

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2022-045478

- (1) REPORTABLE: Yes  / No   
(2) OF INTEREST TO OTHER JUDGES: Yes  / No   
(3) REVISED: Yes  / No

Date: 26 June 2024 WJ du  
Plessis

In the matter between:

**CITY OF EKURHULENI METROPOLITAN  
MUNICIPALITY**

APPLICANT

**And**

**PHINUS KHEWSA  
AND OTHERS**

**FIRST RESPONDENT  
TWO TO TWO HUNDRED AND  
TWENTY THIRD  
RESPONDENTS**

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**JUDGMENT**

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**DU PLESSIS AJ**

**[1] Background**

[1] This is an application for the eviction of 220 respondents and others listed in the addendum to this judgment. The application was launched on 23 November 2022.

The Applicant local authority (“the Municipality”) seeks to evict the Respondents (“the occupiers”) from property belonging to the Municipality, known as Erf 1431 and 1432 Tembisa Extension 4, and Erf 1431 and 1432 Makhulong (“the property”).

[2] The Municipality avers that the occupiers occupied the properties after Wright J granted a *rule nisi* on 28 April 2022. This order was granted after various agencies, on instructions from the Municipality, entered the homes of the occupiers, intimidated them, and asked them to leave their homes without a court order. The *rule nisi*, to be confirmed on the return date, stated that:

1.1 The respondent (Municipality) is interdicted from evicting from destroying harassing the shacks of the 278 persons listed in annex M01 to the replying affidavit and their dependents.

1.2 the Municipality is interdicted from evicting or harassing the persons referred to in 1.1 above.

[3] The Municipality ignored this court order, which prompted the occupiers to approach the court again on 6 May 2022 for a contempt of court order, but was granted an order to compel compliance with the initial order instead.

[4] The Municipality states that this then led to the occupiers constructing their structures while the matter was pending during June / July 2022. They suggest that this *rule nisi* precluded them from acting against the occupation for three months, leading to large-scale land occupation.

[5] The occupiers deny that the occupation only took place after the Wright J order. They refer to a letter from the Municipality’s attorney that asked for a week’s postponement of the urgent application in April 2022, undertaking that they will not demolish the occupiers’ homes until the hearing. In other words, there were already structures on the land that could be demolished.

[6] The occupiers further state that the structures that were built after the granting of the Wright J order were the re-building of the demolished homes, which is why the report of the Municipality indicates building on the land in the months after the

court order. The rebuilding took place as the occupiers could gather money for materials to rebuild their demolished homes.

- [7] In its founding affidavit, the Municipality reflects on how “Tembisa is becoming a place where people do not respect the rule of law and often take the law into their own hands”. It refers to the Metro Police Department’s Land Invasion Unit, which tries to prevent people from occupying land by erecting structures on vacant and unoccupied land within the municipality. The affidavit states that the “present application is brought by the Municipality as a result of the occupier’s persistent conduct of unlawfulness after several prevented attempts by the Municipality’s Metro Police preventing the invocation of the Immovable Properties”. This includes approaching the court to prevent people from occupying vacant properties and preventing them from constructing structures and demarcating land. The Municipality voices its concern about the orders granted by this court which it regards as permitting the Respondents to occupy the vacant property. The Municipality refers the court to other matters pending before the court “in around the area of Tembisa”. The Municipality attach various court orders to the affidavit.
- [8] The orders of Maier-Frawley J (11 August 2022), Kuny J (13 October 2022), and Dosio J (22 October 2022) relate to other occupiers and other properties in the Tembisa area. Since eviction applications must be decided on a case-by-case basis, taking into account the context of the particular case, those orders are largely irrelevant in considering whether the current eviction would be just and equitable. What is noted, however, is that many of the orders stem from *rule nisi* applications brought by the occupiers, calling on the municipality to show cause why the Municipality should not be *interdicted* from interfering with the occupiers’ occupation and construction of their houses, and from demolishing it, *without a court order*. The therefore called upon the court to prevent illegal eviction.
- [9] The Municipality furthermore seems concerned about the peace in the area and the fact that the area occupied is not suitable for human occupation because of the sewerage line and a high voltage servitude.

- [10] In its answering affidavit, the occupiers sets out the circumstances that led to the occupation. The deponent of the answering affidavit, Mr Ntsuseng, stated that he has been staying in the area for 40 years. He is unemployed and depends on informal jobs to survive. Due to this situation, he cannot afford to move from his parents' home and is forced to live in cramped living conditions with the family. He blames this on the state's failure to create employment and to provide people with access to adequate housing. The system of not having access to land led to him and others occupying the land.
- [11] He also makes allegations of corruption (having to pay for RDP houses) as a reason for some people not having access to these RDP houses, although there is no evidence of such or no criminal case referred to where this was reported.
- [12] He describes the land they occupied as vacant since he was born and a place of refuge for criminals. The occupiers decided to take matters into their own hands, to clear the land and to occupy it. At the time of the deposing of the affidavit in January 2023, they had been staying there for 10 months.
- [13] He says they consulted the surrounding community before they occupied the land, and the community agreed, provided that they build a wall to maintain the standards of the area. They claim that community members were supportive as the community was tired of the criminality on the vacant land.
- [14] In their heads of argument, the occupiers mention that there are now more than 300 households comprising more than 1000 people, including women, children, disabled people, and pensioners living on the land. In the answering affidavit, Mr Ntsuseng provides information about eight households as an example. Due to the high unemployment rates, scarcity of affordable housing and the absence of available residential land, they had no option but to occupy vacant municipal land.
- [15] The occupiers deny that bringing the eviction application is the only alternative remedy to bring law and stability within Tembisa. They argue that the municipality is obliged to release, develop and allocate vacant land for residential purposes and

provide housing to its residents. They refer specifically to the Rapid Land Release Programme developed by the Gauteng Department of Human Settlements.

- [16] In reply, the Municipality states that it, with the assistance of the Gauteng Province, provides services to the residents of Tembisa along with providing a Housing Subsidy for those who apply and qualify. They argue that the occupiers should not benefit or be rewarded for their own wrongdoing (in the context of forcing the Municipality to provide alternative accommodation upon eviction).
- [17] The Municipality does not provide details on how they aim to fulfil their obligations to progressively realise the right of access to adequate housing of the specific occupiers. Instead, they regard the actions of the occupiers as an attempt to “jump the queue” to get some housing benefits, although the details are scarce, and there is no evidence for this claim.
- [18] As for the obligation to provide alternative accommodation, the Municipality states that they brought the application within six months, which means they are not obligated to provide alternative accommodation. Furthermore, they indicate that providing alternative accommodation would mean the occupiers benefit from their unlawful conduct. The Municipality states that the fact remains that the occupiers took the law into their own hands and that they have not indicated that they applied for a housing subsidy.
- [19] The Municipality eventually instituted the present application for the eviction of the occupiers listed as respondents. At the time of the hearing, the occupiers have occupied the land for almost two years. The occupiers do not regard their occupation as lawful but regard it as their sole residence. They do not deny that the Municipality is the owner. However, they do argue that an eviction order would not be “just and equitable”, mainly because such an eviction would leave them homeless.
- [20] On the day of the hearing, counsel for the occupiers argued that the applicable provision is s 6, not s 4. I allowed the parties to submit supplementary heads of argument on this issue. The distinction is important as each section has different

requirements, and the assessment of whether the eviction would be just and equitable also depends on who the evictor is.<sup>1</sup>

**[2] Section 26 of the Constitution and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998**

[21] The Municipality relied heavily on *Ndlovu v Ngcobo*<sup>2</sup> to support its application for eviction, advancing the argument that it only needs to prove that it is the owner of the land and that the occupiers are occupying the property unlawfully. This is common cause.

