iAfrica Transcriptions (Pty) Ltd/mvd

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 22436/2014

DATE: 26/08/2014

(1) REPORTABLE: YES

(2) OF INTEREST TO OTHER JUDGES: YES

(3) REVISED. YES

DATE **SIGNATURE**

17 October 2014

In the matter between

SHANIKE INVESTMENTS NO 85(PTY) LTD	First Applicant
ITHEMBA PROPERTY TRUST 3 (PTY) LTD	Second Applicant

And

NDIMA, S	First Respondent
LUDICK, B C	Second Respondent
PHALA, R A	Third Respondent
MDHULI, Z L	Fourth Respondent
MHLANGA, M M	Fifth Respondent
RAKGOALE, T	Sixth Respondent
THE FRIENDSHIP TOWN COMMITTEE	Seventh Respondent
THOSE ATTEMPTING TO BLOCKADE	Eighth Respondent
THE ENTRANCE TO FRIENDSHIP TOWN	

_____

J U D G M E N T

10 _____

SPILG J:

The judgment is *ex tempore* which means that there may be areas that I may amplify. However the substance will remain the same.

NATURE OF APPLICATION

1. The first applicant is the registered owner of the property in Midrand on which is situated a complex comprising three blocks of residential flats known as Ndlovu, Komati and Letabong. There are a total of 266 individual flats. The complex as a whole is called Friendship Town.

   The second applicant appears to be both the manager and letting agent.

   Unless otherwise required, they will be collectively referred to as the applicants.

2. The first six respondents are occupiers of the first applicant's complex. They have resided in the complex pursuant to written agreements of lease which in the case of the first respondent had already been terminated for non-payment of rent with effect from 15 July 2014.

   The seventh respondent is an organisation claiming to represent

the individual respondents although its reach may be broader. However its constitution was not provided.

The eighth respondent comprises all those who may have attempted to blockade the entrance to Friendship Town. They were not individually identified.

3. On 31 July 2014 the applicants brought an urgent application on notice alleging that the respondents were intimidating and threatening employees, were attempting to blockade the entrance to the complex and were organising a rent boycott. Each individual respondent, ie. the first to sixth respondents, was alleged to have been actively involved in these activities.

4. The application was divided into two parts. Part A was set down for hearing on 31 July 2014 and the following urgent relief was sought;

    a. to interdict the respondents, pending a final order to that effect under Part B, from blockading the entrance to the complex or otherwise preventing free movement in and out of the complex to the other tenants, applicants' employees, officials or agents and from threatening, intimidating or assaulting any of them;
    b. to authorise the applicants to serve a notice under section 5(2) of The Prevention of Illegal Eviction from and Unlawful

Occupation of Land Act 19 of 1998 ('*PIE*') of their intention to evict the first to sixth respondents on the basis that there exists *"a real and imminent danger of injury or damage to any person or property if the unlawful occupier is not forthwith evicted from the land".* A court order was also sought in regard to the mode of effecting service of the notices and all other papers.

5. The second part of the application, under Part B, was set down for hearing on 12 August 2014. In this part the applicants sought;

    a. final orders in respect of the interim interdicts under Part A; and
    b. orders evicting the first to sixth respondents, in terms of section 5 of PIE, from their units in the complex pending the outcome of proceedings to be instituted for a final order.

6. The application was served through the Sheriff on each of the first to sixth respondents by 13:00 on 31 July. Although service was effected on the person who was in occupation at each individual respondent's unit, none was prepared to provide his or her identity. Service was also effected generally by explaining the relief being sought in English, Sesotho and isiZulu through the use of a loud hailer.

7. It is important to note that at this stage the application served on each of the respondents gave notice that;

    a. the urgent relief under Part A was set down for hearing at 16h00 on Friday 31 July and if anyone intended opposing the relief sought that answering affidavits were to be filed by 15h00;
    b. the semi-urgent relief under Part B was set down for 12 August at 16h00 and that a notice of intention to oppose was to be filed by 1 August with answering affidavits in by 16:00 on 4 August.

8. The respondents were therefore afforded two court days (albeit that there was an intervening weekend) to file their affidavits. There were however seven court days with two intervening weekends between service on 31 July and the hearing on 12 August for the final relief sought, which included the section 5(1) interim eviction of the first to sixth respondents.

9. My brother Makhanya J granted the interim interdicts and authorised the service of the section 5(2) notices. The court also directed the mode of service for the notices and all court papers. It is evident that the court regarded the matter as urgent and the relief under Part A justified, albeit that the threshold then was the establishment of a *prima facie* right though open to some doubt

with the balance of convenience favouring its grant.

10. On 9 August 2014 and by 10h01 all the section 5(2) notices were served in accordance with the directions given. In all but two instances personal services was effected. In respect of the others, the notice was affixed to the door of the relevant respondent's unit.

The section 5(2) notices also repeated that the application for the eviction of the first to sixth respondents would be heard by the court on 12 August 2014.

11. On Tuesday 12 August 2014 respondents (save for the second respondent) and many others attended court. One of the tenants, who apparently claimed to be an attorney, informed the court that the respondents intended opposing the final order sought as well as the ejectment of the first to sixth respondents. They also wished to challenge the urgency of the matter. However they had not filed any opposing papers and sought a postponement.

12. By this stage the second respondent appears no longer to have been in occupation or the issue was resolved in respect of him and the matter only proceeded against the other respondents.

13. Since all the respondents had been served with the application on 31 July informing them that Part B of the order would be heard on

12 August and the section 5 (2) notices had been served on the morning of 9 August on the six affected respondents, I directed that if any of the respondents intended filing opposing affidavits they were to do so by Thursday 14 August and I postponed the hearing to the Friday.

14. The Respondents filed an answering affidavit to which the applicants responded. On Friday counsel appeared on behalf of the respondents and I proceeded to hear argument.

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THE ISSUES

15. The following issues were raised by the parties in relation to the individual respondents whose immediate eviction was sought;

a. whether the matter is urgent;
b. whether there was a real and imminent danger of substantial injury or damage to any person or property if each individual respondent was not immediately evicted;
20 c. whether there was sufficient evidence to identify each respondent individually as being responsible for such a dangerous situation, if it existed;
d. whether each respondent was exercising a legitimate right;
e. whether there was another effective remedy.

