

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2023-078684

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| (1) | REPORTABLE: Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/> |
| (2) | OF INTEREST TO OTHER JUDGES: Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/> |
| (3) | REVISED: Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/> |

Date: 25 August 2023 WJ du

In the matter between:

NAKAMPE RECTOR SEALE

FIRST APPLICANT

THE RABIE RIDGE COMMUNITY

SECOND TO 291TH APPLICANT

and

**THE CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

FIRST RESPONDENT

**MMC FOR HOUSING, CITY OF JOHANNESBURG
METROPOITAN MUNICIPALITY, ANTHEA NATASHA
LEITCH N.O.**

SECOND RESPONDENT

JUDGMENT

DU PLESSIS AJ

- [1] This is an urgent application for relief under s 38 of the Constitution, which empowers a court to grant appropriate relief if approached by a person alleging that a right in the Bill of Rights has been infringed. The Applicants ask for restoration of the *status quo ante* of their possession and structures on land, an interdict against eviction without a court order and that the Applicants refrain from harassing the Applicants.
- [2] The Applicant community comprises 122 female-headed households, and 128 other households. The rest of the 836 members are children. The community consists of impoverished families who previously rented or squatted elsewhere and could no longer afford to pay rent, even more so after the COVID-19 pandemic that rendered many applicants unemployed. The First Respondent is the City of Johannesburg (hereafter the COJ), the local authority with the necessary jurisdiction over the property, and the Second Respondent is the MMC for Human Settlements in Gauteng.

[1] Background

- [3] A small group of the Applicants settled on the property around 2017, but the majority took occupation after the Covid-19 pandemic during 2022 and 2023. As part of part B of the Application, the applicants set out their efforts to engage with the Responents to find a more permanent solution regarding housing, but this has not borne fruit so far.
- [4] Currently, the Applicants occupy various dwellings on the land known as portion of Farm Allandale, Registration Division IR, Province Gauteng ("Farm Allandale") that the Respondents caused to be demolished. These demolitions were done relying on an interdict granted by Sutherland J in 2017 (the "2017 order"). The 2017 order was granted against "the unknown people who intend invading [the property] as

the first Respondents, and "the unknown people who invaded the property" as the second Respondents.

- [5] The specific demolitions that triggered this urgent application took place between 10h00 – 13h00 on 14 July 2023 and again on 21 July 2023, the Applicants argue without an eviction order. ¹However, this is a regular occurrence, with such evictions taking place "on an almost 3 weekly basis for at least the past 3 years".² After the round of evictions in July 2023, the Applicants approached Lawyers for Human Rights (LHR) for assistance. On the advice of the LHR, community members took pictures to document the eviction, knowing that the municipalities often claim that the demolished structures were unoccupied.
- [6] The Respondents state that they only use the interdict to demolish unoccupied structures, prevent people from settling on the land, and not to evict people from living on the land. In fact, they were dismantling false shelters– unoccupied but only filled with a few household items on the day of the demolition, to create the impression that they occupied the property. ". According to the supporting affidavit of the service providers, on the day of the evictions, the team took pictures inside and outside of the structures, certifying them unoccupied, to later demolish them. They attached photographs of the empty structures they demolished, some half-built, some finished.
- [7] The Applicants deny this. Their case is that the community has occupied the property since 2017, but mostly since 2022. They also submitted photographs of the eviction. In these photographs are trucks filled with material and a water cannon (the JMPD confirmed this during the inspection *in loco*) spraying water on what looks like burning debris, amongst other things. There are also photographs of household items like a plastic bathtub, cutlery, mattresses, blankets, pillows and the like lying outside in the open.
- [8] In videos uploaded there is a disabled mother who, after the eviction, made a shelter from the plastic covers that remained, for her and her baby to sleep under.

¹ FA para 23.

² FA para 27.

During the inspection *in loco*, she was sitting in front of a rebuilt structure with the same red plastic sheet next to it.

