

**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

**CASE NO: 8667/2006**

In the matter between

**CITY OF CAPE TOWN**

Applicant

and

**NATASHA MAART & 91 OTHERS**

Respondents

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**JUDGMENT DELIVERED ON 16 MARCH 2010**

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**ZONDI, J**

**Introduction**

[1] On 16 August 2006 the applicant brought an application for the eviction of the respondents from erven 22118 and 22161, Bellville, Western Cape (“the property”). The application was brought in terms of section 4(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 (“the PIE Act”).

[2] The application was brought on the basis that the occupation of the property by the respondents is unlawful as the applicant, the owner of the

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property, has not granted them permission to occupy the property or to erect structures at the property.

[3] The respondents opposed the application on the basis that they were not aware that the applicant had not consented to their occupation. The respondents have, however, indicated that they are willing to move from the property of the applicant if the applicant provides them with meaningful assistance to obtain alternative accommodation.

[4] In light of the respondents' defence the applicant began to engage the respondents in an attempt to reach a settlement and following on settlement negotiations about 96 families accepted the alternative accommodation option offered to them and they agreed to move.

[5] They were moved between 9 and 13 March 2009 to the J Section of Delft, Phase 2, a temporary relocation area in Delft known as Blikkiesdorp. At the time 6 families refused to accept the alternative accommodation offered to them and refused to move.

[6] The 96 families that agreed to move, were relocated to 18 square metre structures with insulated wooden and metal framework including a roof and windows, erected on a concrete slab, situated on a site with electricity, water and sanitation.

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[7] The remaining respondents are part of the 6 families that refused to vacate the property and occupy 13 structures on the property. The names of the respondents occupying the 13 structures are set out on annexures "GE2" to the supplementary affidavit of Gregory Exford.

[8] The attorney, who acted for all respondents, withdrew on 15 July 2009 as the attorney of record for the remaining respondents and at the hearing hereof they were unrepresented.

### **Applicant's Case**

[9] It is common cause that most of the respondents have been in occupation of the property since February 2006.

[10] The basis for the relief sought by the applicant is that the respondents' occupation of the property is unlawful in that they do not have applicant's consent to occupy its property. It alleges that the respondents were accommodated elsewhere prior to the unlawful occupation of the property.

[11] The applicant further alleges that it currently has a housing backlog of over 260 000 units which is thought to be as high as 400 000, and the demand for housing is growing annually by about 19 000 families. It points out that it has adopted its own emergency policy and has been implementing same for over a year to accommodate persons with desperate and urgent housing needs and to

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prevent unlawful occupation of land and in the event that anyone is truly homeless, they can avail themselves of its emergency housing programme. It contends that the solution is not to unlawfully invade property.

[12] The applicant further alleges that the respondents are seeking to gain an unfair advantage over the people who have lawfully complied with the criteria for temporary housing and later permanent housing within its jurisdiction. The applicant points out that hardship will result for it and the Western Cape Province and law abiding residents of the Belhar area and other areas who have legitimate expectations to housing or community facilities if respondents were allowed to invade land. The property which is being occupied by the respondents is zoned public open space and does not have services on it such as electricity and ablution facilities.

[13] The remaining respondents resist the relief sought by the applicant on the ground that the applicant has not provided suitable alternative accommodation. They contend that Blikkiesdorp, the place which the applicant has offered as alternative accommodation, is not suitable. They say the place is crime ridden and is not conveniently located for them and their children. The schools in the area are overcrowded and will have no space for their children. The respondents also complain of lack of public facilities such as shops and health care facilities in Blikkiesdorp.

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[14] At the request of the Court the applicant filed a further supplementary affidavit deposed to by one Gregory Exford ("Exford") to specifically address the concerns of the respondents.

[15] Exford states that he is responsible for the management of the Blikkiesdorp Temporary Relocation Area. He states that Blikkiesdorp is located in the suburb of Delft between Symphony Way and the Airport runway. It is located approximately 5km from the Airport Industria and about 7km from Belhar.

[16] With regard to its safety Exford points out that there is a palisade fencing which surrounds the Temporary Relocation Area and it has a satellite police station manned by the applicant's law enforcement and Metro police. He says that Blikkiesdorp itself is located between 1-2km from the bigger police station in Delft.

