



south african
**human
rights**
commission

INVESTIGATIVE REPORT

THE RIGHT TO ADEQUATE SANITATION OF OCCUPIERS OF PORTION 3 (REMAINING EXTENT) OF FARM WITFONTEIN

An investigation into the non-provision
of adequate sanitation and the alleged
violation of human rights by
Matlosana Local Municipality



COMPLAINANT

Maria Motswaruleng
on behalf of the occupiers



FIRST RESPONDENT

Matlosana Local Municipality



SECOND RESPONDENT

Dee'k Logistics CC



THIRD RESPONDENT

Gaosupe Lawrence Dikokwe



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EXECUTIVE SUMMARY

This report concerns an investigation conducted by the South African Human Rights Commission (“**Commission**”) into a complaint relating to the provision of adequate sanitation to three households residing on Portion 3 (remaining extent) of Farm Witfontein (“**Farm**”), situated within the jurisdiction of Matlosana Local Municipality (“**Matlosana**”). The complaint was lodged by Maria Motswapuleng (“**Motswapuleng**”) on her own behalf and on behalf of the other occupiers of the Farm.

The complaint was lodged with the Commission on 24 February 2026, during a visit to the Farm in connection with a separate matter. Motswapuleng alleged that, in and around 2024, Councillor Gabriel Mqikela (“**Mqikela**”) undertook to have toilets constructed for the three households on the Farm. According to Motswapuleng, when the occupiers subsequently enquired why the toilets had not been constructed, Mqikela advised them that Gaosupe Lawrence Dikokwe (“**Dikokwe**”), the sole member of Dee’k Logistics CC (“**Dee’k Logistics**”), which owns the Farm, had refused to consent to their construction.

During its visit to the Farm, the Commission observed that the three households shared two traditional pit toilets that were in a deplorable state and posed an imminent risk of harm to users, particularly children. The Commission further observed that the occupiers did not have an independent source of water and relied on the Farm owner for their water supply.

The Commission investigated the complaint through engagements with the parties, correspondence with Matlosana, a site inspection and desktop research. During the investigation, Matlosana acknowledged that it had implemented a project for the construction of Ventilation Improved Pit (“**VIP**”) toilets in farm settlements during 2021, using COVID-19 relief funding provided by the Department of Water and Sanitation. Matlosana provided differing explanations for why toilets had not been constructed for the occupiers of the Farm, including issues relating to its inability to obtain consent from the Farm owner and insufficient funding. It nevertheless acknowledged the outstanding sanitation needs of the three households and initially indicated that the three toilets would be included in its implementation plan for the 2026/2027 financial year.

In a subsequent response, Matlosana advised the Commission that it intended to request the Department of Water and Sanitation to fund the construction of three toilets on the Farm from the contingency budget of its Reconstruction of Outside Water-Borne Toilets project in Kanana. Matlosana did not, however, provide definite timelines for the proposed intervention. The Commission was further concerned that it was unclear whether Matlosana intended to construct water-borne toilets on the Farm and, if so, how such toilets would be operationalised given that the occupiers do not have an independent water source.

The investigation disclosed factual inconsistencies concerning the circumstances in which toilets were previously considered for the Farm. Motswapuleng maintained that Mqikela undertook in 2024 to construct toilets and subsequently attributed their non-construction to Dikokwe's refusal to consent. Matlosana, on the other hand, linked the matter to its 2021 VIP toilet construction project. Notwithstanding these differing versions, the evidence established that Matlosana became aware of the sanitation needs of the occupiers, indicated an intention to address those needs and did not consult Dee'k Logistics or Dikokwe regarding the construction of toilets on the Farm.

In assessing the complaint, the Commission considered the rights to human dignity and access to adequate housing in terms of sections 10 and 26 of the Constitution, together with the constitutional obligation of municipalities to provide basic services sustainably in terms of section 152(1)(b) of the Constitution. The Commission further considered the Extension of Security of Tenure Act 62 of 1997, the Housing Act 107 of 1997, the Local Government: Municipal Systems Act 32 of 2000, the Water Services Act 108 of 1997 and the Compulsory National Water and Sanitation Services Standards.

Regarding the right to human dignity, the Commission found that the continued exposure of the occupiers to unsafe and dilapidated sanitation facilities, coupled with Matlosana's failure to provide adequate replacement sanitation despite knowledge of their circumstances, violated the occupiers' right to human dignity in terms of section 10 of the Constitution and section 5(a) of the Extension of Security of Tenure Act.