- [9] The Respondents did not address the photographs and the videos in their answering affidavit other than challenging the veracity of the videos and the pictures and denying that they were taken on the property. This was addressed with an inspection *in loco*, set out below.
- [10] The Applicants also had the legal representatives of the Lawyers for Human Rights attend to the premises to witness the occupation of the structures by the Applicants first-hand.
- [11] After the July evictions, Ms Louise du Plessis from the LHR wrote a letter to the CoJ to notify them of the evictions, also notifying the CoJ of their view that the evictions are unlawful because it is not done in terms of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act³ (hereafter PIE), noting their willingness to meet and explore the potential to have the issue resolved. They received no formal response to the letter. Instead, four days later, 30 heavily armed JMPD officers and 50 so-called Red Ants arrived with six trucks to demolish the structures. They state that the demolition took place in the presence of most community members (being unemployed), including many children. Some of the materials not uploaded onto the truck were burned, and many other personal items, such as identity documents, electrical appliances, pots, places, clothing, shoes etc. were lost or damaged.
- [12] The same thing happened a week later, on 21 July 2023. After the application was served on 8 August 2023, the Respondents executed two more evictions, namely on 9 August 2023, and on 18 August 2023, on the day the parties were supposed to have a mediation discussion. After this, some families managed to rebuild scant homes to stay in, while others took occupation by other members or in nearby areas.

³ 19 of 1998.

[13] An *in loco* inspection confirmed that all the photographs were taken on the property (only one could not be confirmed). During the inspection, the legal representatives and I, as well as members of the Respondents, were guided by the photographer Mr. Seanego, accompanied by about 30 community members. On the inspection, a mix of occupied and unoccupied, complete (about 55) and incomplete structures stood on the unfenced property. On the other side of the road is an equally big piece of land, unoccupied. A community member explained that that is private land; they do not occupy it.

[14] Some half-built structures were next to burned grass – a community stated that that is where the materials were burned. Another community member explained that the structures are half-built because they do not have the money to rebuild them all at once. While he is building, he sleeps at his friend's shack.

[2] Relief sought

[15] The Applicants, therefore, ask for a constitutional remedy under section 38 of the Constitution since their constitutional rights of housing and property were infringed. They claim restoration of their structures and R3 500 per family to replace their lost belongings. During the exchange of pleadings, a constitutional damages claim has been moved to part B of the relief. The applicants indicate that a "one and a half" shack from corrugated iron on average costs R3 500, while wooden structures cost around R1 500 to replace.

[16] The Applicants also ask for various interdicts. They state they have clear rights in the Constitution, namely the right not to be evicted without a court order and not to have property arbitrarily deprived, along with the right to privacy and dignity. They state that they will suffer irreparable harm in the form of constant evictions and that they have tried to engage with the CoJ to no avail, meaning that this is their only remedy.

[17] They also argue that this matter is urgent, as they are constantly being deprived of their possession and evicted without a valid court order, often rendering them homeless (until they rebuild a new structure). There is no substantial redress in

due course for this. They explain their delay of a month in bringing this application regarding the logistical challenges of such a large community scattered all over the place and the limited resources within the LHR. The delay was not due to the Applicants.

[18] The Respondents first answer with procedural arguments: that the Applicants lack authority, so they filed a Rule 7(1) Notice challenging the LHR's authority to represent the people. The LHR provided this by uploading 292 signed forms. In the Replying Affidavit the Applicants indicate that once that was uploaded, this caused the Respondents to argue that the matter should be removed from the urgent roll because the papers exceed 500 pages.

[19] They also argue that the matter is not urgent, mainly because many people are not homeless as they indicated they are staying with friends, or had re-established themselves on the property or elsewhere. They question the logistical delay in bringing the application, stating that "[m]ounting grounds of urgency on such flimsy grounds by such a reputable law clinic is most regrettable and amounts to reckless and vexation litigation bordering on abuse of court process and to the annoyance of the City of Johannesburg". They warn that a punitive cost order would be sought if not removed.

