

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

**CASE NO: CCT 108/2013**

In the matter between:

**JABULANI ZULU AND 389 OTHERS**

Appellants

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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**FIRST RESPONDENT'S PRACTICE NOTE IN TERMS OF  
PRACTISE DIRECTION NO. 5**

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**A: NAME AND NUMBER OF THE MATTER:**

As above.

**B: NATURE OF RELIEF SOUGHT:**

An appeal against a decision of the KwaZulu High Court, Durban refusing the application made by the appellants for leave to intervene.

**C: ISSUE/S REQUIRING DETERMINATION**

It will be argued that the KwaZulu High Court, Durban did not misdirect itself in refusing the application by the appellants for leave to intervene.

**G: RELEVANT PARTS OF PAPERS:**

Volume 1: pages 1 - 20;

Volume 2: pages 1 to 110;

Volume 3: pages 111 to 153.

**H. AN ESTIMATE OF THE DURATION OF THE ARGUMENT**

Approximately three hours.

**I. SUMMARY OF ARGUMENT:**

1. The third respondent secured the grant of a *rule nisi*:
  - 1.1. authorising the first and second respondents to prevent the unlawful invasion of the third respondent's properties;
  - 1.2. interdicting and restraining any persons from invading any of the properties and/or undertaking the construction of any structures and/or the placing of any material upon the properties;
2. The appellants applied for leave to intervene contending that they were in occupation of one of the properties and in particular the Lamontville Property on which the Madlala Village was established and that the Order would result in their homes being demolished and their assets removed.

3. The first respondent argues:
  - 3.1. that the Order was directed at preventing the invasion of the properties *subsequent* to the date of the grant thereof;
  - 3.2. the Order did not justify the eviction of any persons (including the Lamontville occupiers) who were admittedly in occupation of the Lamontville Property prior to the date of the grant thereof;
4. The appellants had in any event instituted separate legal proceedings for an Order restoring them to their occupation of the Lamontville Property.
5. It is argued that the appellants have failed to establish a direct and substantial and or a legal interest in the subject matter of the litigation and that their application for leave to intervene was accordingly misconceived.
6. It is submitted that the High Court did not misdirect itself in any respect in refusing the application for leave to intervene

in that any rights which the appellants seek to assert to occupy the Lamontville property will be determined in their pending application in which they seek to be restored to occupation thereof.

7. There has been no breach of any rights in terms of section 26(3) of the Constitution.

**J: SPECIFIC AUTHORITIES:**

1. *Government of the Republic of South Africa and Others v Grootboom* 2001 (1) SA 48 CC at paragraph 92
2. *President of the Republic of South Africa and Another v Modderklip Boerdery (Proprietary) Limited (Agri SA and Others amici curiae)* 2005 (5) SA 3 CC at paragraphs 43, 45, 46 and 49
3. *Groengras Eiendomme (Proprietary) Limited and Other v Elandsfontein Unlawful Occupants and Others* 2002 (1) SA 125 T at paragraph 28
4. *The City of Cape Town v Unlawful Occupiers, Erf 1800, Capricorn (Vrygrond Development) and Others* 2003 (6) SA 140 C at 151 I – J

5. *City of Cape Town & Another v The Occupiers of Erf 4832 Phillipi*, Unreported decision under Case Numbers: 5746/2000 and 5747/ 2000 (C)
  
6. *Paarl Municipality v The Occupiers of Houses situated at certain erven in Mbekweni, Paarl*, Unreported decision under Case Number. 8937/2000 (C)

**N. BHAGWANDEEN**

**CHAMBERS  
DURBAN  
2<sup>ND</sup> JANUARY 2014**