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Case No 397/87
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IN THE SUPREME COURT OF SOUTH AFRICA

APPELLATE DIVISION

In the appeal of:

THE MUNICIPALITY OF GEORGE — Appellant

and

ELLEN NONGATINI VENA — First Respondent

EDWARD VYWER — Second Respondent

CORAM: CORBETT, VAN HEERDEN, HEFER, MILNE et KUMLEBEN JJA

DATE OF HEARING: 17 November 1988

DATE OF JUDGMENT: 30 November 1988

J U D G M E N T

MILNE JA/.....

MILNE JA:

This is an appeal against the grant of a spoliation order and certain other relief which the respondents obtained in the Cape of Good Hope Provincial Division. The judgment of the court a quo is reported as Vena and Another v George Municipality 1987(4) SA 29 (C). The allegations of fact, the contentions of law and the relevant legislation are clearly and fully set out in the judgment of **FRIEDMAN J.** It is therefore unnecessary to set them all out again at this stage, although I shall have occasion to refer in detail to the legislation.

There can be no doubt that the appellant municipality did demolish the partly erected building occupied by the first respondent, and the extra room which the second respondent had added to the house occupied by him, and that it did so without obtaining an order of court. The appellant invoked the

provisions of section 3B(1)(a) of the Prevention of Illegal Squatting Act 52 of 1951 (as amended), which I shall call "the Act", in seeking to justify this demolition.

Before considering whether those provisions did justify such demolition it is necessary to consider whether the learned Judge a quo was right in concluding that, on the affidavits, each of the respondents had established, on a balance of probabilities, "...a title or right to the land on which the building or structure was or is situated, by virtue of which he may lawfully occupy the land." This is so because section 3B(4)(a) of the Act prevents any person from asking for any order, judgment or other relief in any civil proceedings of whatever nature, in any court, that are founded on, inter alia, the demolition under section 3B of any building or structure, unless that person has first satisfied the court that he has a title or right of the kind stated above. (The court a quo held

that these proceedings were founded on a demolition "under this section" (3B) and this finding was not questioned on appeal.)

The court a quo found that there was a conflict of fact on the affidavits and applied the test set out in Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984(3) SA 623 (A) at 634H-I. Initially there was such a dispute with regard to both the respondents but by the time all the affidavits had been filed, the dispute on the material facts was, in the case of the first respondent, more apparent than real. I shall start by dealing with her position.

In the first affidavit filed on behalf of the appellant the Town Clerk stated the following:

> "Volgens Respondent se rekords bewoon Eerste Applikante plakkerwoning nommer 576. Sy het eers op 1 Julie 1986 by Respondent as bewoner van Lawaaikamp geregistreer...",

and denied the first respondent's allegation that the plot was

initially allocated to "our family", but was registered in the name of her sister Jenette Moyakhe and that she, the first respondent, had paid the rent. He added "Sedert 1976, toe ek diens aanvaar het as stadsklerk, het Respondent geen toestemming aan nuwe intrekkers gegee om hulle in Lawaaikamp te vestig nie." Annexed to his affidavit were the affidavits of one De Swardt and one Jansen. De Swardt stated that he was responsible for the appellant's accounting documents "...wat betrekking het op huishure van Nie-blanke areas" and said "ek...kan onomwonde verklaar dat in September 1982" (when the Municipality's records were computerised) "nòg Ellen Vena nòg Edward Vyver h huis besit, beheer of gehuur het in die gebied wat bekend staan as Lawaaikamp; of trouens in enige ander Nie-blanke gebied van die Munisipaliteit van George nie." Jansen, in his affidavit, stated that from the results of a survey which he conducted in 1980 in collaboration with the appellant it was clear that neither of the respondents occupied, rented or controlled a house in Lawaaikamp

at the time of the survey. As the learned Judge a quo pointed out in his careful analysis of the affidavits and annexures this was an incorrect statement of the position. The appellant municipality quite properly made its records available to the respondent's attorney and he brought to light a number of the appellant's records which, in my view, substantially corroborate the first respondent's version.

It was the first respondent's case that she had lived at Lawaaikamp with her children since 1970, and that when her sister died in 1979 she, personally, went to the appellant's offices to inform the appellant's officials of this fact, and was told "...that it did not pose any problem and since then we continued staying there and paid rent." In the context, she plainly means that she was told this by one of the appellant's officials. It turns out that there is, indeed, a card among the records of the appellant which relates to the very premises

occupied by the first respondent which has on it the name "Jenette Mayake" (sic) and the name "L Vena". A clerk in the employ of the appellant, one Ruiters, says that he added the name "L Vena" to this card "gedurende 1981", and at a later date the first respondent's "pasboeknommer". He says, further, in paragraphs 3 and 4 of his affidavit:

"3.