[22] Likewise, the Municipality cite *Ridgway v Janse van Rensburg*,<sup>3</sup> where the court states that the occupiers have to place the “relevant circumstances” before the court. In other words, it is not their duty to inform the court what the situation is with the occupiers.

[23] In its heads of argument, it further states that “by refusing eviction orders, the public could lose their confidence in the judiciary, which could lead to some people taking the law into their own hands resulting in unwanted public violence”. For this reason, the court must restore the rule of law. If the occupiers are unhappy with particular government conduct, they must approach the courts and not take the law into their own hands.

[24] The occupiers disagree. They state that the Municipality must show that it is just and equitable to evict, that justice and equity is impacted by s 6(3) factors, and that the issue of homelessness as alternative accommodation plays an important role. There is simply not enough facts before the court to make an eviction order, they argue.

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<sup>1</sup> See, for instance, for instance *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7; *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* [2011] ZACC 40; [2011] ZACC 33.

<sup>2</sup> *Ndlovu v Ngcobo, Bekker v Jika* 4 All SA 384 (SCA) at 17 to 19.

<sup>3</sup> 2002 (4) SA 186 (C).

- [25] From the outset it should be stated that the Municipality's framing of criminalising unlawful occupation instead of ensuring that evictions occur in a manner consistent with the values of the Constitution is concerning. During Apartheid, under the *Prevention of Illegal Squatting Act*<sup>4</sup> the unlawful occupation of land was criminalised, which enabled the issue of unlawful occupation to be resolved quickly by restricting the focus on land ownership and the unlawfulness of the occupation without any reference to considerations of justice, equity, or the bigger context.<sup>5</sup>
- [26] It rested on the "normality assumption" that an owner is generally entitled to exclusive possession of their property<sup>6</sup> and that the onus rested on the unlawful occupier to show their legal basis of occupation. If they could not, they would be evicted. This often meant that people with weak property rights such as the occupiers in this case could be easily evicted and moved, with no regard for their rights or the impact of such eviction on the occupiers and the community.
- [27] Likewise, s 3B of the *Prevention of Illegal Squatting Act*<sup>7</sup> gave the local authorities the power to summarily demolish any building or structure erected on land without the owner's consent.
- [28] S 26(3) of the Constitution was enacted to ensure that we move away from such practices towards humane and dignified treatment of those facing eviction. It states that "[n]o one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances" and that "[n]o legislation may permit arbitrary evictions".
- [29] The *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act*<sup>8</sup> ("PIE") was enacted to implement this constitutional provision. It requires that no

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<sup>4</sup> 51 of 1951.

<sup>5</sup> See a discussion on the history in Boggenpoel ZT and Mahomed S "Reflecting on Evictions and Unlawful Occupation of Land in South Africa: Where Do Some Gaps Still Remain?" *PER / PELJ* 2023 (26) page 6.

<sup>6</sup> *Chetty v Naidoo* 1974 (3) SA 13 (A) at 20A, see Boggenpoel ZT "(Re)Defining the Contours of Ownership: Moving beyond White Picket Fences" (2019) *StellLR*. 234 page 236.

<sup>7</sup> 52 of 1951.

<sup>8</sup> 19 of 1998.

home or shelter be demolished without a court order, which can only be granted after all relevant circumstances have been considered, and if it is of the opinion of the court that such an eviction be just and equitable. It thus no longer criminalises unlawful occupation, but rather lays down procedural requirements for eviction, and importantly, requires a court to consider if such an eviction would be just and equitable, with reference to factors that must be taken into account.

[30] Section 4 lays down the following requirements when a private person seeks an eviction:

4. Eviction of unlawful occupiers.—

(1) Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier.

(6) If an unlawful occupier has occupied the land in question for less than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by women.

(7) If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.

(8) If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine—

(a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and

(b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a).

(9) In determining a just and equitable date contemplated in subsection (8), the court must have regard to all relevant factors, including the period the unlawful occupier and his or her family have resided on the land in question.

(10) The court which orders the eviction of any person in terms of this section may make an order for the demolition and removal of the buildings or structures that were occupied by such person on the land in question.

(11) A court may, at the request of the sheriff, authorise any person to assist the sheriff to carry out an order for eviction, demolition or removal subject to conditions determined by the court: Provided that the sheriff must at all times be present during such eviction, demolition or removal.

(12) Any order for the eviction of an unlawful occupier or for the demolition or removal of buildings or structures in terms of this section is subject to the conditions



deemed reasonable by the court, and the court may, on good cause shown, vary any condition for an eviction order.

[31] Section 6 deals with eviction at the instance of an organ of state, such as the Municipality, and requires

6. Eviction at instance of organ of state.—(1) An organ of state may institute proceedings for the eviction of an unlawful occupier from land which falls within its area of jurisdiction, except where the unlawful occupier is a mortgagor and the land in question is sold in a sale of execution pursuant to a mortgage, and the court may grant such an order if it is just and equitable to do so, after considering all the relevant circumstances, and if—

(a) the consent of that organ of state is required for the erection of a building or structure on that land or for the occupation of the land, and the unlawful occupier is occupying a building or structure on that land without such consent having been obtained; or

(b) it is in the public interest to grant such an order.

(2) For the purposes of this section, “public interest” includes the interest of the health and safety of those occupying the land and the public in general.

(3) In deciding whether it is just and equitable to grant an order for eviction, the court must have regard to—

(a) the circumstances under which the unlawful occupier occupied the land and erected the building or structure;

(b) the period the unlawful occupier and his or her family have resided on the land in question; and

(c) the availability to the unlawful occupier of suitable alternative accommodation or land.

(4) An organ of state contemplated in subsection (1) may, before instituting such proceedings, give not less than 14 days’ written notice to the owner or person in charge of the land to institute proceedings for the eviction of the unlawful occupier.

(5) If an organ of state gives the owner or person in charge of land notice in terms of subsection (4) to institute proceedings for eviction, and the owner or person in charge fails to do so within the period stipulated in the notice, the court may, at the request of the organ of state, order the owner or person in charge of the land to pay the costs of the proceedings contemplated in subsection (1).

(6) The procedures set out in section 4 apply, with the necessary changes, to any proceedings in terms of subsection (1).

[32] S 4(7) states that an eviction order may only be granted if it is just and equitable<sup>9</sup> after the court considered all the relevant factors, including the availability of land for relocation and the rights and needs of the elderly, children, disabled, and women-headed households. When evaluating this issue, the court must decide whether or not eviction is just and equitable for all parties. When it is determined that eviction would be just and equitable, the court moves on to the second

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<sup>9</sup> S 4(7) PIE.

investigation. It must then decide what terms should be included in the eviction order and when it would be most reasonable to take effect.<sup>10</sup>

[33] The court ‘must’ grant an eviction order under s 4(8) if the requirements in s 4 are met (the procedural formalities *and* the conclusion that the eviction order would be just and equitable) and no good defence is made. Thus, if the procedure is not followed, or if the court comes to the conclusion that the eviction would not be “just and equitable”, there is no obligation on the court to order an eviction.