[17] As regards the accessibility of the place, Exford states that it is easily accessible and is close to the bus and taxi route.

[18] From the planning point of view Exford alleges that the structures at the place are individually numbered. There is one toilet with a wash trough per four structures. Refuse collection occurs in the area.

[19] In terms of the resources Exford points out the public facilities such as day hospital, police station, community hall and library are available and are easily accessible. The nearest primary school is within walking distance.

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**Issue**

[20] The question is whether it is just and equitable to grant an order for the eviction of the respondents.

**The Statutory Provisions**

[21] The applicant has brought this application under the PIE Act which provides for eviction of unlawful occupants. In particular section 4(7) and (8) provides as follows:

***“4 Eviction of unlawful occupiers***

*(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*

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*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)..."*

Section 6 deals with eviction at the instance of organ of the State. In particular section 6(1) and (3) provides:

- “(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.*
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- (2) ...
- (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."*

[22] It is common cause that the remaining respondents are in unlawful occupation of the applicant's property and have so occupied it at least since February 2006. The structures they have erected on the property are unauthorised. It is also common cause that the applicant has offered the remaining respondents an alternative accommodation in Blikkiesdorp.

[23] The respondents resist eviction and refuse to relocate to Blikkiesdorp on the ground that Blikkiesdorp is not suitable alternative accommodation.

[24] It is correct that once it is established that the occupation is unlawful and that the structures on the property are unauthorised the Court may, in the exercise of its discretion, grant an eviction order if it is just and equitable to do so and in

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making its decision it must take account of all relevant circumstances, including the manner in which occupation was effected, its duration and availability of suitable alternative accommodation or land. (**Port Elizabeth Municipality v Various Occupiers** 2005 (1) SA 217 (CC) at 232 C-D).

[25] In deciding on the question whether eviction of the respondents will be just and equitable I have had regard to these facts. Firstly, the land in question is zoned public open space. It has no electricity and ablution facilities. Its occupation may therefore pose health hazards.

[27] The respondents' occupation of the land poses a serious challenge to the applicant's ability to deliver on its mandate and in the process innocent residents, who are badly in need of accommodation and provision of other services, suffer.

[28] Secondly, it cannot be said, as the applicant suggested, that the respondents in occupying the land were engaged in a deliberate land invasion campaign with a view to placing themselves at the front of the queue. To me their conduct was no more than an act of sheer desperation by the people who needed a space to occupy in order to regain their dignity and integrity.

[29] They allege that at the time of their occupation of the land they did not know that they needed the applicant's consent to do so. But once they discovered that they did not have a requisite consent to occupy the land they indicated their willingness to vacate it. It is clear from the evidence that some of the respondents

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desperately needed land on which they could erect a structure which could provide some form of privacy. Prior to their occupation of the land they were accommodated at the Huegonot Community Hall in Belhar which, it is clear, did not provide privacy.

[30] Thirdly, it is clear from the evidence that the majority of the remaining respondents are unemployed and have school going children. Those who are employed earn not more than R2 400-00 per month. Some of the households are headed by females.

[31] Fourthly, the respondents have been on the land for a period of about 5 years, which in my view, is a relatively long period for one to establish attachment to the area.. There is no doubt that eviction of the respondents will bring about disruption and inconvenience in the respondents' social lives. It is noted that the applicant has offered to assist the respondent during relocation process in order to diminish the devastating effect of their eviction.

[32] It is also correct that the applicant has in place a housing programme to deal with delivery of houses and provision of other services. (**Government of the Republic of South Africa and Others v Grootboom and Others** 2001 (1) SA 46 (CC)).

[33] It is not suggested by the respondents that the applicant's housing programme is inadequate or is not implemented or is implementable. This

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consideration is important because the eviction of unlawful occupiers of land by an organ of the state which does not have in place an adequate housing programme to address the plight of the homeless cannot be said to be just and equitable. This is so because, as Sachs J pointed out in **Port Elizabeth Municipality** *supra* at para 56, “municipalities have a major function to perform with regard to the fulfilment of the rights of all to have adequate housing... They must do so on the understanding that there are complex socio-economic problems that lie at the heart of the unlawful occupation of land in the urban areas of our country”.

[34] I take account of the fact that in the instant matter the applicant has in accordance with its housing policy offered the respondents alternative accommodation which will go a long way to ensure that their needs are taken care of while a permanent solution to their housing problem is found.