16. The court also requested the parties to address it on the constitutionality of section 5(1) of PIE.

SECTION 5(1) OF PIE

17. The provisions of section 5 of PIE read as follows:

"5. Urgent proceedings for eviction

5.1 Notwithstanding the provisions of section 4, the owner or person in charge of land may institute urgent proceedings for the eviction of an unlawful occupier of that land pending the outcome of proceedings for a final order, and the court may grant such an order if it is satisfied that-

(a) there is a real and imminent danger of substantial injury or damage to any person or property if the unlawful occupier is not forthwith evicted from the land;

(b) the likely hardship to the owner or any other affected person if an order for eviction is not granted, exceeds the likely hardship to the unlawful occupier against whom the order is sought if an order for eviction is granted; and

(c) there is no other effective remedy available.

(2) Before the hearing of the proceedings contemplated in sub-section (1) the court must give written and effective notice of the intention of the owner or person in charge to obtain an order for

eviction of the unlawful occupier to the unlawful occupier and the municipality in whose area of jurisdiction the land is situated.

(3) The notice of proceedings contemplated in subsection (2) must-

(a) state that proceedings will be instituted in terms of sub-section (1) for an order for the eviction of the unlawful occupier;

(b) indicate on what date and at what time the court will hear the proceedings;

(c) set out the grounds for the proposed eviction; and

(d) state that the unlawful occupier is entitled to appear before the court and defend the case and, where necessary, has the right to apply for legal aid."

18. I may add there has been no challenge to the procedural requirements. It is the substantive issues that are being challenged.

REQUIREMENT OF URGENCY

19. It will be apparent that the subsections to section 5(1) substantially mirror the requirements for an urgent interim interdictory or mandatory order, namely;

a. the basis of urgency and a well-grounded apprehension of irreparable harm, which is set out in subsection 1(a);
b. the factors affecting the balance of convenience which are set out in subsection 1(b);
c. there is no other effective remedy (subsection 1(c)); and,
d. the right to eject is dependent on the respondent being an '*unlawful occupier'* for the purposes of affording the remedy under section 5, and as that term is defined in section 1.

20. It is therefore evident that the requirements, including that of urgency, are statutorily prescribed. The requirement of urgency will be met, in terms of section 5(1)(a), if the court *" is satisfied … that there is a real and imminent danger of substantial injury or damage to any person or property if the unlawful occupier is not forthwith evicted from the land.*"

'Land' in the section (1) definition includes a portion of land.

21. In order to determine whether the matter is urgent it is first necessary to consider whether the applicants are able to satisfy the court that each individual respondent, acting on his own or in association with others, poses a real and imminent danger of inflicting substantial injury or damage to any person or to the property.

THE FACTS

22. Until the end of May 2014 average rental payment levels for the complex were over 95%. June rental payments dipped below that figure but were still above 90%. However the July rental payments fell by some 30%.

23. The applicants contended that each of the respondents was directly responsible for the dramatic decrease in rental payments by tenants.

24. The undisputed facts indicate that dissatisfaction initially arose over additional charges raised by the applicants. The background to the dispute concerns the steps taken by the applicants during late 2013 to erect carports and provide 24 hour security with controlled access to the complex. These steps were implemented at the request of tenants. The erection of carports was prompted by hail damage to motor vehicles that were parked at the complex during a severe storm in early November 2013. Twenty-four hour access control was motivated because of security issues raised by tenants. In an e-mail that was subsequently addressed it appears that this issue concerned ready access gained by unauthorised persons to

the complex and who were not residing there.

25. The applicants then informed the tenants by letter dated 12 November 2013 that these additional facilities would result in an extra charge of R250 per unit. Subsequently in May 2014 a further notification was sent to all the tenants setting out the parking rules and access control requirements.

On 30 June tenants were notified that they would be charged a monthly rate of R160 per unit for the security upgrade and that in addition covered parking would be charged at the rate of R175 per month.

26. On the evening of 2 July 2014 a group of people demanded that the applicants' security guards leave the complex and threatened to set the security guard facilities alight.

A general letter was sent to all tenants on the following day informing them that should such conduct persist criminal charges would be laid, an urgent court interdict would be sought and that any tenant who, after receipt of the letter, was involved in such activities would have their leases terminated without further notice and would be required to vacate the property immediately.

Moreover letters to the same effect were sent individually to the first, third, fourth and fifth respondents. It is unnecessary to deal

with any of the letters that were sent to the second respondent.

27. These letters prompted an email reply by a group which identified itself as the Friendship Town Committee, the cited seventh respondent. The letter is unsigned. However from its contents it is evident, as submitted by the applicant, that it was written by a lawyer. The email refers to the "*alleged unlawful conduct"* claimed by the applicants and is written on behalf of the individual tenants to whom the applicants had addressed the letters of 3 July. These individual tenants were described as "*clients*" of the seventh respondent and the email was sent with the express reservation of rights.

28. The gist of the email was to claim that the allegations against the "*clients"* constituted inadmissible hearsay "*until confirmed by the informant*" and that they have no knowledge of the allegations, which they in any event deny.

The applicants' attorneys responded to this letter on 4 July by advising, amongst other things, that no action will eventuate unless further unlawful acts were perpetrated.

29. Also on 3 July a letter was delivered to the second applicants'

offices objecting strongly to the carport charges which were considered to be capital expenditure that the owners were obliged to incur but which were being passed onto the tenants who could ill-afford the extra charge.

A number of other incidents also occurred on 3July. During the day a group of people forced their way into the assistant building manager's flat and intimidated her and her children. Later the same evening the first applicant's building manager was threatened and told that he would be burnt inside his unit because he was providing information to his employers.

30. The applicants relented to the representations regarding the carport charges and resolved not to implement these additional charges. On 8 July they informed the tenants by way of a general letter to this effect. Tenants were also requested to treat the security and staff personnel with respect and the warnings issued in the earlier letter of 3 July were repeated regarding the consequences to any individual tenant if he or she abused, intimidated or threatened personnel.

31. It is common cause that the letter of 8 July confirmed that the dissatisfaction with the proposed increased charges had been satisfactory addressed and resolved.

32. Matters then settled down until shortly before the end of the month. On 29 July two tenants addressed emails to the second applicant

advising that meetings had been held at which it was resolved not to pay rent until certain unspecified enquiries were resolved.

They were also informed that on Friday 31 July tenants would lock the gates from 03h00 and no one would be allowed in or out of the complex. This would mean that tenants could not go to work and their children could not go to school. One of the emails claimed that there was a threat to burn the building manager on Friday. The one email was sent by a tenant who had paid rent for the month and wanted to know what measures would be put in place so that residents could safely go to and return from work.