[34] PIE features two separate eviction procedures. S 4 addresses evictions by the owner or person in control of a property. S 6 deals with eviction at the request of an organ of state, even if the organ of state does not own the property. In both cases, the occupants must occupy the land unlawfully. In both cases, the eviction must be just and equitable. The approach is identical in both cases.<sup>11</sup>

[35] S 6, however, has extra requirements. This is presumably because the state bears the obligation to ensure the realisation of the right of access to adequate housing as set out in s 26(1) and (2) of the Constitution. S 6(1) states that an organ of state can only apply for eviction if consent is required for occupying the property (i.e. if the occupier is occupying the land or building without the consent of the state authority) or if it is in the public interest to grant such an order. S 6(2) qualifies that public interest includes the health and safety of those occupying the land and the public in general. When considering whether the eviction would be just and equitable, the court must take into account three factors listed in s 6(3), namely whether the eviction is just and equitable, namely the circumstance of the occupation, the period of the occupiers’ occupation and the availability of suitable alternative accommodation or land. This links with the requirements in s 26(3) of the Constitution that the court must take into account “all the relevant circumstances”.

[36] The s 6(3) PIE factors are peremptory but not exhaustive. The factors listed in s 4 may also be considered. Each case has to be considered on its own merits and not

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<sup>10</sup> *City of Johannesburg v Changing Tides 74 (Pty) Ltd* [2012] ZASCA 116 para 12.

<sup>11</sup> S 6(6)

based on generalities or vague references to lawlessness and disruption in a specific area. This is also true for the various occupiers on the various pieces of land in Tembisa that the Municipality refers to in their founding affidavit.

[37] The Supreme Court of Appeal emphasised two factors that often take centre stage in such an enquiry: the risk of homelessness and the availability of alternative land or accommodation.<sup>12</sup> It emphasises that “[i]n the case of occupations of public land and evictions at the instance of public bodies, the emphasis has fallen on the constitutional obligations of the arms of government mandated to address the housing needs of the people affected by the eviction, and in particular to address the plight of those who face an emergency situation of homelessness.” The State, at all levels of government, owes constitutional obligations to persons needing shelter, especially those in emergency situations like eviction-related homelessness.

[38] These obligations arise under s 26 of the Constitution and are unrelated to whether an eviction order is just and equitable. However, there is also not an absolute right to be given accommodation. Thus, the court is to have regard to the availability of alternative accommodation or land, even if there is no unqualified constitutional duty on local authorities to ensure that. Specifically, in relation to s 6(3)(c) of the PIE, which requires the court to consider the availability of alternative accommodation or land, the Supreme Court of Appeal<sup>13</sup> has stated that there is no unqualified constitutional duty on local authorities to ensure that no eviction occurs unless alternative accommodation is made available. However, an eviction with no alternative accommodation is far less likely to be just and equitable.

[39] The fact that the occupiers are occupying the land and erecting structures on the land without authorisation, the potential danger of the sewerage and power lines, and the unrest in the area does not mean that the court must grant the order. This triggers the court’s discretion to grant the order,<sup>14</sup> and a court can only grant an

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<sup>12</sup> *City of Johannesburg v Changing Tides 74 (Pty) Ltd* [2012] ZASCA 116 para 13.

<sup>13</sup> *City of Johannesburg v Changing Tides 74 (Pty) Ltd* [2012] ZASCA 116 para 12.

<sup>14</sup> *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7 par 25.

order if it is just and equitable to do so, with regard to the three factors in s 6(3). They will be discussed now.

**(i) The circumstance of the occupation**

[40] The Municipality emphasised how the occupiers occupied the land. It argues that the manner in which the land was occupied was against the public order and that similar unlawful activities are occurring in and around Tembisa. This despite the Municipality “at all material times [...] implementing the order and the prior judgments”.

[41] The Municipality emphasises that the property is unsuitable for human inhabitancy, which is also why it is not earmarked for it. It attaches two documents that indicate that the property is zoned as a public open space, “other natural areas”, which requires environmental impact assessments before it can be utilised for other purposes.

[42] The Municipality further states that the occupiers have not placed evidence before the court that they would be homeless should they be evicted and that “the Respondents are just people who are aggrieved with the State and they are just taking the law into their own hands”.

[43] In their supplementary Heads of Argument, the Municipality referred the court to an application brought before Moorcroft AJ in the urgent court a month before this hearing, dealing with a dispute between some of the occupiers (respondents) themselves.<sup>15</sup> It deals with allegations that some of the occupiers are trying to evict others from the land. The issue was not decided as the case was dismissed because of non-compliance with the practice directives. I do not regard the issue raised in that matter as relevant to the current matter. No supplementary affidavit was filed to explain its relevance, and it does not deal with the question of whether the eviction of these specific respondents by the Municipality would be just and equitable.

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<sup>15</sup> *Mokhatla v Ntsuseng* (2022/554) [2024] ZAGPJHC 498.

- [44] The Municipality also referred the court to *City of Ekurhuleni Metropolitan Municipality v Tshepo Gugu Trading CC*,<sup>16</sup> a case dealing with the erection of a billboard contrary to the by-laws of the Municipality, where the SCA stated that courts should not permit glaring illegality or turn a blind eye to the prescripts of the law and the importance of observing them. The Municipality lastly further referred the court to a recent judgment of Cassim AJ, *31 Koch Street Joubert Park CC v City of Johannesburg*<sup>17</sup> dealing with a dispute regarding electricity. In the judgment, Cassim AJ warns that the courts should not encourage illegality in any form – referring to the illegal reconnection of electricity in instances where the City has disconnected electricity.
- [45] The crux of the argument seems to be that if the court does not grant this eviction, it will be condoning illegal activities, which the court cannot do.
- [46] Not only are the above cases not applicable to eviction matters, but as will be discussed later, should the court grant an eviction order when it is not just and equitable, it would be breaching its constitutional duty to comply with s 26(3) of the Constitution.
- [47] Even more so, this line of argument is misplacing the role of the courts in eviction proceedings. The courts are called upon to determine whether an eviction is just and equitable. Once the owner of the land proves that it is the owner, and that the occupiers occupy the land without consent, PIE is activated and the court must determine whether, in the absence of a valid defence, the eviction will be just and equitable. The focus is not on supposed unlawfulness or alleged criminality of the occupation (unlawful occupation is not a crime) – the focus is on whether the *eviction* takes place within the prescripts of PIE and s 26 of the Constitution.<sup>18</sup>

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<sup>16</sup> [2024] ZASCA 81.

<sup>17</sup> 016733-2024.

<sup>18</sup> See a discussion in Jeewa TR *Unlawfully occupying the bridge to transformation: a case for judicial exploration when evictions are unjust and inequitable* (2021) LLM dissertation, UCT, p 33 in this regard.

[48] Occupiers taking the law into their own hands, however, can play a role in the weighting process. Still, it needs to be placed in the historical context of occupiers who have waited 30 years for the state to fulfil its constitutional obligation within its available resources. It does also not absolve the Municipality to comply with the substantive requirements of an eviction. The link was clarified by the Constitutional Court in *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes*<sup>19</sup> as follows:

[PIE] is a statute which was passed to give effect to the constitutional commitment that no one may be evicted from their home or have their home demolished without an appropriate intervention by a court of law and no legislation may permit arbitrary evictions. As we well know, this protection against arbitrary eviction is entrenched in our Bill of Rights and lives side by side with a salutary, if not complementary, right to have access to adequate housing. To that end, our Constitution enjoins the state to take reasonable and other legislative measures within its available resources to achieve the progressive realisation of the right of access to adequate housing.

