REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

Case no: 9617/02

In the matter between:

CITY OF CAPE TOWN **Applicant**

and

THE PERSONS WHO ARE PRESENTLY UNLAWFULLY OCCUPYING ERF 1800, CAPRICORN: VRYGROND DEVELOPMENT

First Respondent

THE PERSONS INTENDING TO UNLAWFULLY OCCUPY ERF 1800, CAPRICORN: VRYGROND DEVELOPMENT **Second Respondent**

Judgment delivered this 20th day of May 2003

N C ERASMUS J

Background

This application is concerned with the very difficult and pressing question of the State's constitutional obligation to provide access to adequate housing. Many South Africans still live in intolerable conditions and, as this case demonstrates, there is a very real danger that

communities will be tempted to take the law into their own hands in order to escape these conditions. According to Mr Johannes Smit, the executive director of housing at the applicant's South Peninsula Administration(SPA), the applicant's waiting list for houses currently stands at around 240 000 applicants and this figure is growing by 19 000 every year.

Planning and approval of the development of section 3 of Erf 1800, Capricorn, Vrygrond in the Western Cape (`Vrygrond') took place during 1997 and 1998. At that time the land was being used as an informal settlement. The Vrygrond development was approved by the Western Cape Provincial Government in 1999. The development is characterised as an *in situ* upgrade which involves the development of the existing informal settlement into a formal low cost housing township. The development of Vrygrond took place in consultation with various community organisations, and in particular between the South Peninsula Municipality (SPM) and the Vrygrond Community Development Trust (VCDT). The applicant

alleges that it was agreed between SPA and VCDT that the houses to be built first would be allocated to *bona fide* Vrygronders (ie members of the community who were resident on the land at that time). To that end a list was drawn up during 1998. Applicant considered the list closed in the sense that no-one other than those appearing on the initial list would be considered as *bona fide* Vrygronders. Of course this makes sense: it is impossible to plan the building of houses when the numbers simply keep on increasing. The applicant claims that the entire development was to consist of 1604 erven, 247 of which comprise section 3, the subject land of the present application. Of these 209 have had houses erected on them and 38 are to remain as serviced erven. The reason for the serviced erven lies in the qualification requirements for housing from the applicant. The National Government has set up various policies regarding township developments. It has set up the National Housing Subsidy Scheme which, *inter alia* provides for the establishment of the South African Housing Subsidy Fund. This fund allocates funds to the Provincial Governments to

whom local governments apply for approval of development plans and funding. Furthermore, a National Housing Code has been approved and adopted by National Government which, *inter alia,* sets out criteria and procedures relating to eligibility for a housing subsidy.

In the case of an *in situ* upgrade, there are two basic requirements for qualification as a beneficiary, namely that the applicant must be a member of the existing informal community (*in casu* they must appear on the 1998 list of *bona fide* Vrygronders) and secondly, qualify for a subsidy in terms of the National Housing Code. Subsidies are approved by the Provincial Housing Development Board which determines the amount of the subsidy depending on the earnings of the applicant in accordance with state capital subsidy programme guidelines. To qualify for a subsidy the applicant must be South African, have dependents, be over 21 years of age, must not have benefitted from a subsidy before and must not be a land owner, which includes being a beneficiary of another state housing development. The applicant must

also not earn less than a prescribed amount.

It was further agreed between SPA and VCDT that those *bona fide* Vrygronders who did not meet the second criterion, ie those who failed to qualify for a subsidy, would be entitled to one of the 38 serviced erven.

The respondents do not challenge this evidence and I accept it.

Effectively then all the *bona fide* Vrygronders on the 1998 list would be accomodated by the development of the 247 erven in section 3 of the Vrygrond development unless they do not comply with the national policy guidelines.

In order for civil services to be installed and houses built it was necessary for the land to be vacated by the *bona fide* Vrygronders. Understandably, some of the residents were unwilling to move and some refused causing applicant to approach the court for their eviction. The entire site was vacated by the beginning of 2001. Many of the residents were accomodated on an adjoining road reserve and the applicant supplied water and electricity. The respondents

deny that they had electricity or other amenities and from their description of the reserve they appear to have suffered intolerably. By 15 June 2002 the construction of houses and installation of services on the individual erven at section 3 was completed.