Ek ontken egter dat Ellen Vena by enige geleentheid aan my sou gesê het dat sy die struktuur en huurverpligtinge van Jenette Mayaki oorgeneem het. Ek vind die bewering geheel en al onaanvaarbaar, omdat die naam van Jenette Mayaki dan op die rekeningkaart deurgehaal sou gewees het.

4.

Dit was 'n algemene gebruik om waar bekend die name van loseerders ook op rekeningkaarte aan te bring ten einde 'n volledige rekord by te hou met die doel om die instroming van ongemagtigde persone te beheer. Hierdie gebruik moes gestaak word toe die rekeninge gerekenariseer is."

The learned Judge a quo found this explanation improbable. In my view it is highly improbable. In the first place, if it is true that no "nuwe intrekkers" were permitted to

establish themselves in Lawaaikamp after 1976, it seems probable that Ruiters must have accepted that the first respondent was not a "nuwe intrekker" which supports the first respondent's allegation that she had been there with the appellant's consent since 1970. Secondly, the first respondent was never a boarder, and certainly could not have been one after her sister had died. What is more, it is quite clear that the first respondent was already a "gesinshoof", in this very house when Jansen carried out his survey during 1980 "in samewerking met die Munisipaliteit van George". There is a rather half-hearted attempt to suggest that the reference to "L Vena" in the annexure to Jansen's affidavit, does not refer to the first respondent, but it is quite plain from the evidence as a whole that it does. It is significant that the first letter of the first respondent's first name was incorrectly reflected as "L" instead of "E" both in the accounts card entry made by Ruiters which he says he made in 1981, and in the annexure to Jansen's affidavit, which he says is

the result of a survey conducted in 1980. It seems reasonably clear that Ruiters does not purport to have an independent recollection of this entry on the card, nor of the surrounding circumstances, but relies on an attempted reconstruction based on what appears on the card. Furthermore, as pointed out in the judgment, (supra at p44E-G), the allocation of the payment of the R100 paid by the first respondent's son in July 1986 to the months of February, March, April and May 1986, is inconsistent with the appellant's contention that she was first recognised by the appellant as renting the house in July 1986.

In these circumstances the court a quo correctly found that the first respondent had established the requisite right in terms of section 3B(4)(a) of the Act.

I deal now with the question of whether the court a quo correctly found that the second respondent had, on the

affidavits, established such a right. The second respondent's case was that he had been allocated a site in Lawaaikamp in 1980 by one Tshefu, that he had paid rent from then until the end of 1986 and that it was in 1985 that he added the extra room which the appellant demolished in 1987. The Town Clerk of the appellant stated that Tshefu was employed "...om toe te sien dat geen nuwe huise of strukture in Lawaaikamp gebou word nie." He said that Tshefu had no authority at any time to allocate any sites to any one. No affidavit by Tshefu was filed.

The position of the second respondent differs from that of the first respondent because his name does not appear in the survey conducted by Jansen nor is he shown as a tenant in any of the records of the appellant prior to July 1986. Furthermore he was unable to produce receipts for rental paid before July 1986, nor did he proffer any reason for such inability. The court a quo, however, found (supra at p45D-F):

> "It is difficult to reconcile Mr Du Plessis' statement that no new permission was granted after 1976 with respondent's purported registration of both applicants in 1986, albeit pursuant to CPD1 and CPD4. It is clear that since July 1986 second applicant has in fact been registered and that, as appears from JWP10, JWP12 and JWP15, debits have been raised inter alia for rent. Moreover, the payment accepted from him on 21 May 1987 was also described on the receipt issued by respondent as 'huur'."