Regarding the right of access to adequate housing, the Commission found that adequate housing encompasses access to adequate sanitation. While section 26(2)

of the Constitution recognises that socio-economic rights may be realised progressively and within available resources, it requires the state to take reasonable measures towards their progressive realisation and does not sanction inaction. The Commission found that Matlosana's failure to provide adequate sanitation to the three households, despite being aware of their circumstances and acknowledging the need for intervention, deprived the occupiers of an essential component of their right of access to adequate housing and constituted a failure to ensure the progressive realisation of that right.

The Commission further found that the sanitation facilities available to the occupiers fell materially short of the minimum standards for basic sanitation prescribed by the Water Services Act and the Compulsory National Water and Sanitation Services Standards. As the Water Services Authority within its jurisdiction, Matlosana bears the primary responsibility to ensure the provision of adequate sanitation to the occupiers, including those residing on privately owned land. Its failure to do so constituted a failure to fulfil its constitutional objective of providing basic municipal services sustainably and equitably.

The Commission considered Matlosana's reliance on the depletion of the grant funding provided by the Department of Water and Sanitation and the insufficiency of funds. It found that, although financial constraints may affect the pace at which sanitation services are progressively provided, they do not absolve Matlosana of its continuing constitutional and statutory obligations. The responsibility to provide basic sanitation within Matlosana's jurisdiction remains with Matlosana and is not transferred to the Department of Water and Sanitation merely because that Department previously provided grant funding. The Commission found that Matlosana ought to have continued making progressive provision for sanitation on farms after the initial grant funding was depleted.

The Commission also considered the issue of landowner consent. Having regard to the applicable jurisprudence concerning the rights of farm occupiers and the obligations of landowners and the State, the Commission concluded that the withholding of consent by a farm owner cannot, without more, prevent the provision of adequate sanitation to farm occupiers or relieve the state of its constitutional and statutory obligations. Farm owners are required to cooperate reasonably with the state

in the fulfilment of its obligations to farm occupiers.

Regarding Dee'k Logistics and Dikokwe, the evidence established that Matlosana did not engage them regarding the construction of VIP toilets on the Farm. The Commission accordingly found that the evidence did not establish that Dee'k Logistics or Dikokwe contributed to the violation of the occupiers' rights by Matlosana.

The Commission ultimately found that the allegations concerning Matlosana's non-provision of adequate sanitation to the occupiers of the Farm were substantiated. It found that Matlosana's failure to provide adequate sanitation violated the occupiers' rights to human dignity and access to adequate housing in terms of sections 10 and 26(1) of the Constitution. The Commission also found that Matlosana's failure to provide adequate sanitation violated its obligations in terms of section 152(1)(b) of the Constitution, read with the applicable statutory framework. The Commission further found that the evidence did not establish that Dee'k Logistics or Dikokwe contributed to these human rights violations.

Consequently, the Commission recommends that, within 90 days of receipt of the final investigative report and in consultation with Dee'k Logistics and Dikokwe, Matlosana provide adequate sanitation to the occupiers of the Farm in accordance with the minimum standards contemplated in section 6(2) of the Compulsory National Water and Sanitation Services Standards. Matlosana is further required, within seven days after the expiry of the 90-day period, to submit a report to the Commission regarding its compliance with the recommendation.

Through this report, the Commission hopes to contribute to the facilitation of appropriate redress for the violation of the occupiers' rights.

1. INTRODUCTION

- 1.1 This is a report of an investigation conducted by the South African Human Rights Commission ("**Commission**") relating to a complaint concerning access to sanitation for occupiers of Portion 3 (remaining extent) of Farm Witfontein ("**Farm**"), located within the jurisdiction of Matlosana Local Municipality ("**Matlosana**").
- 1.2 This report is prepared in terms of section 7.1.3 of the CHP, which empowers the Commission to issue investigative reports in respect of investigations conducted.