33. A letter was addressed on the same day, i.e. 29 July, to each of the first to sixth respondents claiming that they had associated themselves in a number of violent, unlawful and intimidatory actions against other tenants and the first applicant's agent and employees. The actions were identified as;

a. threatening to burn the building manager inside his flat;
b. severely intimidating the assistant building manager, forcing their way into her flat and threatening her;
c. threatening the security personal and demanding that they move off the premises as well as threatening to set the guard facilities alight;
d. calling for a rent boycott;
e. participating in the organisation of a planned lockdown of the

complex and threatening that no tenant would be allowed to enter or exist whether for work or to take children to school.

34. The letter addressed to the first respondent informed him that his lease had already been terminated as he was substantially in arrear with rental and was required to vacate by 30 July, failing which urgent eviction proceedings would be instituted. Those addressed to the other individual respondents gave notice that their leases were terminated by means of the letter with immediate effect and they too were to vacate by noon on 30 July failing which their urgent eviction would be sought.

35. In response, the seventh respondent sent an email on 30 July. Again the seventh respondent claimed to represent "*collectively*" the individual respondents who had received the letters of 29 July. The applicants' attorneys were informed that;

    a. the lawful ownership of the complex was disputed and *"is deemed invalid"*;
    b. during the June/July period numerous attempts were made to raise concerns directly affecting tenants but were ignored and that the second applicant had advised that it would not entertain any black tenants on their property which constituted racist remarks, *"and purport unfair discrimination*

which in layman's language understands <u>a deadlock for violence as was provoked</u>." (emphasis added);

c. there will be a peaceful and protected march to submit a memorandum of grievances;

d. the seventh respondent had not suggested a rent boycott but the authorities had and the seventh respondent *"could not hesitate to walk in."*

The authorities referred to are eight in number and are said to include the Mayor's Office of Ekurhuleni, the Office of the MEC of Human Settlements in Gauteng, the Ekurhuleni Metropolitan Municipality and the Johannesburg Metropolitan Municipality;

e. the march would be covered by the media *"as our client has invited them to spread tenants' struggle to the members of the public at large."*

f. the individual respondents whom the seventh respondent represents are, *"currently in talks with the Chinese Government under the auspices of the Chinese Ambassador's office in South Africa as they contributed greatly to the lowest cost project in order to realise a dream of the poorest of the poor to own a house in their lifetime moreover to support the government's project of Reconstruction Development Project. Validated information confirms that they are lawful donors of the project*

(Friendship Town) to the Ekurhuleni Metropolitan Municipality."

g. the seventh respondent had been advised by the individual respondents it represented that *"they understand that revolutions is not about a bed filled with a punch* (*sic) of red roses."*

36. On the undisputed facts it is therefore evident that on the respondent's own say-so;

a. they were actively engaged in promoting a rent boycott which they intended to extend through a publicised march and which they claimed had been suggested by the authorities;
b. they did not dispute that there would be a blockade of the complex on 1 August;
c. the issues included the lawfulness of the first applicant's acquisition of the complex;
d. it was recognised that there had been violence but it was said that this had been provoked.

37. In addition it was not disputed that fights broke out at the public meeting on 29 July where one tenant assaulted another and where a group who attended this meeting then approached the building

manager chanting *"Down with Ithemba, down with the rent*".

It was also not in dispute that there were incidents affecting the ability of certain tenants to freely access the complex. By this stage it was clear that the court proceedings were being instituted to interdict the proposed blockade.

38. On 11 August the second applicant deposed to a supplementary affidavit which set out events that occurred despite the grant of the urgent interdict on 31 July. These included;

a. on 1 August and shortly prior to 07h30 a bakkie, marked with the logos of a political party, stopped at the complex. A number of tyres were being carried in the rear. Some four men who were riding on the back of the vehicle then took the tyres off the vehicle, placed them on the road outside the complex and proceeded to set them alight. The arrival of the vehicle and the removal of the tyres were captured in photographs attached to the affidavit;

b. security guards reported that they continued to be threatened. They were told that they would be shot. This prompted the SAPS to be called. Nonetheless protestors started burning tyres in the street. It is also clear that some of those who attended the meeting were bussed in from outside;

c. on 4 August two of the applicants' cleaners were approached and told to inform all new tenants that they can pay their rent to a particular person;

d. by 8 August only 38% of tenants had in fact paid their rent. Non-payment therefore had increased by over sevenfold (R602 000 outstanding by this time of the month as opposed to a norm of only R80 000). Applicants bond repayments alone are R580 000 per month while running expenses amount to R250 000 per month. The net result is that on present figures the first applicant cannot service its debt repayments should the rent boycott continue;

e. those present at a meeting attended by approximately 200 people on 10 August were informed that the complex belonged to the Government, will become RDP houses and that foreigners will be chased off the complex. As a result increased security was provided to protect non-South Africans.

f. on 10 August the car tyres of a tenant who was accused of supporting the landlord were punctured;

g. ordinary tenants were being confronted late at night with calls for contributions.

39. The Respondents' affidavit was deposed to by Mr Thokozani who is the chairperson of the seventh respondent. The respondents challenged urgency, disputed that there had been violence, denied

intimidation or a blockade and also referred to the municipality's request that the matter be referred to the housing tribunal for adjudication in respect of the non-payment of rent. The affidavit then proceeds to deal with the reason for the actions taken. In light of the earlier email those actions related to the rent boycott. I will consider this in more detail later.

40. In an attempt to meet the respondent's claim that they had a legitimate right to organise a rent boycott, the applicants in reply set out the history of the complex's acquisition. Again this aspect will be dealt with separately.

OPPORTUNITY TO FILE AN ANSWERING AFFIDAVIT

41. The respondents did not deny that at a meeting on 10 August the person known as the Thabiso claimed that he will represent them at court and that it was unnecessary to obtain legal representation. Indeed a person claiming to be an attorney did represent the respondents when the matter was called and he sought a postponement.

42. I am satisfied that if any of the respondents seriously intended to engage the applicant and raise a *bona fide* defence to the ejectment sought then they had ample opportunity to do so. The failure to file any such affidavit setting out the position of the

individual respondents against whom urgent eviction orders were sought is not explained. Nowhere is it suggested that they were unable to file an affidavit in good time or that there was insufficient time to do so within the two week period between receiving the application and the date of hearing. There is no application for condonation.