[49] In *Grootboom v Government of the Republic of South Africa*<sup>20</sup> the Constitutional Court warned that the Court's approach by denying an eviction does not approve the practice of land occupation for coercing a State structure to provide housing on a preferential basis to those who participate in the occupation. This is also true in this case. In this case, however, there is no evidence that the occupiers occupied the land with the intention to jump the housing queue.

**(ii) The period of the occupiers' occupation**

[50] At the time of the hearing the occupiers have been staying on the land for two years. Before their occupation, the land was vacant. There are no plans to develop the land, it seems, as it might be unsafe to do so. At the time of the hearing their tenure was still insecure and precarious. There is no information about the community cohesion or the impact that the length of time has on their occupation. It is thus difficult to assess this factor properly.

[51] The Municipality denies that it has obligations to provide alternative accommodation since (in terms of s 4 of PIE) the occupiers lived on the land for

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<sup>19</sup> [2009] ZACC 16 par 145.

<sup>20</sup> [2000] ZACC 14 par 92.

less than six months. However, as discussed above, this places the inquiry under the wrong section. S 6 obliges such a consideration.

**(iii) The availability of suitable alternative accommodation or land**

[52] The general rule is that evictions should not lead to homelessness. This is to be decided on a case-by-case basis, calling on courts to reconcile the competing interests of owners and occupiers, who should not be rendered homeless as a result.

[53] In *City of Johannesburg v Changing Tides 74 (Pty) Ltd*<sup>21</sup> the City argued that the occupiers must place relevant information regarding homelessness before the court. After discussing the onus, the court concluded that it is for the applicant to ensure that the information placed before the court is sufficient that, if left unchallenged, would satisfy the court that it would be just and equitable to grant an eviction order. In some instances, the only relevant facts might be the applicant's ownership and the respondent's unlawfulness, but not always. The onus is not governed by the common law but by PIE, which requires that the applicant show why evicting the respondents would be just and equitable. It would be in very limited circumstances that the applicant has absolutely no knowledge of the identity of the persons they want to evict and their personal circumstances.

[54] The Municipality states in its founding affidavit that the occupiers only invaded the land to sell or rent the properties but attaches no evidence of this. It also does not clarify whether this is true for all the respondents. The occupiers deny this in their answering affidavit. Without proof that the denial is far-fetched or untenable, the court is bound by the respondents' version.<sup>22</sup>

[55] The Municipality also avers that the fact that the occupiers have legal representation "is not a conduct of a Respondent who are not able to go back where they were residing prior to the occupation". It is difficult to follow this logic. Just because the occupiers could secure legal representation does not mean they

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<sup>21</sup> [2012] ZASCA 116.

<sup>22</sup> *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] (3) SA 623 (A)

will not be homeless if evicted. Getting legal assistance to defend an eviction and the risk of being rendered homeless because of such an eviction can co-exist.

- [56] If it is the Municipality's case that (all) the occupiers have access to enough funds to rent property elsewhere, it would have to place evidence of that before the court. There is none. This is also the case with their assertion that the occupiers can address their own housing needs.
- [57] In short, there is no proper report setting out the personal circumstances of each of the occupiers cited, nor regard for the impact the eviction will have on the occupiers and the community.
- [58] The potential homelessness and the availability of alternative accommodation goes hand in hand. The question of alternative accommodation plays a role in both the s4(7) and s 6(3)(c) inquiry. It is not an absolute right or duty, but one of the considerations the court needs to consider in determining whether the eviction would be just and equitable. The occupiers state in their answer that they do not have funds to secure alternative accommodation. They argue that the National Housing Code and Chapter 12 of the Emergency Housing Policy are applicable in this instance.
- [59] While the Municipality makes a general reference to the options available to people seeking access to housing, it is not clear what the Municipality is doing to assist the specific respondents with access to housing. The Municipality states that the alternative accommodation option is only available to people in need, not those who commit the offence of invading land.
- [60] Other than the references to the public order in the area in general, the municipality did not indicate what the impact will be on them (with relation to this piece of land) should an eviction order not be granted. This means that in the balancing exercise, there is very scant information to consider regarding the impact on the Municipality of refusing an eviction order.



[61] Absent a comprehensive report that sets out the circumstances of the occupiers, the court is bound by the respondents' version. Thus, at least some of the occupiers will be rendered homeless if evicted, and it is not clear if there is alternative accommodation available for them, or why that inquiry is not relevant in this particular instance. This would render the eviction, on the information before me, unjust and inequitable.

#### **(iv) Meaningful engagement**

[62] When a Municipality is seeking an eviction, a court will be reluctant to grant such an order unless the municipality can show that it has meaningfully engaged with the occupiers to avoid the need for eviction by finding alternatives. In *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg*<sup>23</sup> the Constitutional Court made it clear.

[18] And, what is more, section 26(2) mandates that the response of any municipality to potentially homeless people with whom it engages must also be reasonable. It may in some circumstances be reasonable to make permanent housing available and, in others, to provide no housing at all. The possibilities between these extremes are almost endless. It must not be forgotten that the City cannot be expected to make provision for housing beyond the extent to which available resources allow. As long as the response of the municipality in the engagement process is reasonable, that response complies with section 26(2). The Constitution therefore obliges every municipality to engage meaningfully with people who would become homeless because it evicts them. It also follows that, where a municipality is the applicant in eviction proceedings that could result in homelessness, a circumstance that a court must take into account to comply with section 26(3) of the Constitution is whether there has been meaningful engagement.

[63] The engagement must occur before approaching the Court.<sup>24</sup> A failure to meaningfully engage prior to asking for an eviction order may result in its refusal.<sup>25</sup>

[64] Recently in *City of Cape Town v Various Occupiers*,<sup>26</sup> Bishop AJ listed some elements that should be included when the Municipality (in that case) seeks to evict, namely that the Municipality must advise the occupiers of the repercussions of the eviction, as well as their options if they are evicted, including what the Municipality may and must do to assist them; provide the occupants

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<sup>23</sup> [2008] ZACC 1.

<sup>24</sup> JB para 29

<sup>25</sup> *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes* 2010 (3) SA 454 (CC) and *Abahlali Basemjondolo Movement SA v Premier of the Province of Kwazulu-Natal* 2010 (2) BCLR 99 (CC); *JB Marks Local Municipality v Illegal Trespassers Erf 2148, Promosa, Potchefstroom* (M353/2021) [2023] ZANWHC 1.

<sup>26</sup> [2024] ZAWCHC 173 para 103.

with the opportunity to express their opinions on these options and propose alternatives; and assess whether it can accommodate the concerns. The parties must act in good faith to find a resolution. This demands a willingness to compromise. It cannot simply be the Municipality's offer to the occupiers to take it or leave it. But it does not require agreement. A municipality may evict even if their offers have been rejected. Meaningful engagement also occurs within the current policy framework and budget rather than resolving larger policy concerns.

