

**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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**COMMON CAUSE *ALTERNATIVELY* UNDISPUTED FACTS**

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1.

The third respondent (*The Member of the Executive Council for Human Settlements and Public Works of the Province of KwaZulu-Natal*) (“*the MEC*”) is the owner of and presently exercises jurisdiction and control over the immovable properties (“*the properties*”) which are fully described in

annexure “**NOM 1**” to “**NOM 37**” to the notice of motion in the application in the KwaZulu-Natal High Court, Durban under case no: 3329/2013<sup>1</sup>.

2.

The properties are earmarked for housing development and other public services<sup>2</sup>.

3.

The proposed development will be undertaken by the **eThekwini Municipality** (the first respondent) (“*the Municipality*”) being the local authority within whose area of jurisdiction the properties are located<sup>3</sup>.

4.

Once the properties are developed the homes constructed thereon will be allocated to persons who feature on the waiting lists for such accommodation

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<sup>1</sup> Annexure “**B**”: Case no: 3329/2013: page 45: founding affidavit: paragraph 9; page 141: answering affidavit: paragraph 46

<sup>2</sup> Annexure “**B**”: Case no: 3329/2013: page 45: founding affidavit: paragraph 10; page 141: answering affidavit: paragraph 46

<sup>3</sup> Annexure “**B**”: Case no: 3329/2013: page 45: founding affidavit: paragraph 11; page 142: answering affidavit: paragraph 52

prepared by the **Municipality** in accordance with the criteria established by the **Municipality** for such purpose<sup>4</sup>.

5.

On or about **25 February 2013** officials of the Department of Human Settlements (“*the Department*”) became aware that one of the properties and in particular *Lot 532, Bonela* was being unlawfully invaded<sup>5</sup>.

6.

The assistance of the members of the South African Police Service (“*the SAPS*”) and the Land Invasion Control Unit (“*the LICU*”) as well as the Metro Police Unit (“*MPU*”) of the **Municipality** was sought in order to prevent the invasions<sup>6</sup>.

7.

Unknown persons entered the property and undertook the clearing of vegetation thereon. Preparations were undertaken to construct structures

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<sup>4</sup> Annexure “**B**”: Case no: 3329/2013: page 45: founding affidavit: paragraph 12; page 142: answering affidavit: paragraphs 53 and 54

<sup>5</sup> Annexure “**B**”: Case no: 3329/2013: page 46: founding affidavit: paragraph 14; page 142: answering affidavit: paragraph 56

<sup>6</sup> Annexure “**B**”: Case no: 3329/2013: page 46: founding affidavit: paragraph 15; page 142: answering affidavit: paragraph 56

thereon. The SAPS, the LICU and the MPU succeeded in preventing the invasion and undertook the removal of all material that was taken to the property for the purposes of the construction of the proposed structures<sup>7</sup>.

8.

An affidavit deposed to in iSiZulu by one **Angel Duma** on **5 February 2013** was communicated to the offices of the Department. The affidavit translated into English reads as follows:

*“Our houses have been demolished and we have no place to stay.*

*We tried to secure shelter and now we are being chased away from the forest.*

*They say we must figure out what to do next and we have no idea where to go.*

*We intend going back to the forest on Monday.”*<sup>8</sup>

9.

The content of the affidavit was endorsed and/or supported by 71 other named persons<sup>9</sup>.

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<sup>7</sup> Annexure “**B**”: Case no: 3329/2013: page 47: founding affidavit: paragraphs 16 and 17; page 142: answering affidavit: paragraph 56

<sup>8</sup> Annexure “**B**”: Case no: 3329/2013: page 47: founding affidavit: paragraph 18; page 142: answering affidavit: paragraph 56

<sup>9</sup> Annexure “**B**”: Case no: 3329/2013: page 47: founding affidavit: paragraph 19; page 142: answering affidavit: paragraph 56

10.

Officials of the Department inferred that the person who deposed to the aforesaid affidavit and the others who supported the content thereof proposed to undertake the unlawful invasion of vacant properties in the Cato Manor/ Bellair and Mayville areas<sup>10</sup>.

11.

Property owned by the Department located in Middleton Road, Queensburgh was also targeted by land invaders. Subsequent thereto other properties became the target of land invaders<sup>11</sup>.

12.

The LICU succeeded in repelling the land invasions until **8 March 2013**<sup>12</sup>.

