

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA
(HELD AT BRAAMFONTEIN)**

**CCT NO: 43/2009
HIGH COURT CASE NO: 08/22689**

In the matter between:

LEON JOSEPH	First Applicant
VALERIE MOSES	Second Applicant
VICTOR MOKETE MOKOENA	Third Applicant
LUCRICIA VAN WYK	Fourth Applicant
SHANICE MAYEZA	Fifth Applicant
DIANA VAN ROOYEN	Sixth Applicant

and

CITY OF JOHANNESBURG	First Respondent
CITY POWER (PTY) LTD	Second Respondent
MEMBER OF THE EXECUTIVE COUNCIL	Third Respondent
FOR LOCAL GOVERNMENT, GAUTENG THOMAS NEL	Fourth Respondent

REPLYING AFFIDAVIT

I, the undersigned,

LEON JOSEPH

do hereby make oath and say that:

- 1 I am an adult male currently residing at at Ennerdale Mansions, Stand 158 Percy Street, corner Sixth Avenue, Mid Ennerdale, Johannesburg (“the property”). I am one of a group of occupiers of the property cited collectively as “the Applicants” in these proceedings. I am duly authorised to depose to this affidavit on their behalf.
- 2 The facts contained herein are, unless otherwise stated or indicated by the context, within my own personal knowledge and to the best of my belief both true and correct.
- 3 Where I make submissions of law I do so on the basis of advice received from my legal representatives.
- 4 This affidavit will not traverse all the allegations in the Respondent’s Answering Affidavit and its failure to do so does not amount to an acceptance thereof. The purpose of this affidavit is simply to supplement the replying affidavit of Shaheda Mahomed in order to draw the attention of this Court to the factual position of the applicants.

5 I am advised that, since this an appeal, this Court will resolve the issues raised by the parties on the basis of the papers that were before the High Court. I do not intend, therefore, to set out detailed factual averments.

6 However, since the Second Respondent, in its answering affidavit in this Court (in particular in paragraphs 12.1.2, 12.1.3 and 13.2), disputes certain of the factual averments made by our attorney in her application for leave to appeal to this Court, I wish briefly to set out the position of the six applicants:

7 In response to the averments made of the Respondent's Answering Affidavit, I highlight the following facts regarding the personal circumstances of each of the Applicants in this matter:

7.1 In response to the assertion that the applicants knew of illegal connections, this was dealt with in the High Court. However, I wish to draw this Court's attention to the fact that all of the applicants, except for the fourth applicant and me, came to live on the property in 2006 after the alleged incident in 2004 that was referred to by the Second Respondent in its answering affidavit in the High Court in support of its contention that the applicants were made aware of illegal connections. They, therefore, are in the same position as Blaauw, the deponent to our replying affidavit in the High Court and had no knowledge of any alleged illegal connections.

7.2 As far as the fourth applicant and I are concerned, we have no

knowledge of the alleged visit by an official employed by the Second Respondent to the property in 2004. Furthermore, it has never been suggested to either of us, prior to the proceedings in the High Court and this Court, that there had been illegal electricity connections on the property.

7.3 Therefore, to the extent that it is relevant to this application, I deny that I or any of the applicants was aware of illegal electricity connections.

7.4 On the question of alternative accommodation: this too was brought to the attention of the High Court in the applicants' papers. In any event, I wish to inform this Court that neither I nor any of the other applicants has remained in the building simply out of laziness or a lack of desire to move. I can assure this Court that our living conditions are practically intolerable. We have all looked for alternative accommodation in the area, but have been unable to find anything that we can afford which is, at the same time, suitable for us and our families. We have remained in the building, despite the lack of electricity, because we simply have no choice. To the extent, therefore, that the deponent to the Second Respondent's answering affidavit suggests that we can simply move to avoid the difficulties we now face, I dispute this.

LEON JOSEPH

The Deponent has acknowledged that he/she knows and understands the contents of this affidavit which was signed and sworn to before me at _____ on this the day of MAY 2009 the regulations contained in Government Notice No. 1258 of 21 July 1972, as amended and Government Notice No. R 1648 of 17 August 1977, as amended having been complied with.

COMMISSIONER OF OATHS