



Province of the
EASTERN CAPE
HUMAN SETTLEMENTS

**DEPARTMENT OF HUMAN SETTLEMENTS -
EASTERN CAPE**

**THUBELISHA HOMES: JOE SLOVO 950
HOUSING PROJECT**

NELSON MANDELA MUNICIPALITY

**AN INDEPENDENT REPORT ON THE CLAIM BY
METRO BUILDING & CIVIL CONTRTACTORS cc**

DEPARTMENT OF HUMAN SETTLEMENTS - EASTERN CAPE

THUBELISHA HOMES: JOE SLOVO 950 HOUSING PROJECT

NELSON MANDELA MUNICIPALITY

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INTRODUCTION

The Eastern Cape Department of Human Settlements, herein referred to as ECDoHS, appointed Mr John Kayula, to undertake an independent assessment of the claim arising from Metro Builders and Civil Contractors cc, herein referred to as MBCC, with a view of settling the long outstanding matter by the department.

Mr Kayula, who is a professionally registered Quantity Surveyor, an associate member of the Association of Arbitrators and an accredited Mediator by the Royal Institute of Chartered Surveyors (RICS), was appointed due to his previous involvement in similar dispute resolutions assignments by the department.

The intention of the report is to establish the validity of the claim by MBCC to the ECDoHS thereby assist in resolving the current dispute between the two parties.

In order to achieve this several meetings were held with different parties and stakeholders. Telephonic conversations were also utilised to also get further clarity on certain matters.

The following meetings were held:

- On 21st February 2014, at ECDoHS Nelson Mandela Metro Region offices, with ECDoHS regional manager & staff member, The Chief director – Project Management & Quality Assurance (Provincial Head office), Vererns construction and the Housing Development Agent, at different times.
- On 26th and 27th February 2014, at ECDoHS Nelson Mandela Metro Region offices, with ECDoHS regional manager & staff member, The Chief director-Project Management & Quality Assurance (Provincial Head office) and Housing Development Agent, one meeting. With follow up on 27th February 2014 with ECDoHS regional office.
- A meeting was held with the contractor messrs MBCC on 10th March 2014.

Following is the report based on the findings.

THUBELISHA HOMES: JOE SLOVO 950 HOUSING PROJECT: PROJECT INFORMATION

1. CONTRACTING PARTIES:

1.1 FUNDING AGREEMENT BETWEEN:

- **EASTERN CAPE DEPARTMENT OF HOUSING (ECDOHS)**, the Developer

And

- **THUBELISHA HOMES**, the Implementing Agent

1.2 CONTRACT AGREEMENT BETWEEN:

- **THUBELISHA HOMES**, the Implementing Agent

And

- **NOMAGWAYI DEVELOPERS**, the contractor

And

- **VERERN CONSTRUCTION**, the contractor

Contracts documents available with National DoHS.

2. BACKGROUND:

The above agreements are the only contractual agreements agreed to have existed by both the ECDoHS and the management of the Housing Development Agent herein referred to as HDA, who were the same management of the liquidated Thubelisha Homes.

The original project contracts, which copies are not available, are said to have involved the construction of 950 housing units by two contractors, messrs Nomagwayi Developers, herein referred to as NB and Verern Construction, herein referred to as VC, both of whom were contracted by Thubelisha to construct 475 units each, some time in 2009.

It is recorded that for various reasons the scope of work was reduced from 950 to 860 units. It is also confirmed by the HDA, Thubelisha at the time, that one of the two contractors Messrs Nomagwayi Builders, terminated their contract with Thubelisha, as they were being liquidated.

Contractual Relationships, according to Thubelisha (advised by HDA)

Thubelisha confirmed that messrs Metro Builders and Civil Contractors cc, herein referred to as MBCC, had been working for NB, as sub-contractors.

After the termination of the contract by NB, according to Thubelisha, they entered into a contract with the then remaining contractor on the project, messrs VC, by way of an Addendum to the existing contract.

Copy of the Addendum has not been provided.

VC then entered into a sub-contract agreement with MBCC for completion of the remaining work for NB, copy not available.

It is confirmed by VC that part of the agreement between the two parties was that MBCC would complete the work left from NB and VC would just take overall contractual responsibilities to Thubelisha, including providing insurances and guarantees for the work at an administration fee to have been agreed by the two parties.

It was also confirmed by VC that payment arrangement was for direct payments to be made to MBCC by Thubelisha, on recommendation by VC, for work done. VC would then deduct their fee component from the same claims. HDA also confirmed this arrangement and copies of claims for executed work reflect the same.