[35] It is correct that the alternative accommodation offered by the applicant may not meet the needs of the respondents and they may find it unsuitable. This is not the question. The question is whether the alternative accommodation is reasonable in the circumstances of the present matter. I consider it reasonable having regard to the fact that it is an interim arrangement.

[36] After taking all these relevant circumstances into account it is my view that eviction of the respondents will be just and equitable.

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[37] The next issue to determine is the date on which the respondents must vacate the land.

[38] I have already mentioned that the respondents have been on the land for a period of about 5 years which is relatively long enough for them to have established themselves on their sites. In the circumstances their eviction must be carried out in such a manner that it produces a minimum amount of disruption in their daily lives and must be such that it gives them a reasonable opportunity to rearrange their affairs.

[39] It is for these reasons that I propose that they be given two months' notice to vacate the property.

### **Costs**

[40] Although applicant is a successful party in these proceedings, I will not award costs in its favour in view of the fact that the respondents are mostly indigent. In the circumstances there will be no order as to costs.

### **The Order**

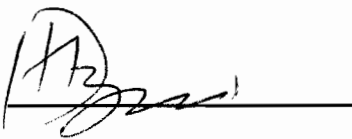
[41] In the result, I make the following order:

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1. that the respondents whose particulars are more fully set out on the annexure "A" attached hereto, and all who hold title under them are evicted from erf 22118 and erf 22161, Bellville, Western Cape (hereinafter referred to as "the property"), in terms of section 4(8) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No. 19 of 1998 and/or the common law, within two months from the date hereof.
  2. the applicant is hereby ordered to render assistance to the respondents during their relocation from the property to the alternative land offered by the applicant.
  3. that the respondents, once evicted, are interdicted and restrained from being upon the property and any other property owned and/or controlled by the applicant, including any road reserve and/or public place, as defined in section 2 of the Municipal Ordinance, No. 20 of 1974 which are situate within the applicant's municipal boundary, for the purpose of unlawfully occupying or carrying on business at the property or any of the aforementioned areas.
  4. that should the respondents fail to vacate the property and remove structures on the property within two months from the date of this order, the Sheriff and/or any person appointed by him including members of the South African Police Service and/or the South
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African National Defence Force is/are authorised to demolish and remove:

- 4.1 any structure unlawfully occupied by the respondents at the said property;
  - 4.2 any structure which respondents may erect elsewhere than at the property, including at any one or more of the places referred to in paragraph 3 above.
5. the Sheriff and/or any person appointed by him is/are authorised to remove any possessions found in, at or near the houses occupied by or the structures belonging to the respondents who are in unlawful occupation, which possessions including demolished structures shall be kept in safe custody by the applicant until released to the lawful owner thereof.
6. No order is made as to costs.

A handwritten signature in black ink, appearing to be 'Zondi D H', written over a horizontal line.

**ZONDI D H**

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## ANNEXURE A

StructureNo; Dependants	Names	Id. No	
W18	Zelda Schriten	8206240204086	3
	Jerome Van Der Westhuizen	7203105276086	
W17	Ella Swartz	50051900530086	1
	Japtha Adonis	4701095016084	
W27	John Bezuidenhout	580804	7
	Sylvia Bezuidenhout	620314	
W43	Geroge Du Preez	6909035130083	2
	Sophia Galant	—	
W24	Neville Davids	5905205114080	2
	Judith Du Preez	6008310060014	
W63	John Meyer	7209065304081	5
	Evelyn Greeves	7303240530080	
W42	Irene Adams	850310	2
	Cecil Clarke	790909	
W46	Jacques Ardendorf	7012265215085	2
	Sarah Ardendorf	6208030147089	
W35	Moses Klein	6810285921082	4
	Karen Klein	7307120551082	
W08	Cyril Coetzee	5912295892088	—
	Sumia Fischer	630305	
W01	Anna Titus	—	3
W30	Neil Van Neel	—	—
	Deon Van Neel	—	—
	Carlo Van Der Westhuizen	—	—
W02	Paul Arries	650921	3

Natasha Highburg

790622

And all those persons whose names are to the applicant unknown who occupy the property at erven 22118 and 22161, Bellville Western Cape and all who hold title under them.