2. PARTIES TO THE COMPLAINT

- 2.1 The Complainant in this matter is Maria Motswapuleng ("**Motswapuleng**"), an adult female whose full and further particulars are known to the Commission. Motswapuleng lodged the complaint on her own behalf and on behalf of the other occupiers of the Farm.
- 2.2 The First Respondent is Matlosana, a local municipality established in terms of section 12 of the Local Government: Municipal Structures Act 117 of 1998, with its principal office situated at the Civic Centre at the corner of Bram Fischer and O.R. Tambo Streets, Klerksdorp, 2570. Matlosana is the Water Services Authority in the area of its jurisdiction in terms of the Water Services Act 108 of 1997 ("**Water Services Act**").
- 2.3 The Second Respondent is Dee'k Logistics CC ("**Dee'k Logistics**"), a close corporation with registration number 200612271623. Dee'k Logistics is the owner of the Farm, having purchased the Farm on 8 April 2018, and with the Farm having been registered in its name on 14 July 2020.
- 2.4 The Third Respondent is Gaosupe Lawrence Dikokwe ("**Dikokwe**"), an adult male and sole member of Dee'k Logistics, whose full and further particulars are known to the Commission.

3. BACKGROUND TO THE COMPLAINT

- 3.1 Motswapuleng lodged her complaint with the Commission on 24 February 2026, during the Commission's visit to the Farm in connection with a separate complaint.
- 3.2 In the complaint, Motswapuleng alleged that in and around 2024, Councillor Gabriel Mqikela ("**Mqikela**") undertook to have toilets constructed for the three households at the Farm but failed to do so. When the occupiers inquired with Mqikela regarding the reason why the toilets were not constructed, he advised that the toilets were not constructed as Dikokwe declined to give consent for the toilets to be constructed on his Farm.

4. PRELIMINARY ASSESSMENT

- 4.1 The Commission's preliminary assessment of the complaint was that:
- 4.1.1 The complaint, on the face of it, implicated the occupiers' rights to human dignity, adequate housing and basic services in terms of sections 10, 26(1) and 152(1)(b) of the Constitution.
- 4.1.2 The complaint fell within the mandate of the Commission; and
- 4.1.3 A full investigation of the complaint was warranted and should be conducted in line with the CHP.

5. INVESTIGATIVE METHODS

- 5.1 The Commission investigated the complaint through:
- 5.1.1 Engagements with the parties;
- 5.1.2 Correspondence with Matlosana;
- 5.1.3 A site inspection; and
- 5.1.4 Desktop research.

6. INVESTIGATION INTO THE COMPLAINT

- 6.1 As indicated above, the Commission received the present complaint during its visit to the Farm on 24 February 2026 in connection with another matter.
- 6.2 During the visit to the Farm, the Commission observed that the occupiers did not have their own independent source of water and relied on the Farm owner for their water supply.
- 6.3 The Commission also observed three households on the Farm that shared two traditional pit toilets between them. The toilets were, however, in a deplorable state and posed an imminent risk of harm to the users, especially the children (see attached photographs).



- 6.4 On the same day, the Commission telephonically engaged Mqikela regarding the complaint. Whilst not mentioning Dikokwe by name, Mqikela advised that the reason the toilets were not constructed was that some farm owners had refused to grant consent for the toilets to be constructed.
- 6.5 Further, on the same day, the Commission engaged Dikokwe on the matter, and he advised that he was not engaged on the matter by Mqikela.

6.6 Consequently, on 25 February 2026, the Commission addressed correspondence to Matlosana, affording the municipality an opportunity to respond to the allegations levelled against it.

6.7 Matlosana responded to the correspondence on 31 March 2026. In its response, Matlosana advised that:

6.7.1 It rolled out a project for the construction of Ventilation Improved Pit (“VIP”) toilets in April 2021, funded from COVID-19 relief funds provided by the Department of Water and Sanitation. The project mainly focused on farm settlements where pit toilets were in use.

6.7.2 The farms are privately owned, and thus a process to obtain consent from the farm owners was undertaken and headed by Mqikela. At the time of the consultations, the Farm was not owned by Dikokwe. Rather, the Farm was on auction and, accordingly, he could not get consent to construct toilets on the Farm.

6.7.3 The VIP toilets project was a special project funded by the Department of Water and Sanitation using COVID-19 relief funding, and no municipal funds were allocated to the project.

6.7.4 The outstanding three VIP toilets would be included in the implementation plan for the 2026/2027 financial year.

6.8 When the Commission followed up with the municipality to request specific time frames for the construction of the VIP toilets for the occupiers on the Farm, Matlosana delivered a further response on 1 June 2026, which contradicted the response of 31 March 2026 in some respects. In that response, Matlosana stated that:

6.8.1 There was a project to construct toilets in farm settlements within Matlosana, but they could not specifically confirm whether Mqikela made an undertaking to have toilets constructed for the three households on the Farm.