[20] They then raise what they say are material disputes of facts, namely the sporadic evictions, showing that the Applicants do not have peaceful and undisturbed possession. They also challenge the identity of the Applicants, adding that there is already litigation about the same property in the local division, Johannesburg. The Applicants can also not be homeless and re-establish themselves on the property simultaneously. All this, they claim, is a bona fide dispute of fact. The Applicants, in argument, stated that there is not a *bona fide* dispute of fact.

[21] As for the litigation, the Applicants stated in their Replying Affidavit that various communities in Rabie Ridge sought legal advice but that the Applicants, in this case, are not part of those cases. Eventually, three orders were uploaded, two from 2019 and one recently where the court ordered restoration of certain property. The first two were struck from the roll (it is not indicated why), while in the last,

there was partial relief granted in that building materials and various utensils must be restored. The rest of the relief (relating to the 2017 court order, and an interdict against evictions without a court order) was struck for lack of urgency.

[22] Lastly, the Respondents state, since they seek a final interdict, they must show that they have a clear right, which they don't have. This is so, state the Respondents, because they are "illegal occupiers" (sic) on their own version and have unlawfully invaded the property. They thus have no right. Moreover, an alternative remedy to the dissatisfaction with the 2017 order is to bring a rescission application or to go for mediation in terms of Rule 41A.

[23] On the well-known *Plascon Evans*-rule,⁴ I find that the Applicants' version prevails. Mr Seale deposed an affidavit of events that he witnessed. The photographs and videos were only questioned for authenticity and not disclosing the location and time taken. The location problem was solved by an inspection *in loco*. Not only did the Applicants submit photos that the shelters were demolished, doing away from the Respondents' contention that they do not use the interdict to evict people, but the Respondents Answering Affidavit deposed off does not indicate that the allegation that community members place material in the house to dupe the authorities by placing household items in the shacks into believing that the structures are occupied, the information submitted also do not fall within the personal knowledge of the deponent. The two supplementary affidavits filed belatedly without leave from the court document the normal modus operandi of the Respondents service providers, namely, to target unoccupied structures. Even if this is so, this will have no bearing on the outcome for the reasons below.

[3] **Ad urgency**

[24] Urgency is a procedural issue that allows a court to forego the forms and services required by the regulations. It is the applicant's responsibility to demonstrate the circumstances that make the matter urgent and the absence of substantial remedies if the matter is not heard as a matter of urgency.⁵ This is not the

⁴ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E – 635D.

⁵ *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo* [2014] ZAGPPHC 400.

equivalent of irreparable harm required before granting interim relief, but something less.⁶

[25] The pressing question is whether the applicant will be granted significant relief in due course. This means that a situation will be considered urgent if the applicant can show that they need immediate court involvement and that if their case is not heard sooner than the ordinary course, as any prospective future court order will no longer provide them with the essential legal protection.

[26] Being rendered sporadically homeless is urgent. There is a new sense of urgency in every demolition of every structure that renders the occupants homeless, especially if this is done unlawfully. The evictions are furthermore done in an unconstitutional manner, rendering the matter even more urgent.

[4] **Ad merits**

[27] Almost 20 years ago, the Constitutional Court in *Port Elizabeth Municipality v Various Occupiers*⁷ placed PIE within its historical context. During apartheid, evictions were done in terms of *Prevention of Illegal Squatting Act* (hereafter PISA),⁸ which criminalised unlawful occupation of land. Unlawful occupation had to be dealt with swiftly, without regard to the occupiers' personal circumstances. Likewise, remedies like the *rei vindicatio* relied on the strong right of possession of the owner, with the occupier only allowed to occupy the premises if she could raise (and prove) a defence, such as occupying the property in terms of a contract.

[28] The Constitution changed this, specifically s 26(3) that states:

No one may be evicted from their home, or have their home demolished, without an order of the court made after considering all the relevant circumstance. (own emphasis)

[29] S 26(3) affords unlawful occupiers a right not to be evicted (or have a home and shelter demolished) without a court order. PIE was enacted to give effect to s 26(3) and lays out the process in which eviction must take place, laying down the

⁶ [2012] JOL 28244 (GSJ) at [7].