[65] In this case, the Municipality is not sure who lives on the land. They state that they have not cited all the relevant parties that occupy the land, as they simply have no idea who is on the land. It mentions in the founding affidavit that the Municipality attempted to resolve the dispute on 31 October 2022 by asking the occupiers to vacate the property in order to avoid court proceedings, but the occupiers refused. This falls short of “meaningful engagement”.

[66] Later, the Municipality again stated that they tried to engage with the occupiers, but there is very little detail as to when this happened, with whom they engaged, what the content of the engagement was, and why it failed. Thus, the Municipality did not attempt to address the issue in a way other than coming to court relying only on their ownership rights and the unlawfulness of the occupation.

[67] There was no attempt to get information on the occupiers through the attorneys. No effort was made to determine the number of women-headed households, children, elderly and disabled people living there on the land. Nothing showed that the Municipality made an effort to determine the needs of the occupiers.

### [3] **Conclusion**

[68] If our Constitution is to be a “transformative Constitution” that is committed to the project of transforming our society, then our property and land law needs to be transformed too, by challenging the traditional view of land law as a hierarchical structure of rights, with ownership at the top, that links with exclusionary remedies of owners. Instead, we must recognise that property law is evolving to regulate overlapping or conflicting interests in property through negotiation or mediation, ultimately advancing constitutional (public) aims.<sup>27</sup>

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<sup>27</sup> Brand, D. (2024). ‘Setting Our Transformation Sights Too Low’: Land Reform, ‘Expropriation Without Compensation’ and ‘State Custodianship of Land.’ In O. Zenker, C. Walker, & Z.-Z.

[69] The first glimpse of such an approach was already evident in *Port Elizabeth Municipality v Various Occupiers*,<sup>28</sup> where the Constitutional Court gave guidance on how to approach evictions from municipal land. The Constitutional approach in such a case recognises the delicate balance between the ownership rights of possession, use and occupation with the right not to be arbitrarily deprived of a home.<sup>29</sup> The function of the courts, the court states,

“is not to establish a hierarchical arrangement between the different interests involved, privileging in an abstract and mechanical way the rights of ownership over the right not to be dispossessed of a home, or vice versa. Rather it is to balance out and reconcile the opposed claims in as just a manner as possible taking account of all the interests involved and the specific factors relevant in each particular case.”

[70] In other words, the Constitution introduced new rights relating to property not recognised in the common law. S 26(3) specifically introduced a right not to be arbitrarily evicted from one’s home.<sup>30</sup> And herein lies the problem of the City’s argument: the right to not be arbitrarily evicted is not recognised in private law, but that does not mean that the case should be automatically decided in favour of the landowner according to the logic of private law, as the Municipality seemed to suggest, with the authority that they rely on. This is where the Municipality falls short and why this application must fail. The City’s extensive reliance on *Ndlovu v Ngcobo*, *Bekker v Jika*<sup>31</sup> does not help their case. The *Ndlovu* case preceded the *Port Elizabeth Municipality* case, with *Port Elizabeth Municipality* providing a broader interpretation of s 26(3). Not only does the latter case deal with a local authority evicting (as opposed to *Ndlovu*, which dealt with private parties), but it is also dicta by the Constitutional Court. In terms of legal precedence, for cases such as these, *Port Elizabeth Municipality v Various Occupiers*<sup>32</sup> and the cases that followed and built on it are to be followed.

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Boggenpoel (Eds.), *Beyond Expropriation Without Compensation: Law, Land Reform and Redistributive Justice in South Africa* (pp. 118–140) Cambridge: Cambridge University Press.

<sup>28</sup> [2004] ZACC 7.

<sup>29</sup> Par 23.

<sup>30</sup> Boggenpoel ZT “(Re)Defining the Contours of Ownership: Moving beyond White Picket Fences” (2019) *StellLR*. 234 page 239.

<sup>31</sup> [2002] ZASCA 87.

<sup>32</sup> [2004] ZACC 7.

[71] The converse is also true: the fact that the right not to be arbitrarily evicted being a constitutional right, does not mean that the matter should be decided in favour of the respondent occupiers. Rather, both rights are protected, and both should be given effect, but in a way that promotes the spirit, purport and objects of the Bill of Rights.<sup>33</sup> The balance will fall not based on the right's origins or doctrinal force, but rather with the view on the constitutional obligation to promote what the Constitution envisions where an owner's right to their property is neither more nor less important than the right of unlawful occupiers not to be arbitrarily evicted from their home. This logic is also contained in PIE.

[72] This is also not a mere procedural right. S 26(3) requires that a court can only make an order "after considering all the relevant circumstances", and PIE requires a court to only order an eviction if it is "just and equitable" to do so, taking into account various factors such as the duration of the occupation, to consider whether it is an organ of state or a private entity evicting, as well as the relevant personal circumstances of the evictee and their family. This shows an intention to transform the issue into a substantive one that depends on substantive, concrete and contextual issues of justice, and not mere procedural compliance with legislative requirements. It is not purely technical criteria that flow from provisions of land law – there is a tension between the rule of law and the achievement of equality that interact with one another and are complementary and mutually reinforcing.<sup>34</sup>

[73] If a court has not been afforded the opportunity to consider *all the relevant circumstances* on whether the eviction will be just and equitable, in other words, substantive issues, and orders an eviction, the eviction will be arbitrary.<sup>35</sup>

[74] The Municipality argued that should the court not grant the eviction application, it would be seen as if the courts are condoning unlawful conduct, rendering the rule of law useless and making it difficult for the municipality to fulfil its constitutional obligation. This cannot be. The court is obliged to ensure that an application for

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<sup>33</sup> AJ Van der Walt *Property and Constitution* (2012) page 156.

<sup>34</sup> *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7 par 35.

<sup>35</sup> AJ Van der Walt *Property and Constitution* (2012) 158.

eviction only succeeds when the procedural *and* substantive requirements of PIE are complied with.

[75] This is in line with *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes*<sup>36</sup> where Moseneke DCJ stated that where occupiers reside on land owned by the State, different and more stringent considerations may apply since the State has certain obligations in terms of s 26(2) of the Constitution. That means that the State must show that it is acting reasonably in seeking the eviction and that the eviction is just and equitable as contemplated in PIE. The reasonableness of the government's conduct, which also links with the implementation of its housing development plans, is thus a material factor in determining whether an eviction is just and equitable.<sup>37</sup>

[76] In other words, once the occupiers have erected structures that resembles a home, the Municipality *must* obtain an eviction order using PIE. It cannot send the land invasion unit to the area demolish the structures. These agencies are not courts of law that can determine right there and then whether people should be evicted from their homes or have their homes demolished. This is not in line with s 26(3).

[77] This is why various court orders were granted to interdict the Municipality from demolishing and evicting people in the area *without a court order*. This is not an absolute prohibition. Rather, it is a call on the Municipality that should it seek to enforce its ownership rights, it does so within the framework of the Constitution and the legislation promulgated to give effect to the Constitution. In terms of the rule of law principle, the Municipality is also bound to follow the prescripts of the law.

[78] This is what the Municipality attempts to do with this application, but it falls short of. The Municipality should know that it cannot simply bring an application for eviction without engaging with the occupiers in good faith in the hope of coming to some solution. It should also know that it has a duty to place enough facts before the court regarding all the occupiers' including whether they risk homelessness should

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<sup>36</sup> 2010 (3) SA 454 (CC) para 148.

