

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CONSTITUTIONAL COURT CASE NO:

(HIGH COURT CASE NO: 33786/2010 NGHC)

(SUPREME COURT OF APPEAL CASE NO: SCA 180/2011)

In the matter between:

THE OCCUPIERS OF PORTIONS 124 AND 150 OF

THE FARM ZANDFONTEIN 317JR

Applicants

and

BROOKWAY PROPERTY 30 (Pty) LTD

First Respondent

THE CITY OF TSHWANE

Second Respondent

NOTICE OF MOTION

APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE THAT THE APPLICANTS hereby apply to this Honourable Court for an order in the following terms:-

1. That leave be granted to the Applicants to appeal to the Constitutional Court against the judgment and order granted by the Honourable Mr Justice Murphy on 30 September 2010 in case number 33786/2010 (NGHC);

2. That the costs of this application, as well as costs in the application for leave to appeal to the Supreme Court of Appeal, be costs in the appeal;
3. That such directions be issued for the finalisation of this matter as the court may deem appropriate;
4. Further and/or alternative relief;

TAKE FURTHER NOTE THAT in the appeal, an order will be sought in the following terms:

5. That the appeal be upheld with costs;
6. Setting aside the order of the High Court granted on 30 September 2010 under case number 33786/2010 as well as the cost order of the Supreme Court of Appeal in which it refused leave to appeal under case number SCA 180/2011 on 29 June 2011, and replacing such orders with the following order:
 - 6.1 That the application for eviction be dismissed with costs.

Alternatively, in the event that the eviction order be upheld,

- 6.2 that the Second Respondent be ordered to engage meaningfully with the occupiers in order to designate land onto which the occupiers must be relocated by the sheriff.
- 6.3 That the eviction order not be executed until such land has been designated.
- 6.4 That the occupiers be given two weeks written notice before the intended date of eviction, and that they be allowed to dismantle their informal dwellings and to salvage the material.
- 6.5 That the Second Respondent, alternatively the First Respondent, be ordered to supply transport to the occupiers to ensure their orderly relocation to the designated land.
- 6.6 That the Second Respondent (City of Tshwane) pay compensation to the First Respondent (Applicant a quo) in terms of section 12(1)(b) of the expropriation act 63 of 1975 as from 1 March 2010 until date of relocation of the occupiers in respect of portion 124 of the farm Zandfontein 317 JR.
- 6.7 That Second Respondent pay the costs of the application, including the costs occasioned by the implementation of the relocation of the occupiers.

TAKE FURTHER NOTICE that the grounds upon which the application is based are set out in the accompanying affidavit of **MATSUIDISO BRENDA MATHOLE**.

TAKE FURTHER NOTICE THAT within **10 (ten) days** of receipt hereof, Respondents may file an answering affidavit in which they may state whether they consent to leave being granted, or, if they oppose leave being granted, they may set out the grounds for their opposition.

TAKE FURTHER NOTICE THAT the applicants appoint the address of their attorneys given below, as address where they will receive all process and correspondence herein.

TAKE FURTHER NOTICE THAT should no answering affidavit be received, the applicant will request the registrar to place the matter before the chief justice to be dealt with in terms of rule 11(4).

Signed at Pretoria on this _____ day of July 2011.

**LAWYERS FOR HUMAN RIGHTS
C/O GILFILLAN DU PLESSIS ATTORNEYS**

ATTORNEYS FOR APPLICANTS

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Ref: K Ramjathan-Keogh

**TO: THE REGISTRAR OF THE COURT
CONSTITUTION HILL
BRAAMFONTEIN
JOHANNESBURG**

**AND TO DE BEER & JANSE VAN VUUREN INC.
ATTORNEYS FOR FIRST RESPONDENT
16B MAROELANA STREET
HAZELWOOD, PRETORIA**

**AND TO: HUGO & NGWENYA INC.
ATTORNEYS FOR SECOND RESPONDENT
102 CENTRAL TOWERS
286 PRETORIUS STREET**

PRETORIA

REF: