IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

REPORTABLE

CASE NO. 8969/2007

In the matter between:

THE ARK CITY OF REFUGE	**APPLICANT**
And	
MIKE BAILING	**FIRST RESPONDENT**
THERESA BAILING	**SECOND RESPONDENT**
MAGDALENE SCHIPPERS	**THIRD RESPONDENT**
JOHN MENTOOR	**FOURTH RESPONDENT**
MARTHA MENTOOR	**FIFTH RESPONDENT**
THE CITY OF CAPE TOWN	**SIXTH RESPONDENT**
Coram	**DLODLO. J**
Judgment by	**DLODLO. J**
For Applicant	**ADV. M. VERSTER**
Instructed by	**SMTT KRUGUR INC.** ***32*** **Wellington** Road **DURBAN V1LLE** **(REF.S.BREDELL/BM/101M10)** **TEL NO.021 976 3194** ***C/o*** **Marais Muller Yekiso Inc.** **6th Floor, The Pinnacle** **Cnr Burg & Strand Street.** **CAPETOWN**
For 1st , 2nd , 4th & 5th – Respondent	**ATTORNEY R. MARCUS**
Instructed	**CLIFFE DEKKER INC.** **8th Floor, Clilffe Dekker Place** **11 Buitengracht Street** **CAPE TOWN** **(Re(. R. Marcus/cvdv/N29944)** **TEL. NO. 021 -181 6396**
For 3rd Respondent	**ATTORNEY B. MBELENI**

Instructed by	**NONGOGO NUKUINC.** **7th Foor, Spoornet Building** **1 Adderley Street** **CAPE TOWN** **(Ref.LG Nuku/R, Jivana)** **Tel. No. 021 4195421**
Date(s) of Hearing	**24 AUGUST 2010**
Judgment delivered on	**15 SEPTEMBER 2010**

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JUDGMENT DELIVERED ON WEDNESDAY, 15 SEPTEMBER 2010

DLODLO, J

[1] This is an application for eviction in terms of the provisions of section 4 of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 ("the PIE Act"). The Applicant (a non-profit organization with registration number N.P.O. 037-341 -a corporate entity with legal personality) applies Tor the eviction of the First to the Fifth Respondents from the property which it leases from the Provincial Government. The Applicant provides temporary refuge to destitute persons who arc in need of drug and alcohol rehabilitation. Mr. Verster appeared for the Applicant; Mr. Marcus appeared for the First, Second, Fourth and Fifth Respondents whilst Mr. Mbeleni appeared for the Third Respondent only.

[2] The Respondents are all resident at the abovementioned premises and have been for the past sixteen (16) to seventeen (17) years. The property on which the Applicant operates has room for some one thousand (1000) people. The Respondents have been accommodated in the property from 1992 and 1994 when the Applicant was still operating at the old premises. According to the papers, the lease of the new premises commenced in December 1998 when the Respondents were already residents. I am told that the written agreement of the new premises expired on 31 May 2002, but was renewed as from 1 June 2002 on a month to month basis. The Applicant pays a nominal rental of One hundred rands (Rl 00.00) per month to the Provincial Government. The Applicant relies on charity and volunteer employees for sustenance. According to the Founding papers the Applicant is not in the business of providing accommodation. It provides

rehabilitation services (as stated above) to destitute people who need to be rehabilitated from drug and alcohol abuse, and as a concomitant, it also provides gratis accommodation to such a person and his/her family on a temporary basis until the destitute person is rehabilitated and is able to join society again. The service it provides is of a religious nature.

[3] According to the Applicant it permitted the Respondents and their children a *precarium* to occupy the premises. The Applicant insisted that this is the only basis on which any of the Respondents could have obtained accommodation at its premises. This is, however, disputed by the Respondents. The "conditions of entry" attached to the Founding papers are also disputed by the Respondents. According to the Applicant everyone who is allowed to stay on the premises must agree to these "conditions of entry" as no one is allowed entry until he/she has so agreed.