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<sup>10</sup> Annexure “**B**”: Case no: 3329/2013: page 48: founding affidavit: paragraph 20; page 142 answering affidavit: paragraph 56

<sup>11</sup> Annexure “**B**”: Case no: 3329/2013: page 48: founding affidavit: paragraph 22; page 142 answering affidavit: paragraph 56

<sup>12</sup> Annexure “**B**”: Case no: 3329/2013: page 48: founding affidavit: paragraph 23; page 144 answering affidavit: paragraph 62

13.

On or about **8 March 2013** the Legal Resources Centre (“*LRC*”) addressed a letter to officials of the Department and the **Municipality**. They asserted therein *inter alia* that they represented 390 residents of Madlala Village which they alleged was established on the Lamontville property (which is owned by the **MEC**) and that the rights of occupation of such persons had apparently been interfered with by officials of the **Municipality**<sup>13</sup>.

14.

On **Sunday 10 March 2013** certain articles appeared in the Sunday Tribune. The articles alluded to land invasions which were taking place and being threatened and the responses of the Department and **Municipality** thereto<sup>14</sup>.

15.

Officials of the Department inferred that an organised campaign of unlawful land invasions had been orchestrated and was being implemented<sup>15</sup>.

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<sup>13</sup> Annexure “**B**”: Case no: 3329/2013: pages 48 to 49: founding affidavit: paragraphs 23 and 24; page 144: answering affidavit: paragraph 62 and 63: pages 99 to 101: annexure “**C1**”

<sup>14</sup> Annexure “**B**”: Case no: 3329/2013: page 50: founding affidavit: paragraph 25; page 102: annexure “**D**”; page 142: paragraph 56

<sup>15</sup> Annexure “**B**”: Case no: 3329/2013: page 50: founding affidavit: paragraph 26; page 142: answering affidavit: paragraph 56

16.

On **11 March 2013** a meeting was convened between representatives of the Department, the **Municipality** and the LRC<sup>16</sup>.

17.

At the meeting the LRC indicated that they were ready to launch an urgent application aimed at having their clients' "*homes*" situated on the Lamontville property restored to the position in which they were prior to their allegedly unlawful destruction by members of the LICU and to prevent further demolitions of their clients' homes by the **Municipality**<sup>17</sup>.

18.

It was agreed at the meeting that the LRC would provide the Department with a list setting out the identities of the persons including their identity numbers whom they represented for the purposes of a verification exercise being undertaken with a view to establishing whether such persons were indeed homeless<sup>18</sup>.

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<sup>16</sup> Annexure "**B**": Case no: 3329/2013: page 51: founding affidavit: paragraph 29; page 146: answering affidavit: paragraph 71

<sup>17</sup> Annexure "**B**": Case no: 3329/2013: page 51: founding affidavit: paragraph 31; page 146: answering affidavit: paragraph 73

<sup>18</sup> Annexure "**B**": Case no: 3329/2013: page 52: founding affidavit: paragraph 32; page 146: answering affidavit: paragraph 73

19.

On **13 March 2013** a group of unknown individuals sought to invade the private property of one **Mansoor** in Cato Manor. **Mansoor** engaged the services of a private security company to repel the invasion<sup>19</sup>.

20.

Endeavours were then undertaken to invade *Lot 1010, Bonela* (which is owned by the **MEC**). The endeavour was repelled by members of the SAPS and the LICU and the MPU who removed the invaders together with the material they placed on the property<sup>20</sup>.

21.

During the night of **13 March 2013** endeavours were undertaken to construct four structures on the latter property. These structures were demolished during the morning of **14 March 2013**<sup>21</sup>.

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<sup>19</sup> Annexure “**B**”: Case no: 3329/2013: page 52: founding affidavit: paragraph 33; page 147: answering affidavit: paragraph 75

<sup>20</sup> Annexure “**B**”: Case no: 3329/2013: page 52: founding affidavit: paragraph 34; page 147: answering affidavit: paragraph 75

<sup>21</sup> Annexure “**B**”: Case no: 3329/2013: page 53: founding affidavit: paragraph 35; page 147: answering affidavit: paragraph 75

22.

On **14 March 2013** an article appeared in the Mercury newspaper under the heading “*Councillor flees from Land Invaders*”<sup>22</sup>.

23.

On **15 March 2013** the **MEC** launched an urgent application out of the KwaZulu-Natal High Court, Durban under case no: 2778/2013 for an Order interdicting **Angel Duma** as well as the supporters to her affidavit from invading and/or occupying the properties owned and/or controlled by the **MEC** in Cato Manor and other appropriate relief including an Order authorising the SAPS and the **Municipality** to take all reasonable and necessary steps to prevent such invasions<sup>23</sup>.