43. A litigant cannot attempt to frustrate an application if it is indeed urgent by seeking indulgences without some justifiable basis. In the present case the respondents sought to play the system. In the case of the first respondent he was in arrear with payment of rental in excess of R90 000. Considering that his basic rental is some R3500 per month, he effectively breached the terms of his lease by failing to pay rental for a very lengthy period of time. As stated earlier he had already been given notice to vacate by 15 July 2014 because of his failure to pay rent under the lease.

44. While the other individual respondents have only been in arrears for some two months or so, nonetheless in terms of their lease agreements the applicants are entitled to terminate the agreements and to evict on notice for non-payment. The respondents confirmed through the email of the seventh respondent and the affidavits filed on their behalf that rental will not be paid. The applicants are therefore well within their right to evict subject of course to PIE. The

only basis upon which the individual respondents can avoid ejectment is if they have some other right either under PIE or by reason of the development of some other legal right or protection.

URGENCY AND DANGER OF INJURY OR DAMAGE

45. At this stage of the enquiry, the entitlement of any respondent to act as claimed is not relevant. Of relevance is whether the facts alleged by the applicants entitle a court to draw the conclusion that *"there is a real and imminent danger of substantial injury or damage to any person or property"* if the unlawful occupier is not forthwith evicted from the land in terms of the requirements laid down by section 5 (1) of PIE.

    I proceed to consider whether this requirement has been satisfied.

46. Firstly each individual respondent was already given notice which terminated his tenancy. It is not disputed that they are therefore unlawful occupiers for the purposes of PIE.

47. The claim that there was no violence or that the blockading did not eventuate or that there has been no intimidation does not address another fundamental ground alleged for necessitating the application. The applicants claim that the actions of the respondents amount to undermining their rights by attempting to make the complex unmanageable and uneconomical or render

them unable to continue operating effectively.

48. The ground is that the actions are directed at subverting the first applicant's right of ownership so that the complex may be taken over by others who have no legal rights. The respondents indeed confirm that their objective is to implement a rent boycott. In addition the applicants rely on a polarisation which is not in dispute, although the claim of fuelling xenophobia is in dispute and is emphatically denied.

49. I turn to the issue of intimidation. It would also be naïve to adopt an armchair approach and believe that without any intimidation a complex with well over 95% rent payment levels can be reduced to a mere 30% compliance within literally a period of a month and a half.

50. The court however must be astute to guard against manufactured urgency. In this case the photographs which captured a group of men taking tyres off a "bakkie" and the evidence of setting them alight despite the apparent presence of police is an act clearly intended to intimidate, indicates an intention to resort to violence and to render the complex unmanageable by resorting to fear and intimidation, if necessary. I again refer to the contents of the email which confirmed that there was violence, whatever its alleged

justification might be.

51. These actions were intended to obtain submission through a show of force and compliance (with the continued boycotting of rental payments) which can only be maintained by the constant threat of force and bullying tactics. The objective, whether political or opportunistic, as was the case in the Johannesburg CBD and in Hillbrow, is to render the property unmanageable, ungovernable and uneconomical to hold.

52. Considering that the complex consists of 266 units within the Midrand area, there are immediate consequences, not only to the other tenants and their children but to others in the immediate vicinity as the campaign is intended to be on-going which will result in no services being capable of being provided in what is presently a pristine building. This leads the court to the only realistic conclusion, having regard also to what is seen elsewhere in Gauteng as the consequence of such action irrespective of motive, namely the intimidation of law abiding people and the immediate degradation of buildings when taken over.

53. In the present case there is no reason for the property owner not to beef-up security, proceed to eject those who do not pay and to otherwise secure the complex. The intent of those responsible for the rent boycott and other actions remains to take over the complex

by ensuring that rent is not paid, that the complex is rendered unmanageable through fear, bullying, and intimidation. This is a recipe for conflagration which has already spilt over into the streets.

54. In my view this is a classic case which section 5(1) was intended to address.

ALTERNATIVE REMEDY

55. The respondents contend that there was an effective alternative remedy; namely to proceed to mediation before the Gauteng Rental Tribunal. Indeed the Ekurhuleni Metropolitan Municipality's Department of Human Settlement Corporate office addressed a letter to the Registrar of this court dated 14 August 2014 requesting that this court direct such a referral.

56. There are a number of impediments in doing so. The most obvious is that effectively a complaint may only remain the subject of a referral provided rentals (at pre-escalation rate, if applicable) continue to be paid, failing which the landlord may evict; see section 13(7)(b) of the Rental Housing Act 50 of 1999. Secondly, this is a rights issue. A court should be slow to turn to mediation when litigants make out a case claim that clear legally protected rights are being invaded and seek the protection of the courts. Thirdly, if the respondents are responsible for the rent boycott and intimidation then they have made it clear that they intend continuing

with the boycott. Finally, mediation requires that both parties to a *genuine* dispute intend to engage in resolving the issues in good faith.

57. In the present case, at no stage has it been suggested that the intimidation will abate (and despite clear evidence it remains denied) or that there will be a moratorium of the rent boycott. It also appears that the municipality was not aware that there had been effectively no issue with regard the payment of rental and that overnight only 30% are now paying rent despite there being no increases in rent or other issues which may have only presented themselves now.

58. One would at least have expected a memorandum of grievances presented to this court. Despite repeatedly enquiring what the grievances were, I was assured that there were only two: the one concerned the charge raised for the carports and the other with regard to whether the first applicant acquired the property in an underhand manner.

59. As to the former, counsel for the respondents readily conceded that this would had been resolved by the letter of 8 July. As to the latter, the court is in as good a position to determine whether it is a genuine dispute legitimately directed at the applicants.

60. I am therefore satisfied that the jurisdictional ground for mediation

under the relevant legislation is wanting and that this is not an appropriate case to refer to mediation at this stage, having regard to the dynamics and conduct of the respondents.

61. I rule that the matter is urgent in relation to the individual respondents. Since there is no challenge to the other interdictory relief which is premised on not curtailing lawful activity and bearing in mind that the interim order did not appear to have been fully respected it is necessary that there be no misunderstanding about the resolve of the court, in respect of the order made by my brother Makhanye J, to ensure that the hundreds of residents including children have the benefit of a final order.

