

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case No. 108 / 13

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, KWAZULU-NATAL**

Third Respondent

and

**AB AHLALI BASEMJONDOLO MOVEMENT
SOUTH AFRICA**

Amicus Curiae

AMICUS CURIAE'S PRACTICE NOTE

A NATURE OF THE PROCEEDINGS

1 This is an appeal against the Durban High Court's refusal to –

1.1 grant the appellants leave to intervene in proceedings concerning an order granted by his Lordship Mr. Justice Koen on 28 March 2013 (“the March 2013 order”).

1.2 Set the March 2013 order aside.

B ISSUES TO BE ARGUED

2 The *amicus curiae* will present argument on the following issues –

2.1 Whether the March 2013 order authorises eviction;

2.2 Whether the March 2013 order is compatible with section 26 (3) of the Constitution; and

2.3 Whether the March 2013 order is compatible with the rule of law.

C PORTIONS OF THE RECORD NECESSARY FOR THE DETERMINATION OF THE MATTER

3 The *amicus* submits that only the March 2013 order, the papers in case number 3329/12, and the other parts of the record specifically referred to in the parties' written submissions need be read.

D ESTMATED DURATION OF ARGUMENT

- 4 The appeal will take less than a day. The *amicus*' oral argument will take no more than half an hour.

E SUMMARY OF THE AMICUS' SUBMISSIONS

- 5 The March 2013 order authorises the eviction of all present and future occupants of the land to which it applies. It leaves the decisions of whether, when and how to evict those occupants to the subjective and arbitrary determination of the second and third respondents.

- 6 Accordingly the March 2013 order breaches a series of fundamental constitutional and common law principles –

6.1 It is incompatible with the text and purpose of section 26 (3) of the Constitution;

6.2 It violates the rule against self-help and thus the principle of legality; and

6.3 It disregards a number of basic common law rules applying to the orders courts may issue, and the

parties that must be before them, when they
adjudicate.

**F AUTHORITIES UPON WHICH PARTICULAR RELIANCE
WILL BE PLACED IN ORAL ARGUMENT**

7 *Motswagae and others v Rustenburg Municipality and Another*
2013 (2) SA 613 (CC).

8 *Chief Lesapo v North West Agricultural Bank and Another*
2000 (1) SA 409 (CC).

9 *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA
217 (CC).

10 *City of Cape Town v Yawa and Others* [2004] All SA 281 (C).

11 *Kayamandi Town Committee v Mkhwaso* 1991 (2) SA 630 (C).

STUART WILSON
Counsel for the *Amicus Curiae*

Chambers, Johannesburg
23 January 2014