I agree that these documents afford support for the proposition that as from July 1986 the appellant regarded the second respondent as its tenant. I have, furthermore, some difficulty with the argument advanced on behalf of the appellant that it accepted the R19, and made the entries in JWP15 in consequence of its mistaken belief that the second respondent had signed CPD4: CPD4, by virtue of its own terms, was valid only until 31 July 1986 at the latest, yet the second respondent remained in occupation, and was, apparently, still in occupation at the date of hearing in the court a quo. The second respondent did not, however, at any stage seek to make the case that the appellant had, by virtue of its conduct after 31 July 1986,

tacitly accepted him as its tenant. His case throughout was that he was the appellant's tenant by virtue of the allocation of the site to him in 1980. He relied upon the entries in the respondent's records as supporting only that case. In these circumstances one cannot draw inferences against the appellant on the grounds that it failed to explain such entries more convincingly than it did, since this was an aspect of the case it was not called upon to meet, and the onus rested upon the first respondent to establish on the affidavits that he had a right of occupation at the time of demolition on 20 May 1987. There was a genuine dispute of fact on the affidavits as to whether the second respondent was allocated a site at any time, and it is only if the appellant's admitted conduct established with the requisite degree of certainty his right to occupy that he could succeed. A further difficulty in the way of inferring some sort of implied lease from the conduct of the parties after 31 July 1986 is that there is nothing on the affidavits to indicate that

the second respondent was aware of the entries made by the appellant in its records, or that the appellant by its conduct conveyed to the second respondent that it regarded him as its tenant. I conclude, therefore, that the court a quo erred in finding that the second respondent had discharged the onus of proving on a balance of probabilities that he was a tenant of the appellant, and entitled to occupy the land on which his house was situated. The appeal therefore succeeds with regard to the second respondent.

I pass now to a consideration of whether the demolition of the first respondent's partly re-erected house was justified in terms of section 3B(1)(a).

The court a quo found, on the facts, that the appellant had consented to the erection of the first respondent's house (supra at 48A-C). It found also that, having regard to the

general intention of the Act, the power given to an owner in terms of the section may be exercised only where the building concerned is erected on land unlawfully occupied, and that as the respondents were lawfully in occupation, the section did not apply. It seems that, in the case of the first respondent, the court a quo also decided that the rebuilding of the house after the fire did not amount to the erection of a building or structure within the meaning of the subsection.

In support of the judgment it was also argued that, for the purposes of section 3B(1)(a), the consent to the erection of the house covered the re-erection of the house after it burned down on 16 May 1987.

I am, with respect, constrained to differ from the conclusion of the learned Judge a quo that section 3B(1)(a) applies only to a building on land unlawfully occupied.

Undoubtedly one of the main objects (if not the main object) of the Act was, at the time of its enactment, and still is, the prevention of illegal squatting; the provisions referred to in the judgment (supra at p51A-C) clearly justify that conclusion. That intention also appears from the long title to the Act. There are, however, two difficulties in the way of reliance upon the long title. The first is that inferences drawn from the long title as to the object of the legislature must always yield to the plain meaning of the language. Bhyat v Commissioner for Immigration 1932 AD 125 at 129 and Norden & Another NN.O. v Bhanki & Others 1974(4) SA 647 (A) at 655A. There does not appear to be any room for doubting that the legislature used the word "or", in the phrase "erected or occupied", disjunctively. The second difficulty is that if one is entitled to have regard to the long title in order to ascertain the intention of the legislature, then where an Act is amended one must likewise have regard to the long title of the

amending Act in order to ascertain the intention of the legislature in enacting the amendment. The first amendment that is relevant to the question here in issue is that effected by section 2 of The Prevention of Illegal Squatting Amendment Act 92 of 1976. This Act inserted into the original Act the following new section 3B(1)(a):

> "Notwithstanding the provisions of any law to the contrary - (a) but subject to any law under which he is compelled to demolish or remove any building or structure, the owner of land may without an order of court demolish any building or structure erected on the land without his consent, and remove the material from the land;".

The long title of the amending Act included the following:

> "To amend the Prevention of Illegal Squatting Act, 1951, in order to prohibit the erection or occupation of, or the presence in certain circumstances of persons in, buildings or structures if building plans in respect thereof have not been approved by a local authority; to provide for the demolition of such buildings or structures, as well as of buildings or structures erected without the consent of the owner of the land;..." [My underlining].

On 3 June 1977 this subsection was further amended by section 1 of the Prevention of Illegal Squatting Amendment Act 72 of 1977. This introduced into section 3B(1)(a) the words: "or

occupy" after the word "erected". The opening words of the long title of that Act are as follows:

> "To amend the Prevention of Illegal Squatting Act, 1951, so as to extend the power under section 3B, of an owner of land to demolish any building or structure erected on the land without his consent, to a building or structure occupied on the land without his consent;..."