[4] In terms of these "conditions of entry" a person's stay is temporary and a person, who is (in the opinion of the Management) regarded as rehabilitated, will be given thirty (30) days to vacate the property. Similarly a person who finds employment is also given thirty (30) days to find another accommodation elsewhere but should he be unsuccessful in finding alternative accommodation, he/she may be allowed to remain on the Applicant's premises provided that he/she pays thirty (30%) percent of his/her salary to the Applicant for being accommodated. As pointed out earlier on in this Judgment, all these allegations are denied by the Respondents. The Respondents contended that they were unaware of these conditions, they also deny-that the signatures (purportedly theirs) appended on the document "conditions of entry" are their signatures. In other words, the Respondents' version is that they were not informed of the temporary nature of their slay on the Applicant's premises.

UNLAWFUL OCCUPATION

[5] The premises from which the eviction is sought is registered immovable property owned by the Western Cape Provincial Department of Public Works. The present application was preceded by an application for eviction in the Kuils River Magistrate's Court in December 2006 under case number 22315/2006. That application was withdrawn because (according to the version of the Respondents) the Department as lawful owner of the property did not support the application as they did not believe that the Respondents were unlawful occupiers in terms of the Act. The Applicant alleges in its Founding Affidavit that it is in control of the property and that the determination of who may occupy and/or be present or remain on the premises is solely within the province of the Applicant. The Applicant would therefore be a "person in charge" within the meaning of the Act defined in section 1 as "a person who has or at the relevant time had legal authority to give permission to enter or reside upon the land in question" and not an "owner" within the context of the Act.

[6] I accept for purposes of this Judgment that the Applicant indeed does have ***focus*** *standi* to institute these proceedings against the Respondents. The submission is advanced on behalf of the Applicant that it is not in the business of providing accommodation. Applicant does not provide any financial information to support this allegation. This submission is misleading in that the Applicant is the *de facto* provider of accommodation, on land for which it pays nominal rental, to almost a thousand people. The Applicant cannot shirk its statutory and constitutional responsibilities by advancing this submission. Even the owner of a vacant piece of land who suddenly finds it occupied by a large group of people who set informal structures is not in the business of providing accommodation, but is obliged to follow the same procedures had it been a land owner whose main business is to let its property for accommodation purposes. The Applicant further submits that it provides all its services, of which it describes accommodation as a concomitant, on a religious basis. It is not clear what constitutes a "religious basis'*, nor for that matter is it clear why a "religious basis" - whatever that may

mean- permits Applicant to avoid its responsibilities at law. From the perspective of the Respondents as occupiers, the fact that the Applicant is not in the business of providing accommodation or does so on a religious basis should not detract from their rights under the Act or their right to housing under the Constitution.

[7] The Applicant further alleges that the Respondents occupy the premises of the Applicant in that they are permitted a *precarium* by the Applicant to use the premises in accordance with certain standard conditions of entry on a temporary basis. The Respondents (as indicated earlier on in this Judgment) deny both that they are permitted a *precarium* and that they are only allowed to remain on a temporary basis. They deny that they ever saw the standard conditions of entry or that they appended their signatures thereon. According to them the Applicant never informed them that they were permitted a *precarium* and that therefore their stay was of a temporary nature. I pause here and ask myself rhetorical]}', how on earth did the Applicant omit to foresee this obvious dispute of fact? It seems so serious that only oral evidence can effectively cure it. I am concerned about these standard conditions of entry. The Respondents have been in occupation of the premises for a very long time indeed (some 16 to 18 years), but the documents (purportedly such standard conditions of entry) are dated inter alia 2005. In other words, these documents post-date the Respondents" occupation of the premises. This alone makes these documents suspect. What then becomes of the Applicant's stance that the Respondents agreed to the terms prior to their occupation? It is clearly demonstrably false as Mr. Marcus submitted. Mr. Verster did not differ with me on the aspect of signatures when 1 pointed it out to him that ordinarily the question of whether or not it is the Respondents* signatures, resides in the province of a handwriting expert.