6.8.2 The reason the toilets were not constructed is that the toilet project was

implemented through grant funding and some areas were not covered due to insufficient budget. However, it is still confirming with the consulting engineer regarding the specific reasons why toilets were not constructed for the three households on the Farm.

6.9 After the Commission again followed up with Matlosana on specific timeframes for the construction of VIP toilets for the three households on the Farm and convened a stakeholder engagement with Matlosana on 23 June 2026 to discuss this matter, amongst others, Matlosana delivered yet another response on 2 July 2026, which contradicted its earlier responses in some respects and which did not provide timelines for the construction of the VIP toilets for the three households.

6.10 In its latest response, Matlosana advised that:

6.10.1 It is currently implementing a project for the Reconstruction of Outside Water Borne Toilets in Kanana.

6.10.2 The consultant for the project will be requested to conduct pre-engineering studies for the three identified households.

6.10.3 The municipality will formally request the Department of Water and Sanitation to fund the construction of these three toilets from the Contingency Budget of the Reconstruction of Outside Water-Borne Toilets project in Kanana.

6.11 It is not clear from the latest response whether Matlosana now intends to construct outside water-borne toilets for the occupiers or if it only intends to use the budget for that project for the construction of toilets for the occupiers. If water-borne toilets are now intended to be constructed, it is not clear how they will be operationalised on the Farm, given that the occupiers do not have their own independent water source and Matlosana is not providing water to the occupiers.

6.12 Having outlined the complaint, the investigative process and Matlosana's responses to the complaint, what follows is a discussion of the applicable legal

framework and its application in the present matter.

7. LEGAL FRAMEWORK AND ANALYSIS

- 7.1 As indicated above, the rights that the Commission found were implicated by the complaint in its preliminary assessment are the rights to human dignity and access to adequate housing as provided for in sections 10 and 26(1) of the Constitution. Matlosana's obligation to provide basic services in terms of section 152(1)(b) of the Constitution is also implicated by the complaint.

Right to human dignity

- 7.2 As more fully ventilated in other reports of the Commission, human dignity is both a value and a right and entails the acknowledgement of the intrinsic worth of every human being, the right to be treated as worthy of respect and concern and the right to live without positive humiliation and degradation.¹ In *S v Makwanyane and Another*,² O'Regan J further held that "without dignity, human life is substantially diminished".
- 7.3 Section 5(a) of the Extension of Security of Tenure Act 62 of 1997 ("**ESTA**") stipulates human dignity as one of the fundamental rights that occupiers are entitled to. In *Daniels v Scribante and Another*,³ the Constitutional Court held that the fundamental right to human dignity necessitates that occupiers' living conditions be commensurate with human dignity. Accordingly, the court found that occupiers' right to human dignity is undermined where occupiers are required to live in deplorable living conditions.
- 7.4 Coming to the facts of this complaint, the Commission observed during its site inspection that the three households on the Farm relied on two traditional pit toilets that were in a deplorable state, posing an imminent risk of harm to users, particularly children. The state of the toilets deprives the occupiers of the ability to attend to one of the most basic human needs in conditions that

¹ *S v Makwanyane and Another*, 1995 (6) BCLR 665, paragraph 328; *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* 1998 (12) BCLR 1517 (CC), paragraph 28; *Minister of Home Affairs v Watchenuka* 2004 (2) BCLR 120 (SCA), para 32.

² 1995 (6) BCLR 665, paragraph 327.

³ 2017 (8) BCLR 949 (CC).

are consistent with their inherent dignity and exposes the occupiers to hazardous conditions whenever they use the toilets. This notwithstanding, Matlosana has failed to take effective measures to remedy this violation.