⁷ 2005 1 SA 217 (CC) paras 8-13.

⁸ *Prevention of Illegal Squatting Act* 51 of 1951.

requirement that the court can only order an eviction if it would be just and equitable.

- [30] In terms of PIE⁹ "evict" means "to deprive a person of occupation of a building or structure". "Building or structure" includes "any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter".
- [31] PIE applies to structures occupied as homes, specifically read in line with s26(3), providing that no one may be evicted from a "home", or no such structure may be demolished unless a court order is granted regarding PIE. Eviction from such structures can thus not be done by an interdict.
- [32] While I have rejected the Respondents version that they unlawfully evicted the people relying on an interdict, even if on their version they only demolished unoccupied structures, their actions amount to spoliation that entitles the Applicants to restoration.
- [33] A growing line of authority clarifies that once the poles are in the ground, possession is established and can only be removed by a court order (where the owner may use common law remedies). Many of these rely on *Yeko v Qana*¹⁰ where the court stated that "the possession which must be proved is not possession in the juridical sense; it may be enough if the holding by the applicant was with the intention of securing some benefit for himself."¹¹ This approach was applied in the context of the dismantling of incomplete structures in *South African Human Rights Commission v City of Cape Town*¹² where the court held that "[i]t would appear that the peaceful and undisturbed possession was physically manifested by the occupiers commencing construction of informal structures on the land. The structures need not be completed nor occupied for the possessory element of spoliation, as defined by *Yeko*, to be perfected".

⁹ S1(i).

¹⁰ 1973 (4) SA 735 (A) at 739H).

¹¹ See also *Fischer and Another v Ramahlele* (203/2014) [2014] ZASCA 88; 2014 (4) SA 614 (SCA); [2014] 3 All SA 395 (SCA) par 22.

¹² 2021 2 SA 565 (WCC) para 83.

[34] In *Residents of Setjwela Informal Settlement v City of Johannesburg: Department of Housing, Region E*¹³, the court faced similar facts as in this case in deciding whether to confirm an interdict or not. In this case, the court stated

[16] In a sense, the Respondent found itself between the proverbial rock and a hard place in this regard. If there was not sufficient presence on behalf of the applicants to constitute possession, there was probably not enough to demolish; if the shacks had reached such a state of completion that they could be (and therefore likely was) occupied, PIE applied. Therefore, since the Respondent did in fact demolish, then, unless the Respondent would concede that PIE applied (which it did not), there was enough of possession on the part of the applicants to constitute spoliation for purposes of the *mandament van spolie*.

[17] Some reflection on the underlying rationale for the mandament underscores the point. It is to prevent self-help; to foster respect for the rule of law; and to encourage the establishment and maintenance of a regulated society.

[18] If local authorities were permitted to move in with heavy engineering equipment, without first obtaining court sanction, whenever people moved onto their land, that encourages conduct which in our society with its history is reminiscent of a time best forgotten.

[35] The *mandament van spolie* is the available remedy where the property (shelters) were so spoliated. Where the property has been irreparably damaged, the question then is if this is the appropriate remedy.¹⁴

[36] I am well aware of the arguments, captured to some extent in *Tswelopele*¹⁵ but since then developed, that state that the *mandament* should be developed in line with the Constitution to make it possible to, in some instances, require the spoliator to restore or construct what has been demolished, even when alternative or replacement materials are required. This rests on the dicta in *Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa*¹⁶ that we have one system of law that "is shaped by the Constitution which is the supreme law, and all law, including the common law, derives its force from the Constitution and is subject to constitutional control", and that common law remedies should rather be developed in line with the Constitution than regarded as shielded from the impact of the Constitution.

¹³ [2016] ZAGPJHC 202; 2017 (2) SA 516 (GJ) (15 July 2016).

¹⁴ *Tswelopele Non-Profit Organisation and Others v City of Tshwane Metropolitan Municipality* [2007] ZASCA 70; [2007] SCA 70 (RSA); 2007 (6) SA 511 (SCA).

