

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

**CCT CASE NO: 69/11**

In the matter between:-

**THE OCCUPIERS OF PORTION 124 AND 150** Applicants  
**OF THE FARM ZANDFONTEIN**

and

**BROOKWAY PROPERTY 30 (PTY) LTD** First Respondent  
**THE CITY OF TSHWANE** Second Respondent

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**APPLICANTS' PRACTICE NOTE**

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**A. DETAILS OF PARTIES AND CASE NUMBER:**

The case number and the names of the parties appear from the heading above.

**B. NATURE OF PROCEEDINGS:**

This is an application for leave to appeal against the eviction order granted by the North Gauteng High Court, per Murphy J on 30 September 2010, evicting all occupants of an informal settlement comprising some 400 dwellings. The Supreme Court of Appeal subsequently refused leave to appeal.

**C. THE ISSUES THAT WILL BE ARGUED:**

(i) Whether the time period in which the occupiers should vacate (the order a quo was granted on 30 September 2011 and the occupiers ordered to vacate the applicant's property on 28 February 2011) was sufficient, under circumstances where the local authority stated categorically that it needed two years to effect a relocation.

(ii) Whether the execution of the eviction order would render the occupiers homeless. The court a quo made a number

of errors in its findings of fact, which errors precluded it from properly exercising its discretion as provided for in terms of PIE and ESTA.

- (iii) Whether some of the occupiers enjoy rights in terms of ESTA.
- (iv) The order of eviction should be conditional in that it may only be effected once alternative land is available.
- (v) The structural interdict should contain provisions that ensure supervision by court and allows for amendment by the court *a quo*.
- (vi) The protection against eviction is not only afforded to “relatively settled” communities. Constitutional and legislative protection extends to all occupants and communities, even if they were part of a recent land invasion. Each case must be considered on its own merits.

**D. RELEVANT PORTIONS OF RECORD:**

- (i) Volumes 5 – 9 (pp 489-897) contain questionnaires of the applicants and should not be read. The facts are dealt with in summary.
- (ii) It is respectfully submitted that the entire record is relevant although Applicants' will mainly refer to the affidavits of the parties.
- (iii) The reports filed by the Second Respondent need not be read in detail (pp 1069 to 1320). The parties will refer to those parts of the reports which they regard as relevant.

**E. ESTIMATED DURATION OF ARGUMENT:**

Not more than one day.

**F. SUMMARY OF ARGUMENT:**

- (i) The court a quo erred in rejecting the evidence that some of the occupiers may enjoy rights under ESTA.
- (ii) The court erred in accepting the evidence of the land owner that the settlement only occurred at the beginning of 2009, based on aerial photographs that were not clear and not proven.
- (iii) The court a quo erred in making granting an eviction order that was not conditional upon the City of Tshwane providing alternative land. In other words, disjoining the provision of land and the eviction could lead to a chaotic eviction if the City does not comply with its obligations in terms of the order.
- (iv) When granting a structural interdict, a court must consider the fact that a organ of state might not be able to comply with the order.
- (v) A structural interdict must contain supervisory provisions.

- (vi) The court a quo erred in accepting that a housing emergency can be created by a court order being effected.
- (vii) The court erred in not accepting the time period which the City claimed it needed to effect a relocation.
- (viii) The constitution and PIE also protects communities that cannot be described as relatively settled. The leading eviction cases did not involve relatively settled communities at the commencement.

**G. MAIN AUTHORITIES THAT WILL BE REFERRED TO IN ARGUMENT:**

- i. President of RSA and Another v Modderklip Boerdery (Pty) Ltd and Others 2005 (8) BCLR 786 (CC)
- ii. Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others 2009 (9) BCLR 847 (CC)

- iii. Grootboom v Oostenberg Municipality and Others 2000  
(3) BCLR 277 (C)
  
- iv. Port Elizabeth Municipality v Peoples Dialogue on Land  
and Shelter and Others 2000 (2) SA 1074 (SE)
  
- v. Minister of Health and others v Treatment Action  
Campaign and others (No2) 2002 (5) SA 721 (CC)
  
- vi. Nyathi v MEC Department of Health, Gauteng and  
another 2008 (9) BCLR 865 (CC)
  
- vii. EN and Others v Government of the RSA and Others  
2007 (1) BCLR 84 (D)
  
- viii. S V Z and 23 other similar cases 2004 (4) BCLR 410  
(E)

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