- 7.5 In her complaint, Motswapuleng stated that Mqikela undertook in 2024 to construct toilets for the occupiers and subsequently advised them that the toilets had not been constructed because Dikokwe refused to consent to their construction. Matlosana, however, submitted in its response of 31 March 2026 that the VIP toilet construction project was implemented in 2021 and that the Farm owner was not consulted because the Farm was under auction at the time. There is, therefore, a material factual dispute between Motswapuleng's account and Matlosana's account regarding the circumstances in which the proposed construction of toilets on the Farm was considered.
- 7.6 In the Commission's view, if the toilet construction project was undertaken in 2021, it appears unlikely that Mqikela would only engage the occupiers of the Farm in 2024 as submitted by Motswapuleng. In the Commission's view, there are also difficulties with Matlosana's version. Matlosana states that the VIP toilet construction project was implemented in April 2021 and that, at the time consultations were undertaken with farm owners, the Farm was still under auction and was not owned by Dikokwe. However, the evidence before the Commission establishes that the Farm was acquired on 8 April 2018 and was registered in the name of Dee'k Logistics on 14 July 2020, several months before the commencement of the VIP toilet construction project in April 2021. Matlosana's explanation that the Farm was still under auction at the time of consultations relating to the 2021 project is therefore difficult to reconcile with the established acquisition and ownership history of the Farm.
- 7.7 Notwithstanding the above inconsistencies, and regardless of precisely when Matlosana first became aware of the sanitation needs of the occupiers, the evidence establishes that:
 - 7.7.1 Matlosana became aware, at some point, of the need to provide adequate sanitation to the occupiers;
 - 7.7.2 Matlosana, through Mqikela, indicated an intention to address that

need; and

7.7.3 Matlosana did not consult Dee'k Logistics or Dikokwe regarding the construction of toilets on the Farm.

7.8 Accordingly, whilst it remains uncertain when Matlosana came to know of the plight of the occupiers, it became aware of their plight at some point. Despite coming to know of the plight of the occupiers and the need for intervention, Matlosana did not provide replacement sanitation facilities for the occupiers, with contradictory explanations now being provided by Matlosana for its failure in this regard. Of even greater concern to the Commission is that Matlosana has now provided contradictory submissions about what Matlosana intends to do to provide safe and dignified sanitation for the occupiers. In this regard, Matlosana initially undertook to construct toilets for the occupiers sometime in the 2026/2027 financial year, without providing clear timelines. In its latest response, however, Matlosana advised that it would formally request the Department of Water and Sanitation to fund the construction of three toilets on the Farm from the Contingency Budget of the Reconstruction of Outside Water Borne Toilets project in Kanana. No timelines were provided for the planned intervention in the latest response.

7.9 The absence of a clear, concrete and time-bound plan raises serious concerns regarding Matlosana's ability to address the plight of the occupiers within a reasonable period. The inescapable conclusion is that, unless something is done urgently, the occupiers will likely continue to endure their current deplorable sanitation conditions for years to come.

7.10 The failure by Matlosana to provide the occupiers with safe and adequate sanitation has meant that the occupiers have had to endure unsafe and degrading sanitation conditions for some time and are at risk of continued and prolonged violations of their rights. Of further concern is that the failure to replace the inadequate sanitation facilities at the Farm has had the effect of normalising living conditions that are inconsistent with the inherent worth of the occupiers.

7.11 Accordingly, the Commission is of the view that the continued exposure of the

occupiers to unsafe and dilapidated sanitation facilities, coupled with the failure to provide adequate replacement sanitation for the occupiers, despite knowledge of their circumstances, constitutes a violation of the occupiers' right to human dignity within the contemplation of section 10 of the Constitution and section 5(a) of ESTA by Matlosana.

Right of access to housing

7.12 Section 26(1) of the Constitution provides for the right of access to adequate housing, whilst section 26(2) of the Constitution articulates the state's obligation to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

7.13 Section 1 of the Housing Act 107 of 1997 ("**Housing Act**") recognises that adequate housing includes adequate sanitation. Section 9(1)(a)(iii) of the Housing Act further places the responsibility for providing adequate sanitation squarely with municipalities. This position was affirmed by the Constitutional Court in *Government of the Republic of South Africa and Others v Grootboom and Others*⁴ and *Nokotyana and Others v Ekurhuleni Metropolitan Municipality and Others*,⁵ where the court found that the right to adequate housing is not limited to the house itself but other related services, which include sanitation.

7.14 The obligation imposed on the state, being Matlosana in this case, to take measures to ensure the progressive realisation of the right of access to adequate housing within available resources recognises that it may not always be possible to ensure the immediate realisation of this right. Section 26(2) does not sanction inaction, however, as appears to have been the case in this particular instance after the depletion of the grant funding as more fully discussed in paragraph 7.27 below.

7.15 In view of the above, the Commission is of the view that, in addition to the violation of the occupiers' right to human dignity, the sanitation conditions uncovered by the investigation also establish an infringement of the occupiers' right of access to adequate housing, which extends beyond the provision of a

⁴ 2000 (11) BCLR 1169 (CC)

⁵ (2010 (4) BCLR 312 (CC) (19 November 2009)

physical dwelling but encompasses the provision of essential services necessary to render housing habitable, including sanitation, which must itself be adequate.