¹⁵ *Tswelopele Non-Profit Organisation and Others v City of Tshwane Metropolitan Municipality* [2007] ZASCA 70; [2007] SCA 70 (RSA); 2007 (6) SA 511 (SCA).

¹⁶ [2000] ZACC 1.

- [37] This argument is not before me, and the urgent court is arguably not the place to (possibly) develop the intricacies of the common law in line with the Constitution *mero muto*. It is a court where robust remedies, often of interim nature, need to be crafted. The court mostly orders a "holding position" to enable the parties to ventilate the main issues in the due course. For that, the remedy in *Tswelopele*¹⁷ vindicates the Applicants' constitutional rights and the Constitution in general, and orders restoration. This entails that the occupiers must get their shelters back and that the Respondents should reconstruct them. If the materials have been destroyed, they must be replaced.
- [38] This is also the remedy the Applicants seek. They ask for relief for the violation of their fundamental rights as envisaged in s 38 of the Constitution, namely "appropriate relief". In the context of the demolition of structures, the Supreme Court of Appeal in *Tswelopele Non-Profit Organisation and Others v City of Tshwane Metropolitan Municipality*¹⁸ provided a constitutional remedy of restoration where property has been irreparably damaged. To have access to this remedy, there must be constitutional infringements.
- [39] There is, of course, a bouquet of other Constitutional Rights at play here. Section 1(c) clearly states that our foundation values include the supremacy of the Constitution and the rule of law. That includes the importance of local municipalities being subject to the Constitution and being bound by the law.
- [40] The Respondents have forsaken their duties in terms of s 7(2) which places an obligation on the municipalities to respect, protect, promote and fulfil the rights in the Bill of Rights, including infringing the following specific constitutional rights:
- i. Section 26(3) of the Constitution, in that they were evicted from their homes and had their homes demolished without an order of court made after considering all the relevant circumstances. It is not only s 26(3), but the whole of s 26 that is implicated – from the realisation of the right to

¹⁷ *Tswelopele Non-Profit Organisation and Others v City of Tshwane Metropolitan Municipality* [2007] ZASCA 70; [2007] SCA 70 (RSA); 2007 (6) SA 511 (SCA).

¹⁸ [2007] ZASCA 70; [2007] SCA 70 (RSA); 2007 (6) SA 511 (SCA).

adequate housing to the meaningful engagement when someone might be homeless because of an eviction.¹⁹

- ii. Section 25(1) in that they were arbitrarily deprived of their property, similar to what the Supreme Court of Appeal found in *Ngomane v City of Johannesburg Metropolitan Municipality*.²⁰ Regarding the FNB test, it is clear that the destroyed property amounts to "property" worthy of protection. The material is used to construct a home, with their utensils, bedding and whatever else they need for day-to-day living. There was a deprivation of this property, which was arbitrary as it was not sanctioned by law. The Applicants' property rights are therefore infringed.
- iii. Judging from some of the pictures, with bedding and belongings strewn outside and the video indicating people living outside, the Applicants' rights to privacy were infringed. Arguably, the security people walking around on the land and peering into structures sometimes amount to an infringement of the precariously little privacy the occupiers have.
- iv. The infringement of their s 10 right to human dignity should by now seem self-evident. If not, it lies in the routine eviction from what should be the Applicants' places of safety, done without a proper court order. The fact that while the Applicants are in the process of engaging with the Respondents to find solutions, this conduct continues. On the very day that the mediation was planned, the Respondents launched another eviction. As was stated in the *Grootboom* case: "human beings are required to be treated as human beings".²¹

[41] There is thus very clearly a right, if not several rights, that are infringed by the Respondents' conduct. *Motswagae and Others v Rustenburg Local Municipality*²² confirms that occupiers have a right to peaceful and undisturbed occupation of their homes unless a court authorises interference. That is a clear right. Further,

¹⁹ *City of Johannesburg v Changing Tides 74 (Pty) Ltd and 97 others (735/2011)*[2012] ZASCA 116, amongst others.