24.

On **Friday 15 March 2013** at a meeting between representatives of the Department, the **Municipality** and the LRC the latter produced a list of the persons who were allegedly in occupation of the Lamontville property<sup>24</sup>.

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<sup>22</sup> Annexure “**B**”: Case no: 3329/2013: page 53: founding affidavit: paragraph 36; page 105: annexure “**F**”: page 147: answering affidavit: paragraph 75

<sup>23</sup> Annexure “**B**”: Case no: 3329/2013: page 54: founding affidavit: paragraph 39; pages 107 to 110: annexures “**G**”: page 147: answering affidavit: paragraph 76

<sup>24</sup> Annexure “**B**”: Case no: 3329/2013: page 54: founding affidavit: paragraph 40; page 147: answering affidavit: paragraph 77

25.

During the course of the meeting representatives of the **Municipality** expressed concern about the ongoing land invasions. They explained that they have a plan in place for homeless low income earners to acquire houses and that they have a target of 8500 units per year. They noted that problems were being experienced in accommodating people who live in so called squatter and transit camps. They indicated that all known and existing informal settlements had been audited and properly documented for accommodation purposes and wanted to know where persons who claimed that they were living on the Lamontville property had come from<sup>25</sup>.

26.

It was agreed that the list provided by the LRC would have to be verified and that those without identity documents would be assisted by the LRC in applying for such documents and that the LRC would provide the **Municipality** with information as to where their clients emanated from. The LRC undertook to do so within a week<sup>26</sup>.

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<sup>25</sup> Annexure “**B**”: Case no: 3329/2013: page 55: founding affidavit: paragraph 42; page 147: answering affidavit: paragraph 79

<sup>26</sup> Annexure “**B**”: Case no: 3329/2013: page 56: founding affidavit: paragraph 46; page 148: answering affidavit: paragraph 83

27.

Representatives of the Department indicated to the LRC that they were not convinced that the persons allegedly occupying the Lamontville property were in fact homeless and intended to pursue an application for their eviction therefrom<sup>27</sup>.

28.

Representatives of the Department noted that in the event that their negotiations with the LRC failed they proposed to pursue an application for the eviction of the persons in occupation of the Lamontville property<sup>28</sup>.

29.

On **28 March 2013 Koen J** granted the Order which is the subject of this application<sup>29</sup>. In terms of the Order:

29.1. the **Municipality** and the SAPS were authorised to take all reasonable and necessary steps:

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<sup>27</sup> Annexure “**B**”: Case no: 3329/2013: page 56: founding affidavit: paragraph 47; page 148: answering affidavit: paragraph 81

<sup>28</sup> Annexure “**B**”: Case no: 3329/2013: page 58: founding affidavit: paragraph 51; page 149: answering affidavit: paragraphs 88 to 89

<sup>29</sup> Annexure “**C**”: page 42: annexure “**LTA**”

- 29.1.1. to prevent any persons from invading and/or occupying and/or undertaking the construction of any structures and/or placing any material upon the properties;
  - 29.1.2. to remove any materials placed by any persons upon the properties;
  - 29.1.3. to dismantle and/or demolish any structure or structures that may be constructed upon the properties subsequent to the grant of the order.
- 29.2. an interdict issued restraining any persons from invading and/or occupying and/or undertaking the construction of any structures and/or placing of any material upon any of the properties.

30.

In the answering affidavit deposed to by the first applicant on **10 April 2013** it was alleged that the applicants were in occupation of the Lamontville property

and that during the period **September 2012** until **7 March 2013** their shacks had been demolished on 24 separate occasions<sup>30</sup>.

31.

On **25 April 2013** the applicants instituted an application out of the KwaZulu-Natal High Court, Durban under case no: 4431/2013 for an Order directing the **Municipality**, the SAPS and the **MEC** to construct for those individual applicants who were evicted from the Lamontville property on **19 April 2013** and/or **24 April 2013** and who still require them temporary residential dwellings and/or structures and/or shelters at least equivalent to those that were destroyed and which are capable of being dismantled at the site at which their previous shelters were demolished.

32.

In view of a dispute of fact in that application and in particular a dispute of fact relating to which persons in particular were in occupation of the Lamontville property at the relevant time the application was adjourned pending a verification exercise to be undertaken by the **Municipality** as to which persons were in fact in occupation of the property and entitled to be allocated alternative accommodation.

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<sup>30</sup> Annexure “**B**”: Case no: 3329/2013: page 128: answering affidavit: paragraph 11