7.16 As is apparent from the discussion in paragraphs 7.4 to 7.11 above, the sanitation facilities currently in use at the Farm are inadequate and, therefore, incapable of providing the standard of sanitation contemplated by section 26(1) of the Constitution and the Housing Act. The obligation to address this situation lies with Matlosana. Despite having been aware of the sanitation conditions on the Farm, Matlosana has failed to discharge this obligation.

7.17 Therefore, the Commission is of the view that Matlosana's failure to provide adequate sanitation to the three households, despite being aware of their circumstances and acknowledging the need for intervention, has deprived the occupiers of an essential component of their right of access to adequate housing. Accordingly, Matlosana has violated the occupiers' right of access to adequate housing in terms of section 26(1) of the Constitution and failed to live up to its obligation to ensure the progressive realisation of this right in terms of section 26(2) of the Constitution.

Basic services

7.18 Section 152(1)(b) of the Constitution identifies the sustainable provision of services to communities as one of the main objectives of municipalities. The basic service delivery mandate of municipalities is affirmed in section 4(2) of the Local Government: Municipal Systems Act 32 of 2000 ("**Municipal Systems Act**"), which requires municipalities to prioritise the equitable provision of basic municipal services to all. In *Mkontwana v Nelson Mandela Metropolitan Municipality*,⁶ the Constitutional Court identified the provision of sanitation as one of the basic services to be provided by a municipality.

7.19 In *Mshengu and Others v Msunduzi Local Municipality and Others*,⁷ the KwaZulu-Natal High Court confirmed that the right to basic services extends to farm occupiers and found that "*the first, second and third respondents*'

⁶ 2005 (1) SA 530 (CC), paragraph 105.

⁷ [2019] 4 All SA 469 (KZP).

ongoing and persistent failure to provide the farm occupiers and labour tenants who are residing within areas of their jurisdiction with access to basic sanitation, sufficient water and collection of refuse is inconsistent with the Constitution of the Republic of South Africa, 1996, particularly ss 9, 10, 24, 27(1)(b), 33, 152, 153, 195 and 237”.

7.20 The Water Services Act specifically provides for the right to basic sanitation and prescribes the content of the right. In this regard, section 3(1) of the Water Services Act provides that everyone has the right to basic sanitation, which is defined in section 1 of the Water Services Act as the “prescribed minimum standard of services necessary for the safe, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic wastewater and sewage from households, including informal households”.

7.21 Section 3(2) of the Water Services Act, read with section 6(1) of the Compulsory National Water and Sanitation Services Standards,⁸ requires water services authorities, of which Matlosana is one in its area of jurisdiction, to take reasonable measures to fulfil this right. Section 6(1) underscores that water services authorities must provide basic sanitation services to all their customers or potential customers in their area of jurisdiction, including customers or potential customers residing in privately owned land.

7.22 Regarding the content of the right, section 6(2) of the Compulsory National Water and Sanitation Services Standards stipulates that basic sanitation services must include:

“the provision of a toilet with functional hand washing facility in the yard, which is safe, reliable for 24 hours a day, environmentally sound, easy to keep clean, provides privacy and protection against the weather, well ventilated, keeps smells to a minimum and prevents the entry and exit of flies and other disease-carrying pests, providing for an effective and acceptable sanitation technology”.

7.23 As already discussed above, the Commission’s site inspection established

⁸ Government Notice 6292, published in Government Gazette 52814 on 6 June 2025.

that the occupiers continued to rely on traditional pit toilets that were in a state of disrepair and posed an imminent risk of harm to users, particularly children. Such facilities cannot reasonably be regarded as sanitation that is safe, hygienic or adequate within the meaning of the Water Services Act and the Compulsory National Water and Sanitation Services Standards. Accordingly, the sanitation facilities available to the occupiers fall materially short of the prescribed standards for basic sanitation.

7.24 Matlosana, as the water services authority within its jurisdiction, has the primary responsibility to ensure that the occupiers receive adequate sanitation, but has failed to provide such sanitation to the occupiers, despite being aware of their plight.