To extend the power to demolish, without an order of court, buildings erected without the owner's consent to buildings occupied without his consent is not to exclude thereby the original power and limit it to the additional one. The long title, therefore, affords no support for the proposition that the Act in its present form, applies only to buildings on land occupied without the owner's consent.

Nor do I think that the provisions of section 3B(4)(a) afford such support. If the legislature had intended section 3B(1)(a) to apply only to buildings on land unlawfully occupied, section 3B(1)(a) would no longer apply once a right had been established of the nature specified in section 3B(4)(a).

That is not what section 3B(4)(a) says. Furthermore, it is quite clear that it is not possible to read any such restriction into section 3B(1)(b). Under those provisions a local authority may, without an order of court, and at the expense of the owner of the land, demolish buildings falling within the provisions ot (i), (ii), and (iii) of that sub-section. This power obviously includes the right to demolish buildings erected or occupied with the consent of the owner and even buildings erected by the owner. It is, however, a power which can only be exercised where the building is situated on land which is not the property of the local authority. The construction of sub-section (a) adopted by the court a quo would mean that where the municipality is the owner of the land, it could not demolish without an order of court a building erected without its consent but on land occupied with its consent; yet, as appears from what I have just said, where the municipality is not the owner of the land it can under sub-section (b) demolish a building erected by or with the

consent of the owner without an order of the court - an inconsistency which can hardly have been intended by the legislature.

From a practical point of view, however, it is difficult to conceive of a situation where the owner of land would be entitled to act in terms of section 3B(1)(a) where, despite the building or structure having been erected without his consent, it was, nevertheless, occupied with his consent. Counsel for the appellant conceded that in such circumstances the owner must be taken to have impliedly, though ex post facto, consented to the erection. To lease premises is, prima facie at any rate, wholly inconsistent with an intention to demolish them during the currency of the lease and, whether one says that the owner has thereby impliedly consented to the erection or, that he has thereby waived his right to demolish under the subsection, does not seem to matter. The appellant's

counsel was also constrained to concede that, looking at the evidence as a whole, it was clear that the appellant municipality must have consented (either expressly at the time when the house was constructed, or by its conduct after the house had been constructed) to the erection of the house occupied by the first respondent before it burned down. He submitted, however, that it was quite apparent that the appellant had expressly forbidden the reconstruction after the fire. This raises the question as to whether or not it was open to the appellant to forbid it. The learned Judge a quo (supra at p51D) said:

> "It is a fundamental principle of our law that a person may not take the law into his own hands and a statute should be so interpreted that it interferes as little as possible with this principle".

In this he was undoubtedly right. The right of any person in possession of property, whether movable or immovable, not to be disturbed in his possession except by legal process, is one recognised by most civilised systems of law. In America, for example, it is guaranteed by the XIVth Amendment to the

Constitution. It is also a fundamental principle of our law. This ordinary principle of law may, however, be altered by Parliament, which may confer a right to act without due process of law. Such a right is in the words of **WILLIAMSON J** (as he then was) "...one which obviously must be conferred in clear language..." - Sithole v Native Resettlement Board 1959(4) SA 115 at 117D. The legislation under consideration in that case was section 17(6) of the Native Resettlement Act, 19 of 1954. This provided that where a notice of expropriation had been served in terms of section 17 of that Act:

> "Upon the service of any such notice the ownership in the land described in the notice shall pass to the board free of all encumbrances and the board may, after expiry of a period not less than 30 days from the date of such service, take possession of and use the land."

The court came to the conclusion that the section was not worded so clearly as to detract from the general principle of law "...that there shall be no spoliation by any person, be it an individual, or a government department or a municipality or any

similar body" (supra at 118B). What the learned Judge said at page 117D-F bears repetition:

> "...the clear principle of our law is that, ordinarily speaking, persons are not entitled to take the law into their own hands to enforce their rights. There is a legal process by which the enforcement of rights is carried out. Normally speaking, it is carried out as a result of an order of court being put into effect through the proper officers of the law such as the sheriff, deputy sheriff, messenger of the magistrate's court or his deputies, reinforced if necessary, by the aid of the police or some such authority; in most civilised countries there exists the same principle that no person enforces his legal rights himself. For very obvious reasons that is so; if it were not so, breaches of the peace, for instance, would be very common. It is clear, therefore, that if you want to enforce a right you must get the officers of the law to assist you in the attainment of your rights."