²⁰ [2018] ZASCA 57.

²¹ *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC).

²² [2013] ZACC 1; 2013 (3) BCLR 271 (CC); 2013 (2) SA 613 (CC) par 15.

based on *Machele v Mailula*,²³ the indignity suffered through losing one's home, even temporarily, will always be irreparable harm. Lastly, granting the interdict will ensure that the Applicants are afforded the protection the Constitution and PIE gives. The interdict will only force the Respondents to comply with the law.

[42] Concerning the 2017 order: In *Kayamandi Town Committee v Mkhwaso*²⁴ the court held that determining whether a particular act is to be classed as a judicial act is whether there is a *lis inter partes*. The court stated that²⁵

A failure to identify defendants or respondents would seem to be destructive of the notion that a Court's order operates only inter partes... An order against respondents not identified by name (or perhaps by 2 individualised description) in the process commencing action or (in very urgent cases, brought orally) on the record would have the generalised effect typical of legislation. It would be a decree and not a Court order at all.

[43] In *Various Erven Philippi v Monwood Investment Trust Company (Pty) Ltd*²⁶ the court stated that parties to legal proceedings must be clearly identified and that "persons intending to unlawfully occupy the erf" are not in any real sense an ascertainable group.

[44] I agree with the above contentions. Counsel for the Respondents argued that on the strength of *Oudekraal*,²⁷ even an unlawful court order stands until rescinded. *Oudekraal* dealt with unlawful administrative action, but be that as it may. Counsel for the Applicants also rightly questioned who would be entitled to bring such an application.

[45] Furthermore, an interdict sought to prevent harm from happening (such as the invasion of land), is only for prevention of *imminent* harm. A 2017 interdict could not have referred to harm so far in the future.

[46] Holding on to an interdict so long turns the interdict into a one-sided decree, as the now unknown people intending to unlawfully occupy property are not afforded to contest the granting of a final interdict in court and could not have contested the

²³ 2010 (2) SA 257 (CC).

²⁴ 1991 (2) SA 630.

²⁵ At 634B.

²⁶ (2002) 1 All SA 115 (C).

²⁷ *Oudekraal Estates (Pty) Ltd v The City of Cape Town and Others* (25/08) [2009] ZASCA 85; 2010 (1) SA 333 (SCA) (3 September 2009).

granting of the final interdict at the time it was granted.²⁸ They will also not be identified during proceedings²⁹ as there are no proceedings.

[47] The identities of those respondents, in fact, now change daily.³⁰ The people "intending to unlawfully invade the land" when the order was granted are not the Applicants.

[48] The 2017 order is abused as a continuous justification for self-help by the Respondent. Furthermore, when an interdict such as the one that the CoJ relies on is used to evict the people from the land, this contravenes s 26(3), as it allows for an eviction before a court has considered any relevant circumstances. As stated above, the Constitution requires more, and PIE, not an interdict, was designed to ensure that the process also considers the occupiers' circumstances.

[5] Conclusion

[49] The Constitution not only changed the paradigm of eviction from criminalising occupation to criminalising unlawful eviction,³¹ it also requires us to reconsider how we refer to people who unlawfully occupy land. In *Port Elizabeth Municipality v Various Occupiers*,³² the Constitutional Court stated that PIE expressly requires the court to "infuse elements of grace and compassion into the formal structure of the law". Constantly unlawfully evicting vulnerable people, demolishing their homes, and loading the material onto trucks or burning them on site is the opposite of grace and compassion.

[50] We are dealing here with 291 applicants, each person having recorded a short moment in their life story on their power of attorney questionnaire submitted in terms of the Rule 7(1) notice for this application. For instance, Mr Buthelezi moved

²⁸ See also *Zulu and Others v eThekweni Municipality and Others* (CCT 108/13) [2014] ZACC 17; 2014 (4) SA 590 (CC); 2014 (8) BCLR 971 (CC) (6 June 2014).