The applicant argues, however, that as at 15 June 2002 no-one (except two or three beneficiaries who had been granted subsidies and had complied with the procedures set out below) had permission to occupy any of the houses or serviced erven because firstly, some of the subsidies had not yet been approved and even if they had been, the applicant prescribes a strict procedure which is to be followed for the orderly occupation of houses and erven. The procedure is as follows. Once a qualifying beneficiary has been identified, they are notified and asked to present themselves at the allocated house on a particular date when they will be asked to sign a “first delivery certificate” which is essentially an acknowledgment that the services are in place and that the house appears to be in good condition. The beneficiary is then granted

permission to occupy the house. They are then asked to draw up a snaglist which, if legitimate, will be attended to by the applicant's contractors. After three months the beneficiary is asked to sign a final delivery form. Applicant claims that this procedure is vital to the orderly occupation of houses and identification of problems.

Shortly after the houses were completed however, certain of the respondents started to occupy the houses and erven. Respondents concede that `[t]he community resolved to move into the homes and to allocate them in accordance with the need and the time particular families had lived in Vrygrond. We do not believe that there was anything unlawful about this move, and we waited for months and had a clear right to our homes.'

The respondents claim that, at first, they did not occupy the land but after the first phase of houses had been built, unidentified persons (not *bona fide* Vrygronders) moved into them. They questioned one Daniel Lopez, whom they took to be an employee of applicant, who apparently, after

a meeting on 21 June 2002, and after still more people had moved into newly completed houses, told respondents that they should also just move into the houses. This is denied by the applicant. In any event, the occupation of the land occurred at least from 21 June 2002.

As at 28 February 2003 (the date of filing of the applicants replying papers) the position was as follows: of the 209 houses at Vrygrond, 104 have been allocated and the proper beneficiaries have taken occupation. The remaining 105 have been unlawfully occupied and form the subject of this application. Of the remaining 105, 91 have been allocated but the beneficiaries cannot take occupation. It appears that the remaining 14 houses and 38 serviced erven were not allocated at the time of the launching of these proceedings.

The applicants seek an order evicting everyone (save for three individual families) from the 105 houses in section 3 of Vrygrond in the first instance but making provision for

various categories of people to take possession of the land in a systematic way. The result of the order they seek will be that everyone whose name appears on the 1998 list (the *bona fide* Vrygronders) or those whose names do not appear but who can prove that they were residents of Vrygrond as at 1998 will be provided with either houses or serviced erven.

Grounds for the Application

The applicant's case is based upon the common law *mandament van spolie* as well as section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No. 19 of 1998 ("PIE"). In view of the decision I have come to, it is unnecessary for me to consider the common law ground of the application. There is in any event some uncertainty in the case law about whether the common law *mandament van spolie* remains available to an applicant whose application is based on PIE. See for example the unreported CPD case of *The Provincial Housing Development Board Western Cape v The Occupiers of the Erven in Delft South Cape Town* case

number 9206/98 at page 15.

Section 4 of PIE reads as follows:

4 Eviction of unlawful occupiers

> (*1) Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier*.
>
> *(2) At least 14 days before the hearing of the proceedings contemplated in subsection (1), the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction.*
>
> *(3) Subject to the provisions of subsection (2), the procedure for the serving of notices and filing of papers is as prescribed by the rules of the court in question.*
>
> (*4) Subject to the provisions of subsection (2), if a court is satisfied that service cannot conveniently or expeditiously be effected in the manner provided in the rules of the court, service must be effected in the manner directed by the court: Provided that the court must*

consider the rights of the unlawful occupier to receive adequate notice and to defend the case.

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

(a) state that proceedings are being instituted in terms of subsection (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.

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

children, disabled persons and households headed by women.

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

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

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

the circumstances; and

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

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

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

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

> *(12) Any order for the eviction of an unlawful occupier or for the demolition or removal of buildings or structures in terms of this section*
>
> *is subject to the conditions deemed reasonable by the court, and the court may, on good cause shown, vary any condition for an eviction order.*

An `unlawful occupier' is defined as meaning `a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land.' (s.1) Applicants argue that the respondents are clearly unlawful occupiers as they had no permission to occupy the land when they did. Respondents argued that they are not unlawful occupiers and appeared to rely for this contention on the so-called doctrine of aboriginal title as has been recognised in, particularly, Australia in the now well known case of *Mabo v Queensland (No. 2)* 1992 CLR 1. In the as yet unreported SCA judgment of *The Richtersveld Community and Others v Alexkor Limited and Another* case number 488/2001 (judgment delivered on 24 March 2003) Vivier ADP expressly avoided the question of whether the doctrine

forms part of our common law or whether our common law ought to be developed to recognise aboriginal rights. The court did however say that not all the aspects of the doctrine fitted comfortably into our common law. In the light of such doubt as well as the fact that, in my view, respondents have not made out a case for aboriginal title, the matter need not be pursued.