<sup>37</sup> *Ekurhuleni Metropolitan Municipality and another v Various Occupiers, Eden Park Extension 5* [2014] 1 All SA 386 (SCA) par 13.

they be evicted, or at the very least set out clearly what steps they took to get the information, and why it was not possible to get the information. Furthermore, if the Municipality is of the opinion that it does not have a duty to address these issues or provide alternative accommodation, it must state why the Municipality, in this specific circumstance, and with reference to the specific occupiers, do not have such a duty. Only then can the court consider whether, based on all the circumstances of the case, and after weighing up the rights of the occupiers with the rights and duties of the Municipality, granting an order would be just and equitable.

[79] In the absence of a proper case being made out and without meaningful engagement prior to the instituting of the proceedings, the granting an eviction order in this case, based on the current facts and evidence before the court, will not be just and equitable.

**[4] Order**

[80] I, therefore, make the following order:

1. The application is dismissed, with costs.

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**WJ DU PLESSIS**

Acting Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines and sending it to the parties/their legal representatives by email.

Counsel for the applicant:	Mr E Sithole
Instructed by:	Madholpa & Thenga Inc
Counsel for the respondent:	Mr MP Maphutha
	Mr Moela
Instructed by:	Sithi & Thabela Attorneys
Date of the hearing:	21 May 2024
Date of judgment:	26 June 2024

**ADDENDUM: Respondents**

<b>PHINUS KHESWA</b>	First Respondent
<b>MOALOHANE SOLOMON NTSUSENG</b>	Second Respondent
<b>RAMOTUKU ABRAHAM NTSUSENG</b>	Third Respondent
<b>TIFFANY BARNARD</b>	Fourth Respondent
<b>NONHLANHLA MKHALIPHI</b>	Fifth Respondent
<b>BRENDA OCTAVIA MKHALIPHI</b>	Sixth Respondent
<b>B J WILLARD</b>	Seventh Respondent
<b>SHARM ROGERS</b>	Eighth Respondent
<b>HANS KAYSTER</b>	Nineth Respondent
<b>LETOYA GIBBS</b>	Tenth Respondent
<b>SANA PRETORIUS</b>	Eleventh Respondent
<b>J CEASER</b>	Twelfth Respondent
<b>JEANY NKOSI</b>	Thirteenth Respondent
<b>GABRIEL LOTTERING</b>	Fourteenth Respondent
<b>ALLAN JOSEPH FORTUIN</b>	Fifteenth Respondent
<b>LAITY NKONENG MATLALA</b>	Sixteen Respondent
<b>TLAKALE VIRGINIA MAKGERU</b>	Seventeenth Respondent
<b>ALLAN JOSEPH FORTUIN</b>	Eighteenth Respondent
<b>JOHN NOKO MOABELO</b>	Nineth Respondent
<b>MOABELO PHATEDI EVA</b>	Tenth Respondent
<b>ANDRIES RAMMUTLA</b>	Eleventh Respondent
<b>LLOYD TLOU MOJELA</b>	Eighteenth Respondent
<b>TSHEFEDISHO MOJELA</b>	Nineteenth Respondent
<b>ROLIVHUWA SINYOSI</b>	Twentieth Respondent
<b>MOYAGABO WINNIE SELOPJANE</b>	Twenty-first Respondent
<b>SEBOLAISHI CHRISTOPHER MASHAMAITE</b>	Twenty-second Respondent
<b>GLORIA REFOMENE KHOZA</b>	Twenty-third Respondent
<b>MATSOBANE KLEINBOOI MAKGOTA</b>	Twenty-fourth Respondent
<b>RAMADIMETJA JOHANNA MASHAMAITE</b>	Twenty-fifth Respondent
<b>DISEMELO OMPHILE PATIENCE</b>	Twenty-sixth Respondent



<b>MMAKAU DORCUS MOTHAPO</b>	Twenty-seventh Respondent
<b>KGASAGO HAPPY MOTHAPO</b>	Twenty-eighth Respondent
<b>MATSHABA ROCKY MOGANO</b>	Twenty-ninth Respondent
<b>TREVOR DECIDE MAMBANE</b>	Thirtieth Respondent
<b>THOKO MOHAPI</b>	Thirty-first Respondent
<b>AGAIN KGOEDI</b>	Thirty-second Respondent
<b>MAPULA MAGGIE MASHABA</b>	Thirty-third Respondent
<b>PRINCE MACHABE</b>	Thirty-fourth Respondent
<b>PHUTI MOLELE</b>	Thirty-fifth Respondent
<b>MPHO NETSHITUKA</b>	Thirty-sixth Respondent
<b>RINAE PERCY NETSHITUKA</b>	Thirty-seventh Respondent
<b>PEACE MAGUVHA</b>	Thirty-eighth Respondent
<b>RAISIBE ESTHER MABOYA</b>	Thirty-ninth Respondent
<b>MAKGABO JOHANNA TEFFO</b>	Fortieth Respondent
<b>MALOSE ANDRITIONS LEDWABA</b>	Forty-first Respondent
<b>LERATO NTSUSENG</b>	Forty-second Respondent
<b>LOBISA NTSUSENG</b>	Forty-third Respondent
<b>JUDITH TSHEGOFATSO NTSUSENG</b>	Forty-fourth Respondent
<b>CONSTANCE LETLALO</b>	Forty-fifth Respondent
<b>KGABO EDWARD LETLALO</b>	Forty-sixth Respondent
<b>DALSON DITABA MATHEKGA</b>	Forty-seventh Respondent
<b>KEDIBONE AGNATH</b>	Forty-eighth Respondent
<b>DORA MAMPAILE MATJIU</b>	Forty-ninth Respondent
<b>KATLEHO MATJIU</b>	Fiftieth Respondent
<b>SIKHUMBUZO MLANGENI</b>	Fifty-first Respondent
<b>MAMPA PONTSHO</b>	Fifty-second Respondent
<b>THATAYAME JACKSON MMOLAENG</b>	Fifty-third Respondent
<b>LINEO MEBLE NTEREKE</b>	Fifty-fourth Respondent
<b>SURPRICE MAHLASE</b>	Fifty-fifth Respondent
<b>EPHRAIM MOFOMME</b>	Fifty-sixth Respondent
<b>NTHABISENG REVONIA RASESEMOLA</b>	Fifty-seventh Respondent
<b>GODFREY KHUTJO RACHEKHU</b>	Fifty-eighth Respondent

