

IN THE CONSTITUTIONAL COURT

(REPUBLIC OF SOUTH AFRICA)

Case number: CCT 69/2011

In the matter between:

**THE OCCUPIERS OF PORTIONS 124 AND 150
OF THE FARM ZANDFONTEIN 317 JR**

Applicants

and

BROOKWAY PROPERTY 30 (PTY) LTD

First Respondent

THE CITY OF TSHWANE

Second Respondent

SECOND RESPONDENT'S PRACTICE NOTE

1. Nature of proceedings:

An application for leave to appeal against an eviction order.

2. Issues which will be argued on behalf of the second respondent:

2.1. Reasons for non-compliance with the High Court's order.

2.2. Reasons why the Second Respondent should not be ordered to pay compensation and costs.

3. Necessary portions of the record:

3.1. The judgement of the High Court and the founding and answering affidavits in this Court contain all the relevant facts and issues. These documents are contained in Volume 16 of the record.

3.2. The record of the proceedings in the High Court can only be referred to where necessary during oral argument.

4. Estimated duration:

Submissions on behalf of the second respondent should not take more than $\frac{3}{4}$ of an hour and the whole case can be disposed of in a day.

5. Summary of argument:

5.1. Although the order issued by the High Court affects the Second Respondent, it did not seek leave to appeal against the order.

5.2. The Second Respondent does not oppose the

Applicants' application for leave to appeal and is taking part in the proceedings mainly by virtue of the directions issued by this Honourable Court on 15 August 2011 and 29 August 2011.

- 5.3. However, the Second Respondent opposes the relief sought by the Applicants pertaining to payment of compensation to the land owner and payment of the costs of the application.
- 5.4. The Second Respondent provides a proper explanation of its failure to strictly comply with the order of the High Court within the time period stipulated therein, and its responsible officials did not act in contempt of court.
- 5.5. The Second Respondent was continuously engaged in negotiations with the First Respondent to acquire the First Respondent's land so that the Applicants could be settled there permanently.
- 5.6. The Applicants were kept abreast of the negotiations, *inter alia*, with a public meeting.

5.7. Because the First Respondent consented to suspension of the High Court's order, the Second Respondent should not be ordered to pay compensation. In any event a local authority is not obliged to provide housing from its own resources and is therefore not liable for damages where housing is not provided.

5.8. The Second Respondent did not oppose the application for leave to appeal and did not seek the order of the High Court. It should not be saddled with costs.

6. Cases referred to:

6.1. *Government of the RSA a.o. v Grootboom a.o.* 2001 (1) SA 46 (CC).

6.2. *Grootboom a.o. v Government of the RSA a.o.* [2000] ZACC 14.

7. Legislation referred to:

7.1. Constitution of the Republic of South Africa, 1996.

- 7.2. Prevention of Illegal Eviction From and Unlawful Occupation of Land Act, 1998 (in particular section 5).

- 7.3. Housing Act, 1997.

DATED at PRETORIA on this 14th day of OCTOBER 2011.

J BOTHA
Counsel for Second Respondent