

**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 WRITTEN ARGUMENT**

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1. **THE ISSUE BEFORE THIS HONOURABLE COURT**

1.

This Honourable Court is called upon to determine whether Kruger, J. misdirected himself in refusing the appellants leave to intervene in the

application under Case Number: 3329/2013 in the KwaZulu-Natal High Court, Durban wherein the third respondent sought to confirm the *rule nisi* granted by Koen, J. on the 28<sup>th</sup> March 2013<sup>1</sup> (“the Order”).

## 2. **THE FACTUAL BACKGROUND**

2.

The factual background underlying the grant of the Order is substantially common cause *alternatively* is undisputed and has been set out in the document which was jointly prepared by the appellants and the second and third respondents<sup