<b>RAMOKONE MARENDA RACHEKU</b>	Fifty-ninth Respondent
<b>GEORGE CHAUKE</b>	Sixtieth Respondent
<b>MAVIS NDHLOVU</b>	Sixty-first Respondent
<b>TRACY CHAUKE</b>	Sixty-second Respondent
<b>FAMANDA GEORGE CHAUKE</b>	Sixty-third Respondent
<b>TEMBI MOKAKE</b>	Sixty-fourth Respondent
<b>TEBOGO BOLEY</b>	Sixty-fifth Respondent
<b>MATJATJI SARAH MAMETSA</b>	Sixty-sixth Respondent
<b>SIPRIAN JUWAWA LEONGINE</b>	Sixty-seventh Respondent
<b>MOSES MOKHATLA</b>	Sixty-eighth Respondent
<b>THABISILE MMANOKO SEBOPA</b>	Sixty-ninth Respondent
<b>THABISILE MMANOKO SEBOPA</b>	Sixty-ninth Respondent
<b>CHAISA SOLOMON SELEPE</b>	Seventieth Respondent
<b>SONTI LISBETH MAPHAKENG</b>	Seventy-first Respondent
<b>KATLEGO BATHLER MAPHAKENG</b>	Seventy-second Respondent
<b>VINCENT SEKGALA</b>	Seventy-third Respondent
<b>MAKETJEPE CAROLINE MADUANE</b>	Seventy-fourth Respondent
<b>AVHAKHOLWI LORYNE TSHILINGA</b>	Seventy-fifth Respondent
<b>SURPRICE BALOYI</b>	Seventy-sixth Respondent
<b>MAPASEKA JOYCE MAKOKO</b>	Seventy-seventh Respondent
<b>MOTSAMAI AUBREY HLUNGWANI</b>	Seventy-eighth Respondent
<b>MATIMBA MABASA</b>	Seventy-ninth Respondent
<b>TLANGELANI SALVA MALULEKE</b>	Eightieth Respondent
<b>TSHINAKAHO RAVHANGA</b>	Eighty-first Respondent
<b>EMMANUEL MARAGANEDZA</b>	Eighty-second Respondent
<b>MAUREEN KHENSANI MABILANE</b>	Eighty-third Respondent
<b>MFANA FEFFRIE</b>	Eighty-fourth Respondent
<b>LETTAH NOMGQIBELO MNGOMEZULU</b>	Eighty-fifth Respondent
<b>TEBOGO EUGENE MPOLOKENG</b>	Eighty-sixth Respondent
<b>CELIA MPOLOKENG</b>	Eighty-seventh Respondent

<b>BONOLO PRICILA LEBOTSE</b>	Eighty-eighth Respondent
<b>NTHABISNG ALICE TSOTETSI</b>	Eighty-ninth Respondent
<b>LEHLOHONOLO TSOANA</b>	Ninetieth Respondent
<b>LIMAKATSO JULIA SEIMA</b>	Ninety-first Respondent
<b>LEPONESA RODGER KHOALINYANE</b>	Ninety-second Respondent
<b>STANLEY BUTI KOLOLO</b>	Ninety-third Respondent
<b>ITANI PHATHELA</b>	Ninety-fourth Respondent
<b>STANDFORD MABOTJA</b>	Ninety-fifth Respondent
<b>BRENDA LINDIWE SITHOLE</b>	Ninety-sixth Respondent
<b>MALOSE STANDFORD NONG</b>	Ninety-seventh Respondent
<b>TUMISANG GERMINA MAHAPA</b>	Ninety-eighth Respondent
<b>JERIDA LEBOGO MAKALO</b>	Ninety-ninth Respondent
<b>KHOMOTSO LEBAKA</b>	Hundredth Respondent
<b>ANGES MAPEBANE CEKWADI</b>	One hundredth and first Respondent
<b>DINEO CEKWADI</b>	One hundredth and second Respondent
<b>TOKOLOGO BRIAN RAMASHALA</b>	One hundredth-third Respondent
<b>THULARE JOHANNA SATHEKGE</b>	One hundred and fourth Respondent
<b>GLADYS MAPHEFO RASWISIWI</b>	One hundred and fifth Respondent
<b>SHORLIN TONDANI RASWISWI</b>	One hundred and third Respondent
<b>RAMONGENE LIZZY LATAKGOMO</b>	One hundred and fourth Respondent
<b>LETHABO CHARLOTE LATAKGOMO</b>	One hundred and fifth Respondent
<b>WELHEMINA MOROMUDI</b>	One hundred and sixth Respondent

<b>MALESELA MOSES MOROMUDI</b>	One hundred and seventh Respondent
<b>MAHLAA REGINAH MASHABATHAKGA</b>	One hundred and eighth Respondent
<b>AZWINNDINI LUCKY RERANI</b>	One hundred and ninth Respondent
<b>KGAUGELO RUDY MASHABATHAKGA</b>	One hundred and tenth Respondent
<b>GOSHETJENG MAVIS MASHIFANE</b>	One hundred and eleventh Respondent
<b>LETHAMAGA JOHNNY KGAPHOLA</b>	One hundred and twelfth Respondent
<b>MACHABA PHILEMON MOKOBODI</b>	One hundred and thirteenth Respondent
<b>EVELYN TSHEPISO MASHABO</b>	One hundred and fourteenth Respondent
<b>KEKULU SINAH LAMOLA</b>	One hundred and fifteenth Respondent
<b>LEBOGANG DILIGENCE LAMOLA</b>	One hundred and sixteenth Respondent
<b>NKIDI ELIZABETH PILA</b>	One hundred and seventeenth Respondent
<b>NKWADI DORAH RACHEKU</b>	One hundred and eighteenth Respondent
<b>ROBERT SARILA</b>	One hundred and nineteenth Respondent
<b>BEAUTY CHUENE SENYATS</b>	One hundred and twentieth Respondent
<b>MONNI SENYATSI</b>	One hundred and twenty-first Respondent
<b>MATSIE PEGGIE MAUNATLALA</b>	One hundred and twenty-second Respondent

<b>EUNICE MAUNATLALA</b>	One hundred and twenty-third Respondent
<b>KANEGO DAZRY MAUNATLALA</b>	One hundred and twenty-fourth Respondent
<b>MABOLOTJE PENELOPE MPHATLHELE</b>	One hundred and twenty-fifth Respondent
<b>AUBREY MISISINYANA MTILENI</b>	One hundred and twenty-sixth Respondent
<b>KARABO MASHILE</b>	One hundred and twenty-seventh Respondent
<b>MOLEWENG ALLEN MOHLALA</b>	One hundred and twenty-eighth Respondent
<b>ELIZABETH MAKGASA KGOLANE</b>	One hundred and twenty-ninth Respondent
<b>KWENA PRUDENCE LEKOLOANE</b>	One hundred and thirtieth Respondent
<b>TJATJI TSHEPO THIPANE</b>	One hundred and thirty-first Respondent
<b>KATLEGO MOHLAGUDI MAKGETLANE</b>	One hundred and thirty-second Respondent
<b>EDWIN RASEASALA</b>	One hundred and thirty-third Respondent
<b>KEDIBONE EPHODIA SENYOLO</b>	One hundred and thirty-fourth Respondent
<b>ROSAH MEOKGO MOKHATLA</b>	One hundred and thirty-fifth Respondent
<b>MATSHIDISO MARTINAH MOKHATLA</b>	One hundred and thirty-sixth Respondent
<b>VALRY LETHABO MOLEKWA</b>	One hundred and thirty-seventh Respondent
<b>KEDIEMETSE SOPHIA MODISE</b>	One hundred and thirty-eighth Respondent