[8] In the circumstances, the Respondents' allegations that the documents were not signed by the Respondents are plausible, and hence there is considerable doubt as

to whether these conditions of entry govern the parties' relationship. The Respondents contend that there is no basis to believe that the allegations as regards the basis of the occupation are lacking in credibility, and accordingly the facts and circumstances surrounding their occupation of the premises as averred by the Respondents must, for purposes of these proceedings, be accepted by this Court. 1 do not differ from this contention because this is exactly what *Plascon-Evans Limited v Van Riebeeck Paints (Pty) Ltd.* 1984 (3) SA 623 (A) postulates as an approach to be followed. On the Applicant's own version the Respondents' occupation is contractual (based as it were, on conditions of entry). But, how on earth can it be contended that the terms of the contract have been proved? As the application is and remains one of final relief the rule in *Plascon-Evans supra* applies. This Court is thus duty bound to decide this matter on the basis of the facts as alleged by the Respondents which are not disputed by the Applicant. See:

Plascon-Evans supra. Even if the Respondents occupy the premises in the form *of precarium,* notwithstanding the Applicant's allegations that the standard conditions of entry govern the terms of occupation, then such *precarium* would in any event be subject to the requirements of the Act

[9] In the circumstances even if the conditions of entry were the basis upon which the Respondents occupy the premises (wc know this is being denied by the Respondents) such terms and conditions may be *contra bonos mores* and would not be capable of any enforcement. See: *Sasfin (Pty) Ltd v Beukes* 1989 (1) SA 1 (A). What would be considered *contra bonos mores* or against public policy would now be rooted in our Constitution and the values that underlie it. The values that underlie the Constitution are found in the founding provisions of our Constitution and are human dignity, the achievement of equality and the advancement of human rights and freedoms. If the terms of a contract are inimical to the values of the Constitution, it must be contrary to public policy and therefore unenforceable. See: *Barkhuizen v Napier* 2007 (5) SA 323 (CC) at 333 para 28-

[10] Mr. Marcus submitted that the standard conditions of entry are *contra bonos mores* and/or unconstitutional, and therefore unenforceable, in that they infringe upon basic human rights *inter alia:*

(a) The right to religion, belief and opinion, in that persons are required to complete a 50 day Bible Course and required to attend all church services and meetings:

(b) The right to freedom of association in that persons are not permitted to have relationships with persons of the opposite sex or "affairs" with person of the same sex;

(c) The right to freedom of trade, occupation and profession in that persons are not permitted to seek employment during the currency of the Bible course;

(d) And the rule that persons receiving salaries, pensions or grants are required to pay 30% of that grant to The Ark as well as persons receiving child grants must pay 10% to The Ark, is *contra bonos mores* or against public policy in that it deprives destitute persons of their much-needed state-funded income. It may indeed also be against public policy as it could not be the intention of the State that these funds are diverted to institutions rather than the individual beneficiaries, nor for that matter that land was provided on a nominal cost basis by the State to the Applicant to house destitute persons in order that the Applicant could itself derive financial benefit.

[11] It is common cause between the parties that 30% of a person's income (staying at The Ark), even in the case of the recipient of a social grant, is to be paid to The Ark as a contribution towards their living expenses. For reasons which

will appear below, however, it seems that this requirement or condition was not strictly enforced and that the Respondents did not find it possible to make this contribution each and even' month. This indeed may very well be contrary to public policy because it applies equally to income from employment and to social grants, even those of children. It places unnecessary financial pressures on persons living at The Ark and it keeps them financially disadvantaged perpetually, preventing them from saving or being able to move out. In any event, the payment of the 30% of income creates an impression that the legal relationship between the Applicant and the Respondents is one of lease as payments arc made to the Applicant and the Respondents are allowed to occupy the premises under the Applicant's control. Importantly, the Fourth Respondent also alleged that they always paid 30% of their social grants to the Applicant, but that they stopped doing so when the Applicant stopped providing food and clothing to them as the Applicant had so agreed.

THE PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND ACT 19 OF 1998 ("PIE")

[12] Mr. Marcus submitted that the version presented by the Respondents is credible and that the Applicant (in his view) has not made out a case of unlawful occupation against the Respondents. In the alternative, Mr. Marcus submitted that should the Court find nevertheless that the Applicant's version is to be believed and mat the Respondents are indeed in unlawful occupation, then the Court would need to have regard to the provisions of section 4 (7) of the Act as the Respondents had occupied the land for more than six (6) months at the time when proceedings were initiated. I have been referred to *Port Elizabeth Municipality- v Peoples Dialogue on Land and Shelter and Others* 2001 (4) SA 759 (E) 767H.