7.25 With sanitation being one of the basic services that municipalities must provide to residents, the Commission is of the view that Matlosana's failure to provide the occupiers with sanitation facilities that comply with the minimum standards prescribed by the Water Services Act and the Compulsory National Water and Sanitation Services Standards constitutes a failure to fulfil its constitutional objective of providing basic municipal services sustainably and equitably in terms of section 152(1)(b) of the Constitution, read with the Municipal Systems Act, the Water Services Act and the Compulsory National Water and Sanitation Services Standards.

Assessment of Matlosana's defence

7.26 Whilst Matlosana's responses to the complaint are contradictory and difficult to decipher, aspects of its defence appear to include the following:

7.26.1 The Department of Water and Sanitation funded the 2021 VIP toilet construction project and that, as such, it will need to source additional funds from the Department of Water and Sanitation in order to construct additional toilets for the occupiers of the Farm; and

7.26.2 It could not construct toilets for the three households on the Farm due to insufficient funds.

7.27 To the extent that Matlosana still wishes to advance the above aspects of its defence, the Commission wishes to state as follows:

7.27.1 Regarding the first aspect of the defence, as discussed above, the obligation to provide basic services to residents within Matlosana's area of jurisdiction, including sanitation services, lies with Matlosana and not the Department of Water and Sanitation. In the circumstances, Matlosana is required to make provision for the fulfilment of this obligation in its budget. Whilst the Department of Water and Sanitation, along with other government departments, may provide support and assistance to local municipalities to enable them to fulfil their obligations through the provision of grants, such assistance does not transfer the obligation to the Department of Water and Sanitation. Accordingly, when the grant funding received from the Department of Water and Sanitation for the construction of VIP toilets in farms was depleted, Matlosana was required to continue the programme to ensure the progressive realisation of the right to sanitation by farm dwellers and not discontinue the programme altogether. Had Matlosana continued to make progressive provision for sanitation on farms, the sanitation needs of outstanding households, including the occupiers in the present matter, could have been progressively addressed. Accordingly, the fact that the initial grant funding for the construction of VIP toilets in farms was depleted does not provide a complete defence to the allegations against Matlosana.

7.27.2 Regarding the second aspect of the defence (insufficiency of funds), while the Commission accepts that Matlosana may have experienced constraints associated with the implementation of the original grant-funded VIP toilet project, those constraints do not absolve Matlosana of its continuing constitutional and statutory obligations as the Water Services Authority. The Water Services Act expressly requires Matlosana to take reasonable measures to realise the right to basic sanitation for all persons within its jurisdiction, including occupiers residing on privately owned farms. Accordingly, whilst financial

constraints may mean that the provision of sanitation services may be done progressively over time, in the present case, Matlosana appears to have abandoned the project when the initial grant funding was depleted instead of making progressive steps year on year to ensure the completion of the project. In the Commission's view, such an approach was not reasonable, resulting in a prolonged failure to provide the occupiers with sanitation facilities that comply with the minimum standards prescribed by the Water Services Act and the Compulsory National Water and Sanitation Services Standards.

Is the owner's consent required?

7.28 In her complaint, Motswapuleng alleged that Mqikela informed the occupiers that the reason Matlosana could not construct toilets for them was that Dikokwe refused to give his consent for the toilets to be constructed. On the other hand, when the Commission first engaged Mqikela on this matter, he advised that the reason Matlosana could not construct toilets on some of the farms was that some of the farm owners withheld their consent for the construction of the toilets. Whilst Matlosana appears to have abandoned this defence in its subsequent responses to the Commission, it is an issue worth reflecting upon in this report, as it was raised at the initiation of the complaint.

7.29 In *Daniels v Scribante and Another*, and *Kruger v Sibanyoni and Others*⁹, the Constitutional Court and Supreme Court of Appeal confirmed that the consent of the land owner is not required for purposes of making necessary improvements to the dwellings of farm occupiers, in order to bring those dwellings to a standard that is consistent with human dignity. What is required is that land owners be consulted.

7.30 In the Commission's view, the provision of dignified sanitation to farm occupiers is one such necessary improvement and as such, the consent of farm owners is not required, in circumstances where occupiers are using sub-standard toilets. What is required in these circumstances is that farm owners be consulted. In the circumstances, the withholding of consent by a farm

⁹ 2025 (6) SA 437 (SCA)

owner cannot, without more, prevent the provision of adequate sanitation to occupiers or relieve the state of its constitutional and statutory obligations in this regard.