That this is a fundamental principle of our law admits of no doubt. The need to avoid "breaches of the peace", can hardly be thought to be of less importance under present-day conditions than when the rule was first enunciated in the cradle days of our law. It is, perhaps, not without interest that **SANDARS** in his **INSTITUTES OF JUSTINIAN (7th Ed)** p488 in a note dealing with the praetorian interdicts suggests that it was:

> "...originally, perhaps, only when the subject of dispute

> was such as to render a breach of the public peace the probable result unless the matter was set at rest by the summary interposition of legal authority"

that such remedies were granted where the dispute was entirely between private parties. See also Malan v Dippenaar 1969(2) SA 59 (O) at 64H.

Against this background it is clear that a section which empowers any owner of any land without due process of law to demolish any building, occupied or unoccupied, which has been erected or occupied without his consent must be narrowly construed, and construed in a way which "...gives rise to the least deprivation of the citizen's right subject to effect being given to the express intention of the legislature": Attorney-General v Tayob 1962(3) SA 421 (T) at 423C and see the remarks of **HOEXTER JA** in the report of the Appellate Division decision in the same case in 1963(2) SA 460 at 464 where the learned Judge stated that:

> "...the section should be interpreted in favour of the existence of common law right, the existence of which is not in conflict with the terms of section 9(1)."

Section 3B(1)(a) is, in my view, capable of meaning that:

(a) the owner's consent to erection may be given before, during or after the erection and may be given in any manner whatsoever, that is to say, expressly or impliedly, orally or in writing or by conduct;

(b) the consent may be in very general terms e.g. for "a dwelling" or "a shack for X and his family to live in". That would probably be the kind of consent usually given under this subsection.

I do not think that the consent here envisaged is one involving the consideration by the owner of the sort of factors

which fall to be considered when application is made to a local authority for approval of building plans (the kind of consent in fact envisaged by section 3B(1)(b)) or for approval of the use of land of the kind envisaged in laws governing town planning. That kind of consent is the approval referred to in section 3A of the Act, and appropriate sanctions are provided in that section and in section 3B(1)(b) for the situation where buildings have been erected without that kind of approval. If the owner has consented to the erection of a building then, for the purposes of section 3B(1)(a), the fact that the building in fact erected is not precisely what the owner envisaged, or does not comply with building by-laws or town planning laws or regulations does not necessarily mean that the owner has not consented to such erection. This proposition is obviously subject to the qualification that the building erected must not be so different from that to which the owner consented that it can be said that he has not consented. If, for example, he consents to the

erection of a dwelling house, he obviously has not consented to the erection of a boarding house or a block of flats - still less to the construction of a commercial or industrial building. Furthermore, much will depend on the particular facts of each case. Obviously, if the owner has defined or qualified his consent in such a way that a particular building, and no other, may be constructed, then any material departure therefrom will mean that he has not consented to what has been built. The legislature has, however, not provided for any procedure with regard to the application for, or the grant of, the consent referred to in section 3B(1)(a) (and I stress that I am dealing only with the consent referred to in that sub-section), and circumstances may arise where it may be said that the owner has consented to the erection of a particular type of building without defining the building or qualifying his consent in such a way as to restrict the size or quality of the building and without limiting the duration of his consent. In order to

justify its actions in demolishing the first respondent's "building" without an order of court, the appellant bore the onus of showing that it was erected without its consent and unless it showed on a balance of probabilities that erection took place without its consent in the sense which I have described, then it failed to discharge that onus.

I turn now to consider the facts. As already mentioned, the appellant's counsel conceded that the appellant must be taken to have consented to the original erection of the house occupied by the first respondent. It is not in dispute that the house was being rebuilt on the same cement floor and foundations (which were not damaged by the fire) and that "[i]t was to be rebuilt in exactly the same fashion as it stood before". There is nothing on the papers to show that the appellant's admitted consent to the original erection of the house did not apply to the house as re-erected, nor was any

reason put before the court to suggest that the consent was such as to terminate automatically if the building was damaged or even destroyed. Thus, for example, I do not think it could be contended that where the owner has consented to the erection of a building on the basis of detailed building plans, and during construction a wall or even the whole building has been demolished by a runaway truck the rebuilding of the wall or house in accordance with the plans would require a further consent.

It follows, in my view, that the appellant's consent continued to operate in respect of the re-erection.