<b>MMATLOU JOSIAS MANAMELA</b>	One hundred and thirty-ninth Respondent
<b>CLAUDIA KELEBOGILE MAKHAFOLA</b>	One hundred and fortieth Respondent
<b>SELLO MARVIN MOTOPI</b>	One hundred and forty-first Respondent
<b>LEKETJA INNOCENT LEDWABA</b>	One hundred and forty-second Respondent
<b>AUBREY MOTSAMAI HLUNGWANI</b>	One hundred and forty-third Respondent
<b>PHINEAS SEANEGO</b>	One hundred and forty-fourth Respondent
<b>FRIDDA DLAMINI</b>	One hundred and forty-fifth Respondent
<b>SALOME SEBOLAISI MOTOPI</b>	One hundred and forty-sixth Respondent
<b>RAMASELA HELLEN RAMOKOLO</b>	One hundred and forty-seventh Respondent
<b>RAISEBE GERMINA LEDWABA</b>	One hundred and forty-eighth Respondent
<b>AGNES MAPOBANE CEKWADI</b>	One hundred and forty-ninth Respondent
<b>SINDISIWE NKOSI</b>	One hundred and fiftieth Respondent
<b>SIMPHIWE PHINIAS MASEKO</b>	One hundred and fifty-first Respondent
<b>PEARL ANNAH MASHAMAITE</b>	One hundred and fifty-second Respondent
<b>MOREEN MABILANE</b>	One hundred and fifty-third Respondent
<b>HILDA MABUSELA</b>	One hundred and fifty-fourth Respondent

<b>JOHANNES MODIBE MODIBA</b>	One hundred and fifty-fifth Respondent
<b>MAANDA RAMULONGO</b>	One hundred and fifty-sixth Respondent
<b>TLOU FREDERICK SELOMANE</b>	One hundred and fifty-seventh Respondent
<b>CHOENE MOKGONYANA</b>	One hundred and fifty-eighth Respondent
<b>SCOTCH MAFIHLE MATHABATHA</b>	One hundred and fifty-ninth Respondent
<b>NHLANHLA BRAIN MADELA</b>	One hundred and sixtieth Respondent
<b>LIVHUWANI NANCY MOTHIBA</b>	One hundred and sixty-first Respondent
<b>SEKELEKETE MARTHA TLHONG</b>	One hundred and sixty-second Respondent
<b>THABISO PENWELL SELEMATSENG</b>	One hundred and sixty-third Respondent
<b>GLEN MATHEBULA</b>	One hundred and sixty-fourth Respondent
<b>KARABO GRANY MPINGA</b>	One hundred and sixty-fifth Respondent
<b>PINKY MAHLANGU</b>	One hundred and sixty-seventh Respondent
<b>AYANDA MANTHWA MOKGODI</b>	One hundred and sixty-eighth Respondent
<b>ARNOLD CHOENE MASHILO</b>	One hundred and sixty-ninth Respondent
<b>MURAGA BETHUAL MUTAVHATSINDI</b>	One hundred and seventieth Respondent
<b>THABO BRENDAN MODIKE</b>	One hundred and seventy-first Respondent

<b>MEYELEN GLORIA CHABALALA</b>	One hundred and seventy-second Respondent
<b>MOLOKO MPHELO</b>	One hundred and seventy-third Respondent
<b>MOOROSI ABRAM MOTSOENENG</b>	One hundred and seventy-fourth Respondent
<b>MABE JACOB SEHURUTSI</b>	One hundred and sixty-fifth Respondent
<b>MBENGENI EDWARD SIPHEYI</b>	One hundred and seventy-sixth Respondent
<b>NTHABISENG THEREZA SELEPE</b>	One hundred and seventy-seventh Respondent
<b>FRIDA MMANGANA</b>	One hundred and seventy-eighth Respondent
<b>JUNIOR MASHIGO</b>	One hundred and seventy-seventh Respondent
<b>MACHUENE SILAS THAMAGA</b>	One hundred and eightieth Respondent
<b>DIPOU DORCAS MANTSO</b>	One hundred and eighty-first Respondent
<b>PENELOPE KADIAKA</b>	One hundred and eighty-second Respondent
<b>RAKGAMANYENE ELVIS MARIPANE</b>	One hundred and eighty-third Respondent
<b>ELVIS MMAMOYABO MALETE</b>	One hundred and eighty-fourth Respondent
<b>NKITLENG MPETHI</b>	One hundred and eighty-fifth Respondent
<b>DIEKETSENG ITUMELENG MOLEFE</b>	One hundred and eighty-sixth Respondent
<b>LEHLOHONOLO</b>	



<b>MTAKWENTE</b>	One hundred and eighty-seventh Respondent
<b>SOPHY MOYENI</b>	One hundred and eighty-eighth Respondent
<b>EVELINAH MABASO</b>	One hundred and eighty-ninth Respondent
<b>OWEN KOENA MORAPI</b>	One hundred and ninetieth Respondent
<b>LUCETTE BILANKULU</b>	One hundred and ninety-first Respondent
<b>BUYISILE PHENYANE</b>	One hundred and ninety-second Respondent
<b>GINY HERMINAH MOLEFE</b>	One hundred and ninety-third Respondent
<b>ASINA DORRIES NGWENYA</b>	One hundred and ninety-fourth Respondent
<b>JOHN MALESELA</b>	
<b>RAMOKGATLA</b>	One hundred and ninety-fifth Respondent
<b>NANA EVELYN MODIME</b>	One hundred and ninety-sixth Respondent
<b>CHARLES TSHIDISO</b>	
<b>SELEMATSILA</b>	One hundred and ninety-seventh Respondent
<b>MESHACK RABELANI</b>	
<b>RAVHUTSI</b>	One hundred and ninety-eighth Respondent
<b>MOYAHABO BENFOTHIUS</b>	
<b>MATLOPELA</b>	One hundred and ninety-ninth Respondent
<b>SOPHIE RAMADIMETSA</b>	
<b>RAMOKGATLA</b>	Two Hundred and first

<b>RONICA MAHLATSE MELLO</b>	Respondent Two Hundred and second Respondent
<b>MMACHIPU STELLA PHAKWAYO</b>	Two Hundred and third Respondent
<b>WILLIAM MAPHARI</b>	Two Hundred and sixth Respondent
<b>JABULANI MTHEMBU</b>	Two Hundred and seventh Respondent
<b>CINDY MAHLANGU</b>	Two Hundred and eighth Respondent
<b>MOHLODING MODIBA</b>	Two Hundred and ninth Respondent
<b>SIDNEY TSIRI</b>	Two Hundred and tenth Respondent
<b>LORRAINE MOGALE</b>	Two Hundred and eleventh Respondent
<b>MATEMA CATHERINE MOTHAPO</b>	Two Hundred and twelfth Respondent
<b>KWENA MOABELE</b>	Two Hundred and thirteenth Respondent
<b>THEMBI SELINA MOKAKI</b>	Two Hundred and fourteen Respondent
<b>MATSHE JATHRO MAHLATLOLE</b>	Two Hundred and fifteenth Respondent
<b>JULIUS NKOANA NGOETJANA</b>	Two Hundred and sixteenth Respondent
<b>LEBOGANG MOABELO</b>	Two Hundred and seventh Respondent
<b>TSEDISO MOILA</b>	Two Hundred and eighteenth Respondent
<b>CHOENE MOABELO</b>	Two Hundred and

**BRIAN NTSHALELA**

nineteenth Respondent  
Two Hundred and twentieth  
Respondent

**THE UNLAWFUL OCCUPERIS OF ERF1432  
TOWNSHIP TEMBISA EXTENSION 4, also known  
as 1432 MAKHULONG**

Two Hundred and twenty-  
first Respondent

**CITY OF EKURHULENI METROPOLITAN  
POLICE DEPARTMENT (“EMPD”)**

Two Hundred and twenty-  
second Respondent

**SOUTH AFRICAN POLICE SERVICES  
(“SAPS”)**

Two Hundred and twenty-  
Third Respondent