

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

**CASE NO:     **CCT 108/2013****

**In the matter between:**

**JABULANI ZULU AND 389 OTHERS**

**Applicants**

**and**

**eTHEKWINI MUNICIPALITY**

**First Respondent**

**MINISTER OF POLICE**

**Second Respondent**

**MEC FOR HUMAN SETTLEMENTS AND PUBLIC  
WORKS OF THE PROVINCE OF KWAZULU-NATAL**

**Third Respondent**

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**THIRD RESPONDENTS' SUBMISSIONS IN RESPONSE  
TO THE DIRECTIONS DATED 1 OCTOBER 2013**

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1.

For the reasons that follow it is submitted that the application under case number 4431/2013 will deal with **all material** issues arising in this Court under application CCT 108/2013.

2.

A review of the affidavits put up by **JABULANI EDMUND ZULU** ("**Zulu**") in support of the application for leave to intervene under application CCT 108/2013 and in support of the application under case number 4431/2013 reveals that they were both founded on substantially the same body of facts and grounds.

3.

Under application CCT 108/2013, **Zulu** asserted *inter alia* that:

- 3.1. he is a resident of **Madlala Village**, a group of free standing shacks and comprising a community of approximately 390 individuals<sup>1</sup>;
- 3.2. since **September 2012** their shacks had been destroyed on 24 separate occasions<sup>2</sup>;
- 3.3. the evictions took place in the absence of an order Court and were therefore illegal under section 26(3) of the Constitution<sup>3</sup>;

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<sup>1</sup> CCT 108/2013: Affidavit of **Zulu**: page 4: paragraph 10.

<sup>2</sup> CCT 108/2013: Affidavit of **Zulu**: page 4: paragraph 11.

<sup>3</sup> CCT 108/2013: Affidavit of **Zulu**: page 5: paragraph 13.

3.4. the applicants have an interest in the relief sought under application CCT 108/2013 because they are occupiers of **Madlala Village** which falls within the area affected by the order<sup>4</sup>

4.

Under case number 4431/2013, **Zulu**:

4.1. repeated the facts summarised in 3.1, 3.2 and 3.3 hereof and relied on a further (the 25<sup>th</sup>) occasion on which the shacks allegedly occupied by the applicants were destroyed<sup>5</sup>;

4.2. asserted that the 24 prior evictions apparently took place in the absence of any Court order authorising the same and that in the case of the most recent (the 25<sup>th</sup>) eviction a Court order was in existence but did not authorise what occurred<sup>6</sup>;

4.3. noted that under application CCT 108/2013:

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<sup>4</sup> CCT 108/2013: Affidavit of **Zulu**: page 4: paragraph 8.

<sup>5</sup> 4431/2013: Affidavit of **Zulu**: pages 2 to 3: paragraphs 5 to 7.

<sup>6</sup> 4431/2013: Affidavit of **Zulu**: page 12: paragraph 31.

4.3.1. the “*spectre of a threat of organised, large scale land invasion prompted the application for the interdict*”<sup>7</sup>;

4.3.2. the order under application CCT 108/2013 was granted as a form of emergency temporary relief aimed at combating a specific mischief: the threat of immediate large scale land invasion<sup>8</sup>.

4.4. maintained that since the applicants took occupation of **Madlala Village** before the order under application CCT 108/2013 was granted they were entitled to the relief sought in the form of an order requiring the construction or reconstruction of temporary residential dwellings and/or structures and/or shelters similar to those previously occupied by them<sup>9</sup>.

5.

The grant of an order in favour of the applicants under case number 4431/2013 would effectively dispose of the relief sought under application

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<sup>7</sup> 4431/2013: Affidavit of **Zulu**: pages 15 to 16: paragraph 40.

<sup>8</sup> 4431/2013: Affidavit of **Zulu**: pages 16 to 17: paragraph 43.

<sup>9</sup> 4431/2013: Affidavit of **Zulu**: page 19: paragraph 49.

CCT 108/2013. It is therefore unnecessary and would be academic or moot for this Court to consider application CCT 108/2013.

**THE THIRD RESPONDENT'S RESPONSE TO THE APPLICANT'S WRITTEN SUBMISSIONS**

6.

It is disputed that the order under application CCT 108/2013 authorises the eviction of any persons without affording them the protection of PIE<sup>10</sup>. This is recognised by the applicants in the affidavit put up by **Zulu** under case number 4431/2013 wherein the following statement is made:

*"It only makes sense that such an order was granted as a form of emergency temporary relief aimed at combating a specific mischief: the threat of immediate large scale land invasion. In cases of existing structures, a clear procedure and remedy are available to the provincial housing department and the municipality. That procedure is an application for an eviction order in relation to the property affected, in which all relevant circumstances would be taken into account"*<sup>11</sup>

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<sup>10</sup> The applicants' written submissions: paragraphs 1 to 5.

<sup>11</sup> 4431/2013: Affidavit of **Zulu**: pages 16 to 17: paragraph 43.

7.

It is disputed that the application CCT 108/2013 was set up in such a way so as to ensure that there would no opposition to the relief sought<sup>12</sup>.

8.

The third respondent has at all material times acknowledged its obligations in terms of section 26 of the Constitution to ensure that persons who are in need of housing are provided therewith.<sup>13</sup>

9.

The applicants' reliance upon the judgment in **Kayamandi Town Committee v Mkhwaso and Others**<sup>14</sup> is misplaced. The applicant town committee sought to evict 150 squatters from land earmarked for residential development. The applicants cited 9 named respondents alleging impossibility of identifying all persons residing upon the property. The Court noted that the applicant had remedies available to it under the Prevention of Illegal Squatting Act, No. 52 of 1951. It was in those circumstances that **Conradie J** made the remarks quoted by the applicants.

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<sup>12</sup> The applicants' written submissions: paragraph 6.

<sup>13</sup> 4431/2013: Third Respondent's Answering Affidavit: page 28: paragraph 68.

<sup>14</sup> **1991 (2) SA 630 (C)**.

10.

The question whether the Municipality and the Police are “*exploiting*” the order granted by **Koen J.** would arise squarely for consideration in the proceedings under case number 4431/2013.

11.

It is submitted that the application CCT 108/2013 should be dismissed with costs including the costs of 2 Counsel.

**V. I. GAJOO S C  
F. ABRAHAM**

**CHAMBERS  
DURBAN**

**11 OCTOBER 2013**