[13] Before having regard lo the above authority, it is appropriate to set out the provisions of section 4 (6) of the Act. It provides as follows: *"4 (6) If an unlawful*

occupier has occupied the land in question for less than six (6) months at the time when the proceedings are initiated, the 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. " Section 4 (7) provides that where an unlawful occupier has occupied the land in question for more than six (6) months at the time when the proceedings are initiated, the Court is enjoined, in addition to the abovementioned circumstances, also to consider whether land has been made available or can reasonably be made available by a municipality (or other organ of State or another landowner) for the relocation of the unlawful occupier.

[14] It must also be borne in mind that the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, the PIE Act, as it affectionately came to be known in legal circles, was enacted with the sole purpose, namely, to give effect to the rights under section 26 of the Constitution Act 108 of 1996. Section 26 (3) provides as follows:

"26 (3) No one may be evicted from their home, or have their home demolished, without an order of Court made after considering all the relevant circumstances ......"

There are stringent provisions of the PIE Act which probably must also be set out infra in order to demonstrate how- serious the Legislature is in its protection of the rights contemplated in Section 26 of the Constitution.

Section 4 (8) provides as follows:

"4 (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. "

Consequently, in ***The Occupiers of Shorts Retreat v Daisy Dear Investments (Pty) Limited*** (245/2008) [2009] ZASCA 80 (3 July 2009) Jafta JA commented as follows on the above portion of section 4 of PIE Act:

"[6] The section requires that before an eviction order is granted the court must be satisfied that such order will be just and equitable to the applicant and the unlawful occupier. In determining whether an eviction is just and equitable, the court is required to consider amongst others, whether land has been made available or can reasonably be made available by a municipality or an organ of state for the relocation of the occupier. "

[15] Indeed, as Mr. Marcus pointed out in his submissions in this regard, the two Constitutional rights that are commonly at odds in eviction cases are the right to property in terms of section 25 (1) and the right to access to housing in terms of section 26 (1) both of the Constitution. See: ***Modderfontein Squatters, Greater Beboni City Council v Modderklip Boerdery (Pty) Ltd (Agri SA and Legal Resources Centre, Amici Curiae); the President of the Republic of South Africa and Others v Modderklip Boerdery (Pty) Ltd (Agri SA and Legal Resources Centre, Ami Curiae)*** 2004 (6) SA 40 (SCA) 53-54.

> As the Applicant is not the owner of the property concerned, the right to property in terms of section 25 (1) does not come into the balance. The Applicant does, however, have certain real rights to the property and also cites other concerns relating to its rehabilitation activities. The view 1 hold, however, is that the Respondents' constitutional rights to housing outweighs the Applicant's other interests. The Applicant averred in the Replying

Affidavit that the First and the Second Respondents are '"exploiting the *bona fide* intentions of the Applicant as free accommodation" and that the Applicant has "free of charge" provided the Respondents with educational, cultural and social activities. The Applicant apparently conveniently forgets or leaves out of the equation that it is a non-profit organization and that therefore it would be in its nature to provide such services to persons free of charge.

RELEVANT CIRCUMSTANCES

[16] The Respondents had all occupied the land in question for considerably more than six (6) months at the time when the proceedings were initiated. Therefore, a Court may only 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 as required by section 4 (7) of the Act. These circumstances include whether land has been made available or can reasonably be made available by a municipality or other organ of state or another landowner for the relocation of the unlawful occupier, including the rights and needs of the elderly, children, disabled persons and households headed by women. The crux of the Applicant's argument why the Respondents should be deemed to be in unlawful occupation is that The Ark is meant to be a *"temporary place of refuge for the destitute so as to place a roof over their heads until such time as they are able to properly deal with their own accommodation needs and rehabilitated fully to join society again. "*

