, MBCC remains owed an amount of R 259 000.00.



METRO

BUILDING & CIVIL CONTRACTORS cc

9 RELTON STREET
SIDWELL
PORT ELIZABETH, 6001
☎ : 041 451 0088 / 09
FAX : 041 451 0098

CK 1989/10762/23

✉ 4254
KORSTEN
PORT ELIZABETH
6014

E-mail: metro2pe@mweb.co.za

I have escalated this matter to the City Manager. I annex E.

The City Manager responded to MBCC informing MBCC that it will be advised to submit revised invoice due to duplications in sites claimed. I annex F.

I indeed submitted a revised invoice on 19 December 2014 and yet MBCC remains unpaid without any sound explanation from the City Manager. I have then received a letter from Tony Anthony a junior official which contradicts what the City Manager had advised me on 18 December 2014. I annex G. I have since written to the City Manager enquiring whether the letter from Tony Anthony supersedes his letter as this is unheard of, the Accounting Officer is the Municipality after all according to my understanding and should not be unduly contradicted by his juniors and do nothing after that. I have not received any response from the City Manager.

I therefore request the Public Protector to investigate the following:

5. To investigate the reasons for NMBM to make a payment/s to Nombriyti Construction in circumstances where work had been performed by MBCC and duly inspected and certified by NMBM officials as work done by MBCC.
6. To investigate who in the NMBM authorised the payments to Nombriyti.
7. To investigate whether the City Manager had acted reasonable and within the confines of our laws when he wrote a letter to MBCC on 18 December 2014 and thereafter failing to ensure that MBCC is paid after it complied with the City Manager's letter.



METRO

BUILDING & CIVIL CONTRACTORS cc

9 RELTON STREET
SIDWELL
PORT ELIZABETH, 6001
☎ : 041 451 0088 / 09
FAX : 041 451 0098

CK 1989/10762/23

✉ 4254
KORSTEN
PORT ELIZABETH
6014

E-mail: metro2pe@mweb.co.za

8. Investigate whether the City Manager has not violated the MFMA or any other applicable legislation by failing to investigate a conduct where he was advised by officials of Human Settlements that MBCC could not be paid due to duplicate invoices and thereafter changing the goal post to false and baseless allegations of termination of the cession, and failing to investigate reports of corruption and misuse of subsidy funds.
9. To investigate in detail if who signed the work completion certificates that must have led to Nombriyti being paid in circumstances where MBCC did the work.
10. To investigate whether any work completion certificates were submitted in support of Nombriyti's invoices that led to Nombriyti being paid.

RELIEF SOUGHT

11. MBCC requests for a consideration of Remedial Actions with the effect that MBCC be paid for each and every house it had rectified and which it holds a works completion certificate in support of its claim PLUS interest from the date when MBCC should have received payment including on the amounts paid in 2014 as the work was completed in June 2012 already.
12. Remedial action requiring NMBM to recover all amounts paid to Nombriyti and dismissal of all the officials that may have participated in the Nombriyti involvement and payment in this project as this has become common practice within the Housing delivery sub-directorate of NMBM.



METRO

BUILDING & CIVIL CONTRACTORS cc

9 RELTON STREET
SIDWELL
PORT ELIZABETH, 6001
☎ : 041 451 0088 / 09
FAX : 041 451 0098

CK 1989/10762/23

✉ 4254
KORSTEN
PORT ELIZABETH
6014

E-mail: metro2pe@mweb.co.za

I have attached other correspondence that may assist the Public Protector in understanding the Complaint.

Conclusion

I wish to advise the Public Protector that MBCC has no other means of recovering these funds except to approach the Public Protector as the abuse MBCC suffered in Joe Slovo housing project and Motherwell Thusong Service Centre has left MBCC with huge and unbearable financial difficulties.

Yours truly,

Samoo Chetty

"A"

HUMAN SETTLEMENT

tel: +27(41) 506 1097
fax: +27(41) 506 2408
PO Box 9, Port Elizabeth 6000
Republic of South Africa
e-mail: Mgorgonzola@mandelametro.gov.za

M E M O R A N D U M

TO: Mr D Toyisi
Acting Director: Housing Delivery
DATE: 17/06/2010
FILE NO.: 19/10/01/01/45
SUBJECT: Cession: Abamelwahe Contractors and Metro Builders : Motherwell Tjoks
* Phase 2

With reference to the above;

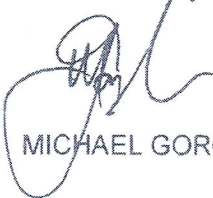
Please find attached hereto a cession agreement between Abamelwahe Contractors and Metro Builders who have been issued a contract for the provision of remedial work on subsidised houses at the Motherwell Tjoks Phase 2 Housing Project.

This cession relates to the ceding of 49 units on the allocated list to the maximum value of R 1 131 373.00.

The finance section of Housing Delivery has scrutinized the documents and found them in order for signing.

Trusting you find the above in order.

Yours faithfully



MICHAEL GORGONZOLA (MR)

**FINANCIAL OFFICER : HOUSING DELIVERY
HOUSING AND LAND**

Checklist on submission(s) for Cessions with NMBM

- 1 All cession pages are handed in. (8 pages)
- 2 Check all pages are completed/filled in by Contractor and Supplier, incl Acknowledgement of Receipt
- 3 Check all pages are co-signed/acknowledged by both Contractor and Supplier - with witnesses for both parties
- 4 Check that document dates are reflective of 2009/10 - and is compliant: an official NMBM Cession document
- 5 Ensure cession amount is for materials only, and less than contract amount [concluded full cession value must be noted]



Confirmed & Checked by Reception (H&L)




Date

Documents to accompany cession application

- 1 Copy of Letter of Award - noting when awarded, amount and site list
- 2 Suppliers Quotation
- 3 Finance Internal Control Sheet - as fully completed by Financial Officer or Admin Clerk
- 4 List provided by Contractor on site nrs applicable to cession with the agreed rate applicable per site nr (scope)



Confirmed & Checked by H&L Official



Date

For Internal NMBM Informational Purposes ONLY

NMBM Housing Delivery - Finance Section

Cession Control Sheet -- To be completed for internal control purposes by Finance staff (Admin Clerk or F/Officer) and the Project Manager

Cession entered into between: Abamelwane Contractors (Contractor) and
Metro Building Contractors (Material Supplier)

Quantified Amount of this Cession: R 1 131 373.00
~~R 1 144 600.00~~

Project Name: Motherwell Tjoks Ph 2 Job Nr: 2009 NHOu 27228

Project Budget (Current Balance): R 1 529 864.64 Verified/informed by: M. J. van der Merwe

Other Cessions concluded by Contractor on this project:

With Whom	For What	Initial Costed Debt	Balance
Africa Timbers	BIM		R 17 848.60
SK Consultants			R 66 561.00
A	A	A	A

Any other matters/factors pending, having an impact on this cession (Known at this stage): Yes / No No

Disclose: _____

Confirmed as having been informed on the above information, relating to the contractor on the project

P.M. --

[Signature]
Staff member --

Date Completed: 4 / 5 / 2010