I should add that, quite apart from the above reasoning, I would have come to the same conclusion on the basis that "erect" in section 3B(1)(a) must be restricted to the creation of a new building and that it does not embrace rebuilding what has been wholly or partly destroyed by fire - or,

for that matter, by earthquake, flood, or other vis major (in which I would include, for example, the knocking down by the municipality of one building in mistake for another). The decision in Tayob's case supra affords substantial support for this view. The section under consideration in that case was section 9(1) of Act 21 of 1940. That provided (excluding words not here relevant) that:

> "...no person shall erect...any structure which is attached to the land on which it stands even though it does not form part of that land within a distance of 300 Cape feet from the centre line of a declared road or a building restriction road, except in accordance with the permission in writing granted by the controlling authority concerned: Provided that the preceding provisions of this section shall not apply in connection with -
>
> (a) the completion of a structure whose erection was commenced on a date before the road in question became a declared road or a building restriction road or before the first day of June, 1939, whichever date is the later;"

The facts were that on the respondent's property there had been a building in existence, which was about 38 Cape feet from the centre line of a declared road. The building was

already there when the road was declared. After the road had been declared the building was destroyed by fire, but certain walls remained standing to the height of six or seven feet and the foundations remained intact. The respondent caused a new building to be built on the existing foundations and partly standing walls. **DOWLING J** said (supra at 423D-E):

> "I am of opinion that the owner or possessor of a predeclaration structure must impliedly have the right to maintain, repair, restore and even improve such building as distinct from erecting a new building. And it would be wrong to say that such a right is extinguished by the fact of destruction by fire or otherwise of a building which is entitled to be within the prescribed distance of 300ft, provided that the operation of maintaining, removing (sic; improving?) or restoring leaves the dimensions and the distance from the road of the structure unaltered."

Counsel for the appellant argued that the owner of a pre-declaration structure could repair the structure, but could not restore it even on an existing foundation, because he would thereby be "erecting a structure". **HOEXTER JA** held at p463-4 that the purpose of the section would not be thwarted by the continued existence of pre-declaration structures; otherwise the legislature would have provided for the removal of such

structures. He agreed with **DOWLING** J that having regard to the fact that the foundations and some of the walls were still intact the building operations of the respondent had to be regarded as restoration and not erection. It may be that **HOEXTER JA** was, to some extent, influenced by the fact that some of the walls were only partly destroyed whereas that does not appear to be the position here. It appears to me, however, that the main thrust of the judgment, both of the court a quo and this court, was that the purpose of the section would not be frustrated by the continued existence of pre-declaration structures - no more than the purpose of section 3B(1)(a) would be thwarted by the continued existence of the structures to which the appellant previously consented. It follows, in my view, that the appeal in respect of the first respondent fails.

It was, however, agreed that the form of the ancillary relief granted in the court below was wider than that intended to

be sought by the respondents, and that the form of the order should be amended by:

(a) adding at the end of paragraph (c) of the order, the following words:

"other than in consequence of an order of court"

and

(b) by the addition of the following sentence as part of paragraph (d) of the order of the court a quo :

"This declaration is without prejudice to respondents' rights to obtain a demolition order in respect of the said house."

Despite the fact that this wording was agreed by counsel for both parties I think that what they intended with regard to the addition to paragraph (d) would be more accurately reflected if the additional sentence were to read:

"This declaration is without prejudice to respondents' right to apply for a demolition order in respect of the said house."

The order of the Court is accordingly as follows:

(a) The appeal as against the first respondent is dismissed with costs including the costs of two counsel.

(b) The appeal as against the second respondent is upheld with costs.

(c) The order of the court a quo is altered:

(i) by deleting paragraph (b) and substituting the following:

"The application by the second applicant is dismissed with costs including the costs of two counsel."

(ii) by deleting paragraph (c) thereof and substituting the following:

"That respondent is interdicted and restrained from further demolishing the said home of first applicant when restored as aforesaid other than in consequence of an order of court."

(iii) by the addition of the following sentence as part of paragraph (d) of the said order:

"This declaration is without prejudice to respondent's right to apply for a demolition order in respect of the said house."

(iv) by amending paragraph (e) to read as follows:

"Respondent is ordered to pay the first applicant's costs including the costs of two counsel."

For the guidance of the taxing master it is estimated that approximately 60% of the affidavits and of the argument

before us was devoted to the case of the first respondent and the remaining 40% to the case of the second respondent. I understood counsel to be agreed that approximately the same amount of time was devoted in the court a quo to argument concerning the first and second respondent respectively as was devoted in argument before us.

A J MILNE
Judge of Appeal

CORBETT JA]
VAN HEERDEN JA] CONCUR
HEFER JA]
KUMLEBEN JA]