ENTITLEMENT TO ORGANISE A RENT BOYCOTT

62. There are two elements to the application. One relates to the respondents' alleged intimidation and threatens to others and the consequent possibility of further violence. The other is that the effect of the rent boycott, which if it continues, will directly cause the degeneration of the property and affect all those occupying under lease agreements (as the economic consequences are self-evident from the financial figures provided). It will also continue to cause confrontation creating the real risk of conflagration with children also at risk of injury bearing in mind the size of the complex and the polarising nature of the rent boycott and its inevitable consequences.

63. The second aspect however begs the question as to whether the rent boycott can be a lawful or otherwise legitimate response similar to withholding labour from an employer in an industrial dispute.

64. This raises three issues. The first is whether the dispute is real or *bona fide*. The second is whether the nature of the dispute is sufficiently linked to the landlord as to find a basis for the tenant to withhold rental and the third is whether such interest or right can trump the right of the landlord to eject for a failure to pay rent. This would involve constitutional issues including the right of association, dignity and to housing.

65. The respondents claim that the main purpose of the rent boycott was to address the housing backlog and in particular those individuals who cannot qualify for either RDP housing or commercial loans.

66. The respondents referred to a research paper which was handed up to court being that of the South African Institute of International Affairs dated April 2009 and entitled '*Chinese Development Co-operation in Africa; The Case of Tembisa's Friendship Town'*. According to the respondents, and relying on the research paper, the project was built by the People's Republic of China and handed over to the municipality, which in turn formed what was known as a section 21 not for profit company. The aim of the company was to

generate more income, to take the property boom in South Africa and re-invest the proceeds of the project into other commercial property developments so that more funds could be created to build houses and thus address the housing backlog in Tembisa. The respondents then state the following;

"How the project landed up in the private companies and the applicant in particular is mysterious and it is the main source of all the problems accompanying this conflict."

67. The affidavit then continues;

" The committee has decided that since the funds generated in this project cannot be utilized for the purpose for which the project was initially intended" and then the affidavit goes silent.

I can only conclude that there was a deletion of certain words. The extract can only make sense if the committee's decision was the withholding rental, which is consistent with the contents of other documentation provided by the respondent.

68. The applicant in reply dealt with the background to its acquisition. It referred to the previous owner being AFCO Holding (Pty) Limited which had acquired it through a simultaneous transfer from Letabong Housing Institute. AFCO Holding and its predecessor in title, also known as the Affordable Housing Company, were

organisations effectively established in the Johannesburg inner city to provide affordable housing.

69. Although the property is situated in the jurisdiction of Johannesburg it was, at that stage, within the Ekurhuleni area. The housing project was developed with funding from the Chinese Government. Moreover the housing units, comprising freestanding houses as well as the four complexes now under consideration, were at no stage intended as free housing for the lowest income group in terms of the reconstruction and development programme. They were intended to be sold by way of sectional title.

70. The Limpopo block was put up for sale on sectional title first, and some 30 to 40 units were sold to private individuals. When the balance of the sectional title units could not be sold because of the difficulty in obtaining bank funding the National Housing Finance Corporation was approached. The NHFC did not offer end user funding and referred the management of the complex, namely under Ekurhuleni Development Corporation, to AFCO which at that stage was able to offer end user funding. However AFCO was moving out of the end user funding market and instead offered to purchase the balance of the units in the Limpopo, Letabong, Ndlovu and Komati blocks outright, which it did.

71. The first applicant still owns approximately 8 units in Limpopo having over the last period of the year, also sold the balance of the

Limpopo units it had purchased on sectional title.

72. The Letabong, Ndlovu and Komati units are owned outright by the first applicant..

73. The applicants therefore contend that any claim that the property was obtained by improper means is incorrect. Any suggestion that the complexes were built for purposes of RDP housing is also wrong. It is contended that no multi-storey RDP accommodation exists in South Africa other than a recent development in Alexandra. Moreover the intention of the EDC to sell units by way of sectional title was only partially successful as a result of which AFCO had to step in and purchase the balance of the sectional title units and also purchase outright the remaining three blocks in the complex.

74. It appears that AFCO had run the three blocks in the complex most successfully until 2011, when purchased by the first applicant. The first applicant claims that it has spent more than R3 million on refurbishing the three blocks since taking transfer. Perhaps most important in relation to the contentions advanced in the respondents' affidavit is that the title deed, which is attached to the papers, reflects that the first applicant paid just under R61,5 million to AFCO Holdings to purchase the complex. The effect is that, through a section 21 company, the municipality indeed obtained the

benefit of some R61,5 million which one would assume was then utilised in accordance with the city's objectives.

75. In concluding this part, it is appropriate to read certain extracts from the South African Institute of International Affairs research paper. It is a thirteen page document excluding the end notes. I will refer to two extracts, the first is from page 12 under the heading '*Assessing the Tembisa Friendship Town Project*'.

"The Tembisa Friendship Town project was and remains a success. It can lay claim to being the first Chinese government grant project in South Africa. It was also the very first project implemented and delivered by a Chinese state owned enterprise in South Africa. More importantly it provides a sustainable model for foreign aid projects that could be emulated elsewhere. The model linking and involving all project stake holders demands that the operation between the donor and the end receiving government between government communities and between the implementing organisation and the community. Remarkable achievement for the Friendship Town project was largely due to the following factors. Most important was the involvement of the community. The need for the project was identified locally by the council and this need was recognised and supported by the donor, the Chinese Government, who was willing to provide a housing project addressing this specific local need. Thereafter the transfer, skills and capacity building throughout the project

ensured further benefits to the community beyond just houses delivered by the project. Through this process the people of the community were empowered in a close community spirit development. Secondly the project was driven by the enthusiasm of two forceful leaders and last but not least the CCOEC being one of the implementing organisations who is the responsible implementing party with extensive international experience the company can speedily adapt to the South African business environment. It went the extra mile to assist the community through its consultation and skill transfer but went beyond simply fulfilling its responsibility as a construction company. This off-set the language and cultural barriers that posed problems earlier on and one that supports the community."

The second extract appears in the conclusion, where the following is said:

"Tembisa Friendship Town project, although only one example of Chinese economic co-operation with Africa nonetheless points to the weight the constructive impact that the engagement with China can have on the continent. The emphasis on consultative practices and identifying local needs in conjunction with the community serve both Chinese and African interests and coupled with the conscious effort to transfer skills and hire workers locally brought concrete benefits to the township. Concurrently the desire

to ensure that the project would be commercially orientated and sustainable in the long term laid the financial foundation for the extension of the success in future."