[17] The Respondents admit that they are fully rehabilitated in the sense that they are no longer burdened with the same problems as when they first came to the Ark. but that they simply cannot move as they do not have the means to procure alternative accommodation. On the Applicant's own version, and since the Respondents, despite their best efforts, have been unable to find alternative accommodation, it would not be just and equitable that the Respondents be

evicted from the premises. It is not disputed, meaningfully by the Applicant, that alternative accommodation is not available to the Respondents. Although the Municipality is not the provider of accommodation in this particular matter, it is clear that the Municipality has simply-delegated these obligations to a charitable organization, being the Applicant, on the basis that it will perform a similar function to that of a municipality in providing accommodation for homeless and destitute people, a constitutional obligation which ultimately falls on the State.

[18] Analogies between a Municipality and the Applicant are therefore appropriate. In the matter ***Port Elizabeth Municipality- v Various Occupiers*** 2005 (1) SA 217 (CC) the following was stated by Sachs J:

> *"[28] Section 6 (3) states that the availability of a suitable alternative place to go to is something to which regard must be had, not an inflexible requirement. There is therefore no unqualified constitutional duty on local authorities to ensure that in no circumstances shoidd a home be destroyed unless alternative accommodation or land is made available. In general terms, however, a court should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only as an interim measure pending ultimate access to housing in the formal housing programme.*
>
> *[29] The availability of suitable alternative accommodation will vary from municipality to municipality and be affected by the number of people facing eviction in each case. The problem will always be to find something suitable for the unlawful occupiers without prejudicing the claims of lawful occupiers and those in line for formal housing. In this respect, it is important that the actual situation of the persons concerned be taken account of. It is not enough to have a programme that works in theory: The Constitution requires that everyone must be treated with care and concern; if the measures, though statistically successfid, fail to respond to the needs*

of those most desperate, they may not pass the test. In a society-founded on human dignity, equality and freedom, it cannot be presupposed that the greatest good for the many can be achieved at the cost of intolerable hardship for the few. particularly if by a reasonable application of Judicial and administrative statecraft, such human distress could be avoided... 'Considering all the relevant circumstances' (s6 (I))

[30] There is nothing in section 6 to suggest that the three specifically identified circumstances are intended to be the only ones to which the court may refer in deciding what is just and equitable. They are peremptory but not exhaustive. It is clear both from the open-ended way in which they are framed and from the width of decision-making involved in the concept of what is just and equitable, that the court has a very wide mandate and must give due consideration to all circumstances that might be relevant. Thus the parn'cular vulnerability of occupiers referred to in section 4 (the elderly, children, disabled persons and households headed by women) could constitute a relevant circumstance under section 6. Similarly.

justice and equity would take account of the extent to which serious negotiations had taken place with equality of voice for all concerned. What is just and equitable could be affected by the reasonableness of offers made in connection with suitable alternative accommodation or land, the time scales proposed relative to the degree of disruption involved, and the willingness of the occupiers to respond to reasonable alternatives put before them.

[31] The combination of circumstances may be extremely intricate, requiring a nuanced appreciation of the specific situation in each case. Thus, though there might be a sad uniformity in the conditions of

homelessness and desperation which lead to unlawful occupations, on the one hand, and the frustration of landowners at being blocked by intruders from enjoyment of their property, on the other, the actual details of the relationships involved are capable of finite variation. It is not easy to classify the multitude of places and relationships involved. This is precisely why, even though unlawfulness is established, the eviction process is not automatic and why the courts are called upon to exercise a broad judicial discretion on a case by case basis. Each case, accordingly, has to be decided not on generalities but in the light of its own intractable elements that have to he lived with (at least, for the time being), and its own creative possibilities that have to be explored as far as reasonably possible. The proper application of PIE will therefore depend on the facts of each case, and each case may present different facts that call for the adoption of different approaches. "

The above formulation by the Constitutional Court puts in context the legal requirements and the approach that needs to be followed in matters of this nature. I fully agree with Sachs J in this regard. It is common cause that the Respondents do not have alternative accommodation and therefore whilst not an absolute requirement, the Court should be most reluctant to evict the Respondents from these premises, especially as these premises:

(i) were occupied by agreement of the Applicant;

(ii) were occupied in circumstances in respect of which the conditions of such occupation are in dispute;

(iii) are in themselves possessed by the Applicant for nominal rental and for charitable purposes, more particularly the provision of housing of homeless and destitute people.

