

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

CC CASE NO: CCT22/08

CPD CASE NO: 13189/07

In the application between:

**VARIOUS OCCUPIERS**

Applicants

**and**

**THUBELISHA HOMES**

First Respondent

**MINISTER OF HOUSING**

Second Respondent

**MINISTER OF LOCAL GOVERNMENT**

**AND HOUSING, WESTERN CAPE**

Third Respondent

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**AFFIDAVIT**

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I, the undersigned,

**XHANTI SIGCAWU**

do hereby make oath and state:

1. I am an adult male and the General Manager of the First Respondent. I am duly authorised to depose to this affidavit on behalf of the First Respondent. I am moreover, and for the limited purposes of this replying affidavit, authorised to depose on behalf of Second Respondent as well.

2. The facts contained herein are true and correct, and, unless the contrary appears from the context hereof, within my own knowledge.
3. The purpose of this affidavit is to reply briefly to the affidavit of Mayenzeke Sopaqa, filed in opposition to Respondent's application to have the appeal process in this matter urgently determined.
4. **AD PARAGRAPHS 8, 9 AND 10.**
  - 4.1. The contention is that the resources which are committed to the redevelopment of Joe Slovo should – pending the appeal process – be applied elsewhere in the N2 Gateway Project. Although this is not stated, it appears that the argument is that these same resources could then simply be diverted back to Joe Slovo once the appeal process is finalized.
  - 4.2. What is not dealt with in Applicant's papers is the result of this suggestion. What it amounts to is that development of "other parts" of the project should be commenced, but brought to a halt or pended when the appeal process is completed.
  - 4.3. This suggestion is entirely impractical. One of the lessons which has emerged very clearly from housing development is that a delay in completing a project is costly, and a waste of resources. A project

- once halted – loses impetus. Furthermore, such a scenario would be highly prejudicial to those persons who stand to be allocated housing and are faced with uncertainty as to the completion date.

4.4. It would moreover be a waste of the resources of the state. Construction teams would have to be engaged for the project on the basis that construction would stop midway. This would add to the contract price, and give rise to the additional cost of having to guard partially completed housing, which would be susceptible to theft, vandalism, or unlawful occupation by those impatient for housing opportunities. (I mention that the results of an unlawful invasion of housing at Delft which took place from December 2008 until February 2008 are still being felt, and damages are estimated to run to in excess of R40 million).

4.5. There is moreover the important issue that Joe Slovo is the starting point of the N2 Gateway pilot project. It is highly desirable to complete this stage of the pilot. This will allow for the experience obtained in the development of Joe Slovo (including the experience of the appeal process currently under way) to be properly considered and evaluated by those involved in the roll-out of housing. As a result and where necessary, adaptations to policy and procedures may be made as will best achieve the fulfillment of the constitutional duties of Respondents progressively to achieve the goals of section 26 of the constitution.

4.6. The contention advanced by Applicants in these paragraphs is accordingly rejected.

5. **AD PARAGRAPH 11.**

5.1. The logic in this paragraph appears to be sound at first glance, as it suggests that a litigant cannot use its own internal policies to justify urgency.

5.2. It must be emphasised, however, that budget allocations are a reality, both in national and provincial government. They are governed by established policies, and the result of a process evolved over time. They are not going to change simply because Applicants suggest that they should.

5.3. The reality is that both Second and Third Respondents are at risk of a loss of budgetary allocation if there is a delay in the roll-out of national housing policy. This loss of budgetary allocation would directly and immediately impact upon citizens who are growing impatient for the allocation of housing opportunities, and would delay the achievement of Respondents' constitutional imperatives.

5.4. Respondents aver that this should be avoided at all costs.

6. **AD PARAGRAPH 13.**

In consequence of the contentions raised in this paragraph, Respondents have conferred with one another regarding both the cost and the logistics of the compilation of a record. Given the exceptional urgency of the matter, and to address the issues raised in this paragraph:

- 6.1. Second Respondent has agreed to bear the cost and – if necessary – provide the logistical support for the compilation of the record. This will be confirmed in a separate affidavit to be deposed to by her or on her behalf;
- 6.2. Respondents undertake to confer with the legal team for Applicants regarding the form and content of the appeal record.

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**PRINCE XHANTI SIGCAWU**

I certify that the above signature is the true signature of the deponent who has acknowledged to me that he knows and understands the contents of this affidavit, which affidavit was signed and sworn to at Cape Town on this                    day of April 2008 in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982.

**COMMISSIONER OF OATHS**