I pause to emphasise that this was not a project intended for the poorest of the poor but was intended to be commercially orientated. I now return to the conclusion;

"*The fact that this did not occur in part due to the absence of any evaluation or review by the government parties involved, in other words, not the private sector but the government parties involved has meant that the lessons of the Tembisa Friendship Town project will unfortunately not be systemically integrated into future endeavours.* "

The last sentence reads *"The spirit of cooperation surely demands otherwise."*

76. It is therefore evident that this was a commercial project, that the first applicant as a registered title holder paid some R61, 5 million to acquire the complex and that money would have gone back to the City's section 21 company to be utilised for the benefit of the municipality's programs. It is also clear that the project was not intended to provide housing for the poorest of the poor, although there were clearly benefits during its development stage that would have assisted in the upliftment of communities through employment

and transfer of skills during the construction phase.

77. The question then concerns the store we place on the respondents' assertion that they are entitled to undertake a rent boycott to achieve an objective that has no substance *vis a vis* the applicant and where the causal connection claimed cannot withstand even the most basic scrutiny.

78. In my view it justifies the conclusion that there must be another motive for the actions taken by the respondents since clearly the rent boycott cannot be to return the building to status it was. The attempt to utilise or to justify the rent boycott on this basis is disingenuous and not *bona fide*.

79. In so far as the demands or claims for low cost housing and the attempt to utilise the rent boycott to promote that purpose or to promote the RDP project is concerned, this court is satisfied that the rights claimed by the respondents (although only expressed as a right to boycott the payment of rent) do no go so far as to disturb the existing relationships *voluntarily* assumed between willing parties to a rental agreement where the issue is unrelated to the leased property.

80. Moreover our common law in relation to withholding rental is strong enough to cater for all those situations where a tenant is entitled to withhold rent and also under the statutory provisions provided for

under section 4(1) of PIE with which I will now deal.

81. There are a number of cases that have considered the application of section 4(1) of PIE in so far as it impacts on the rights of private landlords. The first is *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd* , 2012 (2) SA 104 (CC) at para 40 where, the judgment of Van der Westhuizen J indicated that private owners who require ownership of occupied property may *" have to be somewhat patient"* reasoning that:

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"An owners rights to use and enjoy property at common law can be limited in the process of the justice and equity enquiry mandated by PIE."

82. In order to decide whether eviction by a particular date would be just and equitable in the circumstances, the court considered it necessary to determine whether land had been made available or could reasonably be made available. It therefore had to consider the City's obligations in relation to alternative emergency

20 accommodation.

As is evident the current situation before this court is far removed from that. There is no suggestion that the tenants, or erstwhile tenants, are not paying rent either because they cannot afford to or because of the rentals have gone up.

83. The next case is *City of Johannesburg v Changing Tides 74 (Pty) Ltd and others* 2012 (6) SA 294 (SCA). This was an appeal against an order authorising the eviction of occupiers from a commercial building in Doornfontein. The building had apparently been hijacked and was no longer under the owner's control. It was said to be unfit for human habitation and was occupied by those who were extremely poor. This court granted an order authorising the eviction of the occupiers. When the matter went on appeal, Wallis JA in the Supreme Court of Appeal held that, although it was overwhelmingly likely that the occupiers were poor and likely to face homelessness on eviction, the high court nonetheless lacked sufficient information about the circumstances of the occupiers to exercise the necessary discretion required under PIE. The Supreme Court of Appeal emphasised the prospect of homelessness and availability of alternative accommodation in the exercise of a discretion under PIE, but stated that each case must be considered on its own facts.

84. Moreover the court observed that an eviction order in circumstances where no alternative accommodation is provided is far less likely to be just and equitable than one that makes careful provision for alternate housing. At paragraph 15 the SCA observed that neither PIE nor section 26 of the Constitution provides an absolute entitlement to be provided with accommodation. In some circumstances a reasonable response to potentially homeless

people may be to make permanent housing available and in others it may be reasonable that no housing at all is made available.

85. The SCA continued that throughout a court must be mindful of all other relevant factors including the resources available to provide accommodation. The court then observed the clear distinction between property that is owned by the State and that owned by a private person. It continued by stating, at paragraph 18, that private owners are not obliged to provide housing and that the availability of alternative accommodation is more likely to bear on when, and not whether, an eviction order should be granted.

86. The SCA then said that a court hearing an application for eviction at the instance of a private person or body, owing no obligation to provide housing or to achieve the gradual realisation of the rights of access to housing under 26 (1) of the Constitution, is faced with two separate enquiries:

a. The court must decide whether it is just and equitable to grant an eviction order having regard to all relevant factors. Under section 47 those factors include the availability of alternative land or accommodation. The weight to be attached to that fact must be assessed in light of the property owner's protected rights under section 25 of the Constitution and on the footing that a limitation of those rights in favour of the occupiers will ordinarily be limited in duration.

b. Once the court decides that there is no defence to the claim for eviction and that it would be just and equitable to grant an eviction order, it is then obliged to grant that order. However before doing so, it must consider what justice and equity demands in relation to the date of implementation of the order and it must consider the conditions that must be attached to its order. In that secondary enquiry the court must consider the impact of an eviction order on the occupiers and whether they may be rendered homeless or need emergency assistance to relocate elsewhere

Accordingly, an eviction order cannot be granted until both enquiries have been undertaken and a conclusion reached that the grant of an eviction order, effective from a specified date, is just and equitable. Nor can the enquiry be concluded until the court is satisfied that it is in possession of all the information necessary to make both findings, based on justice and equity. See paragraph 25 of the judgment.

87. The most recent case is *Mpango v Angus Lifestyle Properties (Pty) Ltd* 2012 (3) SA 531 (CC). The court considered the impact of the constitutional protection against eviction by a landowner pursuant to terminated lease agreements. The judgment also dealt with the

role of the Rent Housing Tribunal established in terms of the Rent Housing Act 50 of 1999. The majority of the court effectively stayed the appeal pending the residents having their complaint of an unfair practice adjudicated upon by the Tribunal. Writing for the majority, Cameron J held that the critical question was whether the landlord was entitled to exercise the bare power of termination in leases for the sole purpose of securing higher rentals. The tenants relied on a number of arguments to contend that the landlord was not permitted to terminate in such circumstances; there was a contractual argument, a constitutional argument and a statutory argument.