AVAILABLE LAND

[19] It is common cause that the Respondents do not have alternative accommodation available to them as is evidenced by the report of the City. Although the Applicant contends, baldly, that alternative accommodation is available, it provides no factual basis for this allegation. The Applicant did not elaborate on the aspect of available land and/or alternative accommodations in its Founding Affidavit save to merely make the allegation that there is alternative accommodation available in the area. The Respondents called on the Applicant to specify the alternative land that had been made available or could reasonably be made available for their relocation. The Applicant has not done so. The Fourth Respondent applied for housing for himself and the Fifth Respondent with the Cape Town Housing Department in January 2007, but he has not received a positive response from the Department regarding his application. The First and Second Respondents have also been unable to find alternative accommodation.

PERSONAL CIRCUMSTANCES

[20] The Respondents are all healthy individuals except for the Fourth Respondent who receives a disability grant due to him suffering from angina. None of the Respondents are elderly and none of the households are headed by women. The First Respondent is the sole, but limited, breadwinner for the Bailing family. The Second Respondent is not employed. They have three (3) minor children of school-going ages. The Fourth Respondent is unemployed and disabled as described above. His wife, the Fifth Respondent, is also unemployed as is their major son who lives with them. Their minor son attends school.

[21] The Applicant made an application to this Court as late as 30 October 2009 to join the City of Cape Town, the Sixth Respondent in the proceedings. The City has indicated that it has no accommodation available for the Respondents. The City's report concludes with the statement that:

> *"It will be apparent from the aforegoing that the City does not have the*

capacity to accommodate the Respondents and it is important that any eviction order should appropriately identify the responsibility for

and method of addressing the displacement that will be occasioned by the implementation of the eviction order. "

What makes this application also complicated is that the Applicant has accommodation of State-owned land at nominal rental for a defined purpose, namely, of *inter alia,* providing accommodation and social services to destitute persons. Even if the Applicant made out a compelling case of unlawful occupation (1 am not holding the case was made or not made yet) I would be very reluctant to grant the eviction of the persons from this land. Such an order of eviction would operate rather harshly against the Respondents because they would be rendered homeless despite the fact that the Applicant's case is disputed as demonstrated above. The Respondents would be removed from the land belonging to the very entity enjoined constitutionally to provide them with a place to stay, namely the State. Mr. Verster was at pains submitting that the Respondents are in occupation of a space which could be used for other persons in need. This submission (obviously made to bolster the Applicant's case) is somewhat problematic in that (as correctly pointed out by Mr. Marcus) that the Respondents are equally indigent and are also in need of accommodation. If this Court were to find that the requirements of section 4 of the PIE Act have been complied with, it would ordinarily be enjoined to grant an eviction order, but then it would be duty bound to determine a just and equitable date on which the occupiers must vacate the land concerned as well as the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated above. See: ***Port Elizabeth Municipality v Peoples Dialogue on Land and Shelter and Others*** 2001 (4) SA 759 (E) 772F-H.

[22] I hasten to add that in determining a just and equitable date 1 would be obligated to have regard to all relevant factors including the period of occupation

of the unlawful occupier on the land in question. See also ***Port Elizabeth Municipality*** case *supra.* In the instant matter, I am not persuaded that the Applicant made out a case compelling the conclusion that the Respondents are indeed in unlawful occupation of this land. In any event, the circumstances taken together do not justify the making of an eviction order against these Respondents. There is no doubt in my mind that the Applicant is engaged in a very important task, namely to lake care of the destitute and persons in need of rehabilitation from all kinds of social ills. The Applicant is to be commended in this regard for a job well done. However, I hold the view that the Applicant's admission policy and its administration generally must in due course be improved significantly.

ORDER

[23] In the circumstances I make the following order:

(a) The application is dismissed with costs.

DLODLO. J