Invoices claimed for by VC and paid by Thubelisha show the split between payments made to VC and MBCC respectively, based on recommendations by VC. Copies are attached.

Contractual Relationships, according to Metro Builders Civils Construction (MBCC)

According to MBCC, they were directly appointed by Thubelisha after ND withdrew from the contract. They disputed the fact that they were subcontractor for VC and advised that they were only paid through VC because Thubelisha said they could not get them on the data base.

They argued that at a site meeting of 22nd July 2009 they were introduced as the main contractor to complete the work by Thubelisha.

The meeting, according to them, was attended by Thelisha, a Community Liaison Officer, the local councillor and the Regional office of DoHS.

They argued that they were forced by Thubelisha to pay Vererns Builders administration fee in order that they could be paid for work done. Hence they are now claiming back the money.

3. PROJECT STATUS

The project Joe Slovo 950 Housing units, with a reduced scope of 860 units, has since been completed and Finished Unit Reports (FURs) issued by NHBRC.

According to HDA staff, who were responsible for the project under Thubelisha, all payments to contractors on the project were made, except for one claim, the last and final one, which was outstanding at the time Thubelisha was wound up.

Thubelisha alleged that Regional office had processed the claim and sent it to Head office for payment. The tax invoice for this claim is JS 0042, issued by Vererns Builders dated 4th January 2010, in amount R447 200.00. This was also confirmed by messrs Vererns Construction. There is no way of establishing if this claim was ever paid after the winding down of Thubelisha by the liquidators.

If the said claim was never paid then payment would still be due to MBCC. MBCC however needs to confirm that they never received such payment, as there were payments made by the liquidators of Thubelisha for outstanding monies to creditors after its closure.

According to HDA and also confirmed by VC, the project was closed with the following record in place:

3.1 COMPLETION OF UNITS:

- 3.1.1 454 units by Vererns Construction
- 3.1.2 184 units by Nomagwai Developers
- 3.1.3 219 units by Metro Builders and Civil Contractors (MBCC argue that they completed 336 units, with 10 being new ones).

The above add up to 857 units, 3No. short of the reduced scope of 860 units on the project. It is not yet known yet where the outstanding 3No. units would belong. ECDohS Metro is investigating this and will submit a complete list of FURs and advise this anomaly.

VC confirmed that all work executed by MBCC was verified by and claimed for by them as work progressed up to the last claim of invoice JS0042. Copy attached.

MBCC, in the meeting with them, argued that the certificate, according to them was interim, as there were other outstanding claims still to be submitted.

3.2 FINANCIAL RECONCILIATION:

In the absence of a signed Final account Statement by all parties on the project, reliance is placed on information available from HDA, also confirmed by VC. They both indicated that the sub-contractors MBCC was paid for all work executed, as VC submitted claims to Thubelisha on their behalf and according to them only the last claim on invoice JS0042 was outstanding for payment.

According to records provided by HDA and VC, the following breakdowns constitute the Final financial status of the "completion" contract, under which MBCC undertook the work, which MBCC disagrees to, as per their claim:

THUBELISHA: JOE SLOVO 950 HOUSING UNITS PROJECT: COST RECONCILIATION

CLAIM			INVOICE AMOUNT	AMOUNT PAID TO PAYEE		COMMENTS	
No.	INVOICE No.	DATE		METRO BUILDERS	VERERNS	PAID	DATE
1	JS00031	31-08-09	552 250,00	522 250,00	30 000,00	YES	NA
2	JS00034	22-09-09	653 800,00	623 800,00	30 000,00	YES	NA
3	JS00035	13-10-09	504 300,00	489 300,00	15 000,00	YES	NA
4	JS00037	04-11-09	382 450,00	382 450,00	-	YES	NA
5	JS00039	04-11-09	276 900,00	276 900,00	-	YES	NA
6	JS00041	07-12-10	379 450,00	369 450,00	10 000,00	YES	NA
7	JS00037	04-01-09	447 200,00	-	-	NO	
TOTAL			3 196 350,00	2 664 150,00	85 000,00		

Table1

The above table1 summarises the overall financial status of the project, as per information available from HDA and Vererns construction. The same information is contained in MBCC's claim to ECDoHS, which confirms that the above amounts are not in dispute.

While MBCC is not disputing the above amount they dispute the fact that HDA and VC claim this was a Final claim on the project. They argue that the other claims they have should have also been included.

This could not have been possible to include in the above schedule at the time as the above payments come from records that HDA and VC have and have also been verified.

MBCC also argues that some monies where paid directly to VC by Thubelisha, which they claim should have been paid to them as they did the work.