88. Cameron J set out a comprehensive account of the context and purpose of the Rental Housing Act and the role of the Tribunal (at paragraphs 29 to 44). The judgment indicated that the Rent Housing Act created a more complex, nuanced and potentially powerful system for managing disputes between landlords and tenants. Neither the landlord nor the tenant had fully appreciated the force of the Act's provisions in litigating their dispute; The court clarifying that the Rental Housing Act is

> *"Super-ordinate to the contractual arrangements between the parties and that the landlord's action may constitute an unfair practice even though it may be permitted by the lease and the common law."*

The court therefore overruled the Supreme Court of Appeal's finding that the term '*practice*' as used in the Act envisaged only incessant and systemic conduct by the landlord which is oppressive or unfair. The majority also found that, although withdrawing their complaint from the Tribunal, the occupiers never abandoned or waived their right to pursue it.

89. It will be noted that these cases are removed from the current situation. In the present case the individual respondents do not claim that their grievance is as a result of increased rental, but rather that they wish to support a move to boycott the payment of rentals for what is claimed to be an issue that goes outside the terms of their lease, and is ultimately based on whether or not the first applicant could take lawful transfer of the property and whether the project ought to have secured housing for the less fortunate, which does not include them.

90. I have already dealt with these contentions and have found that the claim is not *bona fide*. There is another purpose for which the non-payment of rent is directed; it is effectively to render the complex unmanageable, ungovernable and uneconomical for the landlord to continue owning, with the objective that it be taken over by others, whoever they might be.

91. I am accordingly satisfied that any other constitutional right or right under PIE is not adversely impacted by what has taken place in this specific case.

THE INDIVIDUAL RESPONDENTS

92. The remedy provided for under section 5 may be draconian depending on the facts. However in the case of an occupier who has already remained in occupation well beyond the time of his eviction notice, and is gainfully employed with alternative accommodation to go to, then not only would the ordinary incidence of the common law that prevailed prior to PIE result in him remaining well beyond the date he or she should have been ejected, but the individual would also be taking advantage of the provisions of PIE which are meant to alleviate the plight of those, to which group he or she knowingly does not qualify.

93. Nonetheless it is essential that the applicant satisfy the court that each respondent who remains as an occupier in the complex individually poses a danger to people or property. I appreciate also that this is a case for final relief and that the ordinary *Plascon Evans* principles apply. I have previously indicated that where constitutional rights are affected a court may more readily refer a matter to oral evidence and this I have considered as well.

94. In the present case the individual respondents, through the seventh

respondent's emails and affidavits, confirm that they are all actively involved in the rent boycott. However that is not enough to demonstrate that they pose a danger to the property or to others.

95. The following evidence was presented by the applicants with regard to the involvement of each respondent.

96. <u>The first respondent</u>:

With regard to the events of 3 July 2014 mentioned earlier, where a number of people forced their way into the flat of the first applicant's assistant building manager and intimidated her and her children, it was averred that each of the respondents were involved.

In relation to the threat to the first applicant's building manager a short while later, it was averred that the manager was informed by the first respondent that he was going to burn him inside his flat because he is taking information to his bosses. Whether this evidence was supported by affidavit was confirmed when the affidavit of the building manager was handed into court and made available to respondents' counsel.

Even in relation to an earlier event it was averred that on the evening of 2 July 2014 a group of people headed by the first, third, fourth and fifth respondents told the security guards to move off the premises and threatened to set the security guards' huts

alight. Then again it was averred that when the first respondent had already threatened to burn the building manager in his house, the other respondents chased the security guards away from the premises and threatened to burn their security structures.

In addition, at the meeting of 29 July, which was mentioned earlier, a group approached the building manager chanting "*down with Ithemba, down with the rent"*. It was averred that the first respondent addressed this meeting with a loud hailer stating that he had the support of the Johannesburg Metropolitan Police Department and the South African Police Services ('*JMPD*' and '*SAPS*' respectively) and that their cause was supported by the community in Tembisa.

97. The third, fourth and fifth respondents:

I have already mentioned their active support, together with the first respondent, in respect of the incident during the evening of 2 July.

I also mentioned the contents of the letter addressed by the seventh respondent which was purportedly written on their behalf and in respect of which they have not dissociated themselves.

98. I am accordingly satisfied that the first respondent is actively involved, having been responsible for addressing the group for at least part of

the time on 29 July, in the organisation of the rent boycott and cannot be blind to the consequences of the acts of violence and intimidation. Having regard to the contents of the letter, he was clearly involved in the organisation and implementation of the rent boycott. The third, fourth and fifth respondents were also involved in the organisation of the rent boycott and have actively associated themselves with it and its objectives, as stated earlier, to render this large complex, with almost three hundred principal tenants some with school going children, not only uneconomical to maintain but also unmanageable and ungovernable through intimidation and, as appears earlier, admitted violent actions.

99. The applicants sought to impress on this court that the sixth respondent was continually referred to as being amongst those involved. However, at no stage was the sixth respondent specifically identified and the generalised averment, in my view, is insufficient to result in this court being satisfied on paper that the sixth respondent also actively involved himself in the actions undertaken by the other individual respondents.

100. I have already indicated that eviction notices were served and the time by which the individual respondents were to have vacated has since passed. Nonetheless section 5 (1) can have draconian effects particularly where occupiers may have difficulty in finding alternative accommodation.

101. If regard is had to the seriousness of the conduct complained of, its consequences and the clear link between the actions of the first, third, fourth and fifth respondents in organising, encouraging and perpetuating it, the court is satisfied that there is a real and imminent danger of substantial injury or damage to persons and property if they are not evicted. As appears above consideration must also be given to the safety and wellbeing of the children; it will be recalled that they would also have been caught up in the barricading of the complex if the urgent order had not granted by my brother Makhanya J. I have also mentioned previously that there is a general risk to them if the polarisation continues and the applicants start enforcing their lawful rights to collect rental. Irrespective of whether this is part of the individual respondent's stratagem it further exacerbates the reasonable apprehension of danger to the safety of all rent paying tenants in the complex.

BALANCE OF CONVENIENCE

102. It remains necessary to be satisfied that the balance of convenience test under section 5(1)(b) favours the applicants. In this regard, save for the first respondent, each respondent claimed when completing the agreement of lease that he had alternative accommodation to go to if the lease was terminated.

103. The applicants were unable to locate a written lease signed by the

first respondent, if any. Nonetheless the first respondent's eviction is imminent and the date by which he was to have vacated has since passed. He has amassed substantial arrears of over R90 000 and has not indicated any intention to pay any of it.