7.31 This view was affirmed in *Mshengu and Others v Msunduzi Local Municipality and Others*,¹⁰ where the KwaZulu-Natal High Court confirmed that the respondent was required to take measures to fulfil its obligations to residents and that the land owner had an obligation to cooperate.

7.32 Accordingly, it is not open to farm owners to derail the state in fulfilling its obligations to farm occupiers by unreasonably refusing to cooperate with the state in the fulfilment of its obligations to farm occupiers.

Culpability of Dee’k Logistics and Dikokwe

7.33 In its response of 31 March 2026, Matlosana submitted that it did not engage Dikokwe on the construction of VIP toilets on the Farm, as the Farm was still under auction at the time of the consultation. This submission is consistent with the submission Dikokwe made to the Commission that Matlosana never engaged him on the construction of VIP toilets on the Farm. In such circumstances, Dikokwe and Dee’k Logistics could not have prevented Matlosana from fulfilling its consultation duty in respect of the occupiers.

7.34 In the circumstances, the Commission is of the view that the evidence does not establish that Dee’k Logistics or Dikokwe contributed to the violation of the occupiers’ rights by Matlosana, contrary to what was stated in the complaint.

8. FINDINGS

8.1 In view of the above, the Commission makes the following findings:

8.1.1 The allegations made by Motswapuleng concerning the non-provision of adequate sanitation for the occupiers of the Farm by Matlosana are substantiated.

8.1.2 Matlosana’s failure to provide the occupiers with adequate sanitation

¹⁰ See paragraph 64 of the judgment.

violated the occupiers' rights to human dignity (section 10 of the Constitution) and access to adequate housing (section 26(1) of the Constitution), read with the provisions of ESTA and the Housing Act.

8.1.3 Matlosana's failure to provide the occupiers with adequate sanitation also violated its obligation to provide basic services to residents (section 152(1)(b) of the Constitution), read with the provisions of the Municipal Systems Act, the Water Services Act and the Compulsory National Water and Sanitation Services Standards.

8.1.4 The evidence does not establish that Dee'k Logistics or Dikokwe contributed to the above human rights violations, as Matlosana did not engage them on the construction of VIP toilets for the occupiers.

9. RECOMMENDATIONS

9.1 In view of the above findings, the Commission recommends that:

9.1.1 Within 90 days of receipt of this report, in consultation with Dee'k Logistics and Dikokwe, Matlosana should provide adequate sanitation to the occupiers of the Farm, within the contemplation of section 6(2) of the Compulsory National Water and Sanitation Services Standards.

9.1.2 Within 7 days of the expiry of the 90 days mentioned in paragraph 9.1.1, Matlosana should submit a report on its compliance with the above recommendation.

10. COMMENTS ON THE PROVISIONAL INVESTIGATIVE REPORT

10.1 The provisional investigative report was sent to the parties on 21 July 2026 for their review and consideration. The parties were invited to submit their comments on the provisional report by 11 August 2026. None of the parties submitted comments on the provisional investigative report by the stipulated deadline.

11. ENFORCEMENT OF THE REPORT RECOMMENDATIONS

11.1 Section 18(4) of the SAHRC Act provides as follows:

“If the Commission makes any finding or recommendation in respect of a matter investigated by it known to the head of the organisation or institution or the executive authority of any national or provincial department concerned, the head of the organisation or institution or the executive authority of any national or provincial department concerned must within 60 days after becoming aware of such finding or recommendation respond in writing to the Commission, indicating whether his or her organisation, institution or department intends taking any steps to give effect to such finding or recommendation, if any such steps are required.”

11.2 Matlosana is, therefore, invited to indicate whether it intends to comply with the recommendations in section 9 above within 60 days of the report, and if so, to ensure compliance with the report recommendations within the indicated time frames.

11.3 If the Commission does not hear from Matlosana within the stipulated timeframe and the recommendations are not complied with within the stipulated timeframes, the Commission reserves the right to approach an appropriate forum or court of law to secure appropriate redress without further notice to Matlosana.

12. APPEAL

12.1 Should any party be dissatisfied with any aspect of the report, that party is entitled to challenge it by lodging an internal appeal. Any such appeal must be submitted within forty-five (45) days of the date on which that party received the report. The appeal should be directed to the Commission via email at appeals@sahrc.org.za.

SIGNED AT **RUSTENBURG** ON THE **24TH** DAY OF **AUGUST** 2026.



Shirley Mlombo (Ms)

Provincial Manager, NW



Henk Boshoff (Dr)

Commissioner