Meetings will be held where all the parties can explain their roles and responsibilities clearly, in view of MBCC's claims and argument about the contractual relations of the

parties and the outstanding claims thereof. Scope of work will also need to be confirmed by all parties involved and the cost thereof.

4. METRO BUILDERS & CIVIL CONTRCATORS' CLAIMS

MBCC's claim is as per their Statement dated 1st March 2013. A hard copy of the entire claim is available.

Comments are made against each and every invoice which constitutes the entire claim on the Statement.

4.1 Invoice 1529: Agreed Amount. Amount R 447 200.00.

This invoice is not disputed by all parties. MBCC confirmed that the above invoice was never paid after Thubelisha's winding up, the amount can then be paid to the contractor, unless it can be confirmed that payment had already been made. MBCC, however argues that this was just an interim and not their final claim, as advised by VC.

4.2 Invoice 1538: Completion. Amount R 801 375.93.

This can only be resolved once the scope of work is agreed by MBCC, HDA and VC. MBCC argue that they completed the units and should be paid this amount. VC was adamant the claim of R447 000.00 was the last claim for MBCC on the project and nothing more.

4.3 Invoice 1539: Rectification work to contract. Amount R 473 976.00.

The scope of work that MBCC claim to have done needs to be verified by HDA and VC. MBCC claim to have assessed the work and the scope was agreed with Thubelisha.

4.4 Invoice 1541: Payment for outstanding wages. Amount R 314 930.00

There is no record of such payments being authorised by Thubelisha. They have also argued that they have no knowledge of the same.

MBCC is however adamant that they had to settle ND's outstanding wages, on instructions from Tubelisha. This, would normally have been claimed from ND who owed the wages. A meeting with both parties can resolve this.

4.5 Invoice 1542: Site Safety and Clean up. Amount R 86 660.00.

There is no scope of work where this is covered. This would normally fall under the contractual scope of work.

MBCC claim to have been instructed to provide for this by Thubelisha. HDA and VC to verify this.

4.6 Invoice 1561: Wet Works schedule. Amount R 358 411.00.

There is no scope of work where this is covered. MBCC claim to have executed work and Thubelisha was aware of it. HDA and VC could verify this claim.

4.7 Invoice 1564: Contract Fee. Amount R 115 000.00.

MBCC is claiming this money was paid for administration of the projects by VC. They argue that since they were appointed by Thubelisha they do not have to pay somebody else for them to be paid for their hard earned money. HDA and VC to assist resolve this claim.

4.8 Invoice 1572: Retention Due. Amount R 871 455.00.

VC who claim to be the main contractor confirmed having been paid Retention money. If MBCC are the ones entitled to this then VC should transfer this money back to MBCC.

4.9 Invoice 1621: Contract Management. Amount R 770 000.00.

There is no scope of work where this is covered. This would normally fall under the contractual scope of work, as Preliminary and General Costs (P & Gs). VC who were regarded as the main contractor did not submit a separate claim to Thubelisha for the same.

MBCC however insists to have agreed this with Thubelisha directly. HDA and VC to assist resolve this claim.

4.10 Invoice 1649: Consultants Fees and Expenses. Amount R 472 543.14.

MBCC claim these are costs incurred following up on their claims. These, once the rest of the claims have been resolved, can be re-assessed.

4.11 Invoice 1620: Consultants Fees (SARS) + Overdraft.

Amount R 472 543.14.

MBCC claim these are costs incurred due to delayed payments. These, once the rest of the claims have been resolved, can be re-assessed. They are more of a compensatory nature, which can be looked at differently.

4.12 Invoice 1650: Interest on outstanding payments.

Amount R 1 296 177.47

MBCC claim these are costs incurred due to delayed payments. These, once the rest of the claims have been resolved, can be re-assessed. They are more of a compensatory nature, which can be looked at differently.

5. CONCLUSION

It is clear from the information available that contractual relationships have not been clearly understood by all parties, resulting in a mix up of rights and responsibilities under the same.

It can also be understood that the absence of the Implementing Agent, Thubelisha, on the project contributed to this confusion.

It is recorded that all debtors and creditors were informed of Thubelisha's winding up and that all outstanding claims needed to be submitted to the liquidators.

Asked why MBCC did not take advantage of this, they claim to have contacted the liquidators who turned them away, as they had no record of their participation on the project.

Lack of clearly defined and agreed scope of work between MBCC and VC or Thubelisha makes it difficult to assess most of the claims from MBCC.

There is therefore need to go through the claims with the other parties who were involved on the project, being HDA and VC, as they are the only ones who can verify them, in the absence of agreed and signed for scope of work and Final accounts.

Meetings will therefore be scheduled with the above parties to assist in resolving the claims.