As mentioned above, respondents further claim that they did have permission to occupy the premises from one Daniel Lopez who, on the applicants version was used simply to complete and collect housing applications. On the very limited evidence I have before me, I cannot make a proper finding regarding whether Lopez was authorised to give permission or whether he in fact did do so. Suffice it to say that I think it is unlikely that he did have authority to do so, especially in light of the respondents' concession that `[t]he community resolved to move into the homes and to allocate them in accordance with the need and the time particular families had lived in Vrygrond.' I therefore accept that, for the purposes of this application, the

respondents are unlawful occupiers as defined by the Act.

Applicant brings the application in terms of section 4 of the Act as both the owner and ‘person in charge’ of the property. It is common cause that all the requirements prescribed by section 4 have been complied with. The application envisaged by section 4(4) was granted on 5 December 2002 and applicant served the Notice of Motion in the main application in terms of that order on 5 and 6 December 2002. As the date of occupation was at least 21 June 2002 and the proceedings in the main application initiated on 5 and 6 December 2002 (in other words just short of six months after the occupation), this matter stands to be determined in terms of section 4(6) instead of the more onerous section 4(7).

In short, the applicant contends that respondents, not content to wait out the finalisation of the allocation process occupied the houses and serviced plots without permission and in doing so took the law into their own hands.

Before I deal with the substance of the application, respondents raised an issue *in limine* arguing that the application is defective because, as an organ of state, applicant ought to have proceeded in terms of section 6 and not section 4 of the of the Act. Section 6 of the Act reads:

6 Eviction at instance of organ of state

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

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

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

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

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

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

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

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

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

> (*5) If an organ of state gives the owner or person in charge of land notice in terms of subsection (4) to institute proceedings for eviction, and the owner or person in charge fails to do so within the period stipulated in the notice, the court may, at the request of the organ of state, order the owner or person in charge of the land to pay the costs of the proceedings contemplated in subsection (1).*
>
> *(6) The procedures set out in section 4 apply, with the necessary changes, to any proceedings in terms of subsection (1).*

Respondents argue that it is not open to the applicant to proceed in terms of section 4 as an organ of state ought to proceed in terms of section 6. I cannot agree with this submission. It will be remembered that section 4 applies in proceedings by an owner or person in charge of land for the eviction of an unlawful occupier. The Act defines an owner as `the registered owner of land, including an organ of state.' The fact that an organ of state may proceed in terms of either section is not a mere anomaly. Section 6 accords an organ of state the right to initiate proceedings against unlawful occupiers of land within its jurisdiction

irrespective of who owns the land. See the unreported CPD judgment of **Ngwenya J** in *Paarl Municipality v The Occupiers of Houses Situated at Certain Erven, Mbekweni, Paarl* case number 8937/2000 at page 14.

> *"In the first instance, section 6 of PIE accords to the local authority powers to initiate legal proceedings against unlawful occupation of land within its area of jurisdiction irrespective of who the owner thereof is."*

I now proceed to consider whether an order evicting respondents is just and equitable considering all the circumstances of this case including the rights and needs of the elderly, children, disabled persons and households headed by women from the point of view of both the parties.

Assessment

The application is opposed by the respondents represented by Ms Lulu Agnes Mtini who deposed to the main answering affidavit. Another affidavit was deposed to by Themba Dennis Menze. Many of the respondents filed confirmatory affidavits to Mtini's answering affidavit, but

some did not. Applicant argued that Mtini could not represent those who did not sign confirmatory affidavits. I do not agree. Section 38 of the Constitution allows anyone to approach court on behalf of others. Subsection (c) in particular provides that a person may approach a court if acting `as a member of, or in the interest of a group or class of persons.' I cannot imagine that this section requires the representative of the group to obtain confirmatory affidavits from every member of the group. This appears also to have been accepted by Ngwenya J in the *Paarl Municipality* case at page 2 of the judgment.

The evidence of Mtini and Menze is that the respondents are poor. A report on research carried out by Jacobus Saayman De Swardt at the University of the Western Cape and referred to in Menze's affidavit found that in the Greater Nyanga and Khayalitsha areas, more than 76% of households fell below the official poverty line of R352,00 per adult per month. I accept that the respondents find themselves in a similar position. The respondents are disadvantaged and continue to live on the margins of society in intolerable conditions. At the end of 1997 or

beginning of 1998, the applicant made it clear that the land they were living on would be developed and they would get houses. They have waited for over five years for their houses, an unacceptably long wait. Applicant explains the delays by referring to the community's reluctance to relocate and political volatility in the area in addition to the normal logistical delays. While I have sympathy for the enormous task facing the applicant, in my view 5 years remains an unacceptably long delay. Conditions in the road reserve were also described by the respondents as intolerable and I accept that evidence.