104. None of the respondents claim hardship or that they were unemployed or could not go to the alternative accommodation that they had indicated. As appears earlier, the respondents were vociferous in challenging the proposed charges for the carports which suggests that they have motor vehicles and have a standard of living which necessitates the additional security and access services they had called for and obtained.

105. Again one must not lose sight of the constitutional issues involved insofar as they weight the respective rights of the individual respondents, the rights of tenants (who are paying or wish to pay their rent and are entitled to the full use and enjoyment of their units and the common area without fear of harm to themselves or their families), and the applicant. I believe that these have been addressed, as between the individual respondents and the applicant in the cases mentioned earlier. The protectable interests and freedoms of ordinary tenants who are obliged to pay rental in terms of their leases are at risk.

106. As stated earlier, a court cannot adopt an armchair approach when confronted with the figures of over 90% payment levels in June which

went down to 38% after rentals fell due for August despite it being common cause that there was no genuine grievance *vis a vis* the complex that could account for such a high levels of default within such a short space of time. The only reasonable inference is that tenants have been intimidated or genuinely fear intimidation if they do not comply with the boycott organised and perpetuated by, at the least, the individual respondents.

107. Returning to the interests of the applicants: I have already identified them and I am satisfied that the provisions of section 5(1)(b) overwhelmingly favour the applicants. Indeed there has been no evidence to suggest hardship to the respondents.

108. The provisions of section 5(1) seek to balance the rights each individual unlawful occupier may have to claim protection under PIE against the interests of ensuring, that in according those rights, a landlord is not remediless if the latter can satisfy a court that the occupier falls within section 5(1). The section appears to weigh all relevant considerations and to the extent that it might affect a protected right under the Constitution (and counsel referred to the right to dignity and housing) I am satisfied that the legislation itself balances the competing rights and such limitations as may affect an occupier's rights are not by reason of the legislation itself.

109. There remains the issue of by when the first, third, fourth and fifth respondents are required to vacate pending the final determination of

their eviction application. This involves two considerations. The first is that although nothing has been placed before me, a court once again cannot adopt an armchair approach. The court must be sensitive to the fact that it is not possible for an individual to literally pack up and leave a place. Some arrangements must be made and while the Act itself indicates that the ejectment is of immediate effect this court does not believe that the intention of the legislature is to ignore the reality that an evicted person is obliged to obtain other accommodation.

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110. Weighing the relevant interests and bearing in mind that each of the respondents was given notice of eviction and that the period by which he was to have left has passed with no attempt to either remedy the breach or to pay the rent outstanding (but rather every intention to persist with the non-payment of rent), on balance I am satisfied that in complying with the various principles, both common law and statutory, the affected respondents should not be ejected immediately but that a short time should be afforded to them to be able to move out and that the time I have indicated in the order I gave earlier this week, is
20 appropriate having regard to the purpose of section 5(1) and the specific facts of this case.

THE ORDER

111. Firstly there is the question of by when the applicants are to launch proceedings for the final ejectment of the individual respondents.

112. The draft order presented to me would allow the applicants to proceed by way of action proceedings. This would effectively result in the final determination of whether the individual respondents should be evicted or not taking an interminable length of time while the respondents remain unable to return.

113. I must weigh that against the issue of whether or not, if there is a dispute of fact, a court might consider that the application itself was ill-founded by proceeding on motion. I have attempted to address both concerns in the order I make.

114. My attention has been drawn to a clear mistake in that the order included a referral to unit 46 Komati. That was incorrect as it is the unit occupied by the sixth respondent against whom the applicants have been unsuccessful. To that extent I rectify the order I made earlier in the week. The order as rectified reads:

1. The application is urgent in terms of Rule 6(12) of the Rules of Court.

2. The Respondents are interdicted and restrained:-

2.1 From blockading on 1 August 2014 the entrance to the Friendship Town complex described as:

ERF 2673 COMMERCIA EXT 9 TOWNSHIP

REGISTRATION DIVISION I.R.GAUTENG

situate at: 2673 DOBERMAN STREET

COMMERCIA EXT 9,FRIENDSHIP TOWN

MIDRAND, JOHANNESBURG

(hereinafter referred to as "the property");

2.2 From preventing free access and egress to the property by the Applicants' employees, officials, agents and tenants;

2.3 From threatening, intimidating or assaulting any of the Applicants' employees, officials, agents and tenants.

3. *That the Sheriff of the Court or his lawfully appointed Deputy is authorised and directed to ensure that the access and egress to the property by the Applicants' employees, officials, agents and tenants is not restricted and to take such steps as are necessary to ensure that any blockade is removed.*

4. *That the Sheriff of the Court or his lawfully appointed Deputy is authorised to approach the Johannesburg Metropolitan Police Department ("JMPD") and the South African Police Services ("SAPS") for whatever assistance he may require in the*

circumstances.

5. That the;

5.1 First Respondent,

5.2 Third Respondent,

5.3 Fourth Respondent, and

5.4 Fifth Respondent,

are evicted respectively from Units 10, 33, 41 and 115 Indlovu Complex at the property pending the outcome of proceedings for a final order evicting each of the said Respondents, which proceedings are to be instituted by way of application under a separate case number, with leave to apply to court for a referral to evidence or trial should the matter not be capable of being determined by ordinary motion proceedings.

6. That the First, Third, Fourth and Fifth Respondents are required to vacate by no later than Sunday 31 August 2014 failing which the sheriff is directed to secure the evictions by no later than 1 September 2014.

7. That the First, Third, Fourth, Fifth and Seventh Respondents are directed to pay the costs of this Application, including the costs of the Applications in terms of Part A hereof and in terms of Section 5

(2) of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998.

8. *That the applicants are directed to pay the costs of the Sixth Respondent in relation to that part of the application for his eviction*

9. *That there are no orders for costs in respect of the application against the Eighth Respondents.*

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DATES OF HEARINGS: 12 and 15 August 2014

DATE OF ORDER: 21 August 2014

DATE OF *EX TEMPORE* JUDGMENT 26 August 2014

DATE OF RECEIPT OF DRAFT: 10 September 2014

REVISED JUDGMENT: 17 October 2014

LEGAL REPRESENTATIVES:

20 FOR APPLICANTS: Adv M Rip SC
Adv A Pullinger
Vermaak & Partners Inc

FOR RESPONDENTS: Adv G Shumba
Kgadima Kekana Attorneys