²⁹ *Communicare v The Persons Whose Identities are Unknown to the Applicant but who unlawfully occupy the remainder of the consolidated farm Bardale no. 451, Division of Stellenbosch better known as Fairdale and others* (CPD case no. 7970/03, unreported).

³⁰ *City of Cape Town v Yawa* [2004] ZAWCHC 51 (29 January 2004).

³¹ S 8(1).

³² ([2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC) (1 October 2004) par 37. See also *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC), *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC), *Tswelopele* (*supra*), and *Schubart Park Residents' Association v City of Tshwane Metropolitan Municipality* 2013 (1) SA 323 (CC).

onto the land on 3 April 2022 with his wife and two minor children. They lost 3 shacks, blankets, clothes, sponge, food and shoes when their home was demolished. He is at the land building another shack. Mr Mtsikwa moved onto the land in December 2022 with his wife and four children and lost his shack and the material inside the shack. They live in a backyard now. Ms Ramalatswa has been on the land since 2018 with her three children, and "[w]here they have destroyed [her] shack, [she has] rebuild it".

[51] It is impossible to list every applicant in the judgment, but that should not detract from the fact that we are not dealing here with "unknown people". These people have *human* rights as contained in the Bill of Rights and protected in the Constitution. Just because they are already living on the margins of society does not make them invisible social outcasts or nuisances, however much their presence may frustrate the Respondents.

[52] I, therefore, grant the order for restoration as set out. Should the Respondents, for whatever operational reasons, not be able to do the reconstructions themselves, they should pay the Applicants R1500 per shelter to enable them to restore the property themselves. The order for the payment of this money is part of the order of restoration and should not be viewed as damages – it is part of the duty of restoration.

[53] Throughout the process, the Respondents insisted that evictions had never taken place, nor would take place, in terms of the 2017 order. However, no explanation was offered for the pictures indicating that such evictions took place, other than stating that the court cannot know the dates at which this occurred. The Respondents argue that when the court exercises its discretion as to costs, it may also attach ways to the moral, as opposed to the legal, obligations of the parties.³³

[54] In this regard, I consider that evictions took place on the date scheduled for mediation. Despite this, the Respondents insisted that the *Applicants'* conduct was contemptuous (as they occupied the land disregarding the 2017 order) and that it amounts to self-help. In conducting the proceedings, there was no evidence that

³³ Berkowitz v Berkowitz 1956(3) SA 522 (SR).

the Respondents have even attempted to "infuse elements of grace and compassion into the formal structure of the law". A punitive cost order against the Respondents, jointly and severally, is therefore warranted in this case.

[6] Order

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

1. The non-compliance with the rules of this honourable court is condoned, and the matter is heard on an urgent basis in terms of rule 6(12)(a) of the Uniform Rules of Court.
2. The evictions affected by the Respondents and/or representatives of the Respondents at Farm Allandale are unlawful and unconstitutional.
3. The Respondents to restore the *status quo ante* of the Applicants, which includes constructing emergency temporary accommodation for the Applicants whose shelters have been demolished at the time of the hearing of this matter and who still require them, within 72 hours of granting this order.
4. Should the Respondents not be able to restore possession as per (3), then the Respondents must pay R1500 per shack to the Applicants within 72 hours of granting this order to enable them to do so themselves. The attorneys of the Applicants are to facilitate such a process.
5. The Respondents and/or any of the Respondents' representatives are barred from evicting or seeking to evict the Applicants without an eviction order.
6. The Respondents are to refrain from intimidating, threatening, harassing and/or assaulting the Applicants.
7. The Respondents are to refrain from causing any damage to the Applicants' property, including but not limited to their personal belongings and building materials.
8. The Respondents are to pay the costs of this application on the scale between attorney and own client.

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. It will be sent to the parties/their legal representatives by email.

Counsel for the applicant:

Ms Coetzee

Instructed by:

Lawyers for Human Rights

Counsel for the Respondent:

Mr Mosikli

Mr Qithi

Instructed by:

Popela Maake Inc

Date of the hearing:

23 August 2023

Date of judgment:

25 August 2023