Respondents have a constitutional right to access to adequate housing. Section 26 of the Constitution provides:-

`(1) Everyone has the right to have access to adequate housing.

(2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.'

As respondents point out however, in cases like the

present, most, if not all of the socio-economic rights of the Bill of Rights find application. Indeed, all the rights in the Bill of Rights are inter-related and mutually supporting. The right of access to adequate housing cannot therefore be viewed in isolation. The State is obliged to take positive action to meet the needs of those living in homelessness or intolerable housing. In *Government of the RSA and Others v Grootboom and Others* 2001 (1) SA 36 (CC) the constitutional court discussed the right of access to adequate housing comprehensively.

At 67 F-I and Yacoob J held that

`The State's obligation to provide access to adequate housing depends on context, and may differ from province to province, from city to city, from rural to urban areas and from person to person....Subsection (2) [of the section 26] speaks to the positive obligation imposed upon the State. It requires the State to devise a comprehensive and workable plan to meet its obligations in terms of this subsection. However, ss (2) also makes it clear that the obligation imposed upon the State is not an absolute or unqualified one. The extent of the State's obligation is defined by three key elements that are considered separately: (a) the obligation to take reasonable

legislative and other measures'; (b) 'to achieve the progressive realisation' of the right; and (c) 'within available resources.'

The obligations of each of the three spheres of government in fulfilling the requirements of section 26 of the Constitution find expression in the Housing Act 107 of 1997. Section 9 of the Act provides:

*`**Functions of municipalities.** – (1) Every municipality must, as part of the municipality's process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation policy to –*

a) ensure that –

i) the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis;

ii) …

iii) …

The applicant's housing development policy was scrutinised by the constitutional court in *Grootboom.* After outlining the Cape Metro's (as it was then) land program the court considered whether it was reasonable in terms of section 26 of the Constitution. The court found that on the face of it the Cape Metro's program meets the obligations which the State has towards people in the

position of the applicants in that case and, by extension, the applicants in the present case. The court added however, that the program was only the starting point and that effective implementation of the program was needed. The court concluded that the State was not meeting its obligations in terms of section 26 of the Constitution in the area of the Cape Metro because no provision was made for relief for families living in crisis conditions.

Applicant claims that it spends approximately R140 Million on housing developments every year and that there are currently around 30 housing projects being developed by applicant. Furthermore, applicant claims that it has also developed `The Accelerated Managed Land Settlement Program' which seeks to benefit families in crisis: that is, it seeks to remedy the inadequacies of the State's housing policy as expressed in *Grootboom.* To date however this program has not been adopted for lack of funds from the national government.

This judgment is not concerned with evaluating applicant's fulfillment of its constitutional obligations. I have raised it simply because, in my view, if it were shown that applicants were failing substantially in the fulfillment of this duty, this would weigh in favour of the respondents in a consideration of all the relevant circumstances of the case.

It was not argued by the respondents that the applicant's

policies are not consistent with its available resources. In the absence of such an argument and in the absence of evidence which would tend to support it, I cannot fault the applicants housing development policies or their implementation.

Turning to a consideration of applicant's interests, it obviously has an interest in ensuring that its housing development programs are implemented in a predictable and fair manner. To this end, the procedures described at the start of this judgment need to be complied with. Furthermore, in order to plan well, I accept that it is necessary to draw up a list of potential beneficiaries and then have a cut off date after which no more applications will be accepted for a particular development. I do not see how it can be done in any other way.

In my view, the most compelling factor weighing in applicants favour is simply that it is, in my view, imperative that land invasions are denounced and rejected as an appropriate way to enforce one's constitutional right to access to adequate housing. As pointed out by **Yacoob J** in *Grootboom* at paragraph 92

> `*This judgment must not be understood as approving any practice of land invasion for the purpose of coercing a State structure into providing housing on a preferential basis to those who participate in any*

> *exercise of this kind. Land invasion is inimical to the systematic provision of adequate housing on a planned basis.'*

Also, as pointed out by **Ngwenya J** in *Paarl Municipality,* at 26, even where delivery is slow

> *`that will not be a justification for anyone to take the law into his hands. The respondents nevertheless deemed it appropriate to do just that. If any disgruntled citizen were to follow the example of the respondents, the country could soon plunge into chaos.'*

I respectfully concur with these views. Self-help land invasions cannot be condoned.

What is just and equitable in this situation will differ from one person to the next and it would accordingly be convenient to separate the respondents into the following categories:

1. Respondents on the 1998 list who have had subsidies approved, who have been allocated a house and who are in occupation of either the house allocated to them or another house or a serviced Erf in section 3.

2. Respondents who are on the 1998 list who have had subsidies approved but no house allocated to them but

who are nevertheless in occupation of a house or serviced Erf in section 3.

3. Respondents who are on the 1998 list but who have not had subsidies approved and are in occupation of a house or a serviced Erf in section 3.

4. Respondents who are not on the 1998 list at all.

The respondents in group 1 have done everything that is required of them except that they have not signed a first delivery certificate, snaglist (if applicable) and final delivery form. These are mere formalities and there is no question that these people are entitled to a house. I do not believe it is just and equitable to evict these respondents.

The respondents in group 2 also qualify for a house and again, it would not be just and equitable to evict them simply because the beauracratic step of allocation has not been performed by applicant.

The respondents in group 3 are different because they may or may not qualify for a house. If their subsidies are not approved, they will only qualify for a serviced Erf. These respondents have not applied for subsidies and this, in my view sets them somewhat apart from the first two categories of respondent. In my view, if any of these respondents are elderly, disabled or women who head households, it would not be just and equitable to evict them. If they do not fall into these exceptions however, it is just and equitable to evict them pending their

application for subsidies.

The respondents in group 4 may or may not have applied for subsidies but do not, *prima facie* form part of the Vrygrond community. In my view it is just and equitable to evict them subject to what is ordered below.

Costs

The usual rule in so far as costs are concerned is that costs follow the result. In this case the applicants have been partially successful. I am in any event not inclined to grant full costs in favour of the respondents because their conduct is premised upon an unlawful land invasion. I shall endeavour to make a cost order which is appropriate in all the circumstances.

Having regard to all of the circumstances of this case I order the following:

1. Peter Stokes and his immediate family occupying Erf 782, Mr Mchunu and his immediate family occupying Erf 759 and Ms Natasha Pelser and her immediate family occupying Erf 944 shall not be evicted from their houses or serviced erven.

2. The respondents (if any) who are in occupation of houses in section 3 of the Vrygrond Development *and* who have had their subsidies approved *and* have been

allocated a house shall not be evicted from their houses irrespective of whether they are in occupation of the houses specifically allocated to them or not.

3. The respondents (if any) who have had their subsidies approved and have been allocated a house and are in occupation of a serviced Erf at section 3 shall be moved as soon as practically possible into a house.

4. The respondents (if any) who have had their subsidies approved, and have not been allocated a house but are in occupation of one shall not be evicted and shall be allocated the house which they occupy as soon as practically possible.

5. The respondents (if any) who have had their subsidies approved, have not been allocated a house and are in occupation of a serviced Erf at section 3 shall be moved into a house as soon as practically possible.

6. The Applicant shall ensure that the subsidy application of those respondents who are on the 1998 list and who have applied for subsidies which have not yet been approved and either approve or reject the application in terms of its usual policies within I (one) month of the date of this order. Those respondents whose applications are successful shall not be evicted from

their houses if they are in occupation of one, and if in occupation of a serviced Erf, shall be moved into a house as soon as it is practically possible. Those respondents whose applications are rejected shall be evicted from houses in accordance with paragraph 8 below if they are in occupation of a house but shall not be evicted from a serviced Erf.

7. The respondents who are on the 1998 list who have not yet applied for subsidies and are in occupation of a house or serviced Erf shall not be evicted if they are elderly, disabled or women heading households in which case the provisions of paragraph 6 shall apply to them. Respondents who do not fall into one of these three exceptions are ordered to vacate section 3 of the Vrygrond Development (as demarcated on annexure "JAS1" annexed to applicant's founding papers) within I (one) month of the date of this order failing which they may be evicted by the Sheriff of this Court and, if necessary with the assistance of members of the South African Police Force provided that the Sheriff must at all times be present during such eviction. They may however make application for a subsidy in accordance with applicant's policies and applicant shall be obliged to provide them with a house or serviced Erf as the case may be.

8. In every case where the respondents are not ordered

to vacate the premises, they shall ensure that, within one month of the date of this order a first delivery certificate is signed and snaglist completed whereafter a final delivery form shall be signed no later than a time prescribed by the applicant.

9. The respondents who do not appear on the 1998 list as well as those referred to in paragraph 6 above are ordered to vacate section 3 of the Vrygrond Development (as demarcated on annexure “JAS1” annexed to applicant’s founding papers) within I (one) month of the date of this order failing which they may be evicted by the Sheriff of this Court and, if necessary with the assistance of members of the South African Police Force provided that the Sheriff must at all times be present during such eviction.

10. The applicant is ordered to pay 50% of the respondent’s costs, as taxed or agreed, on a party and party basis.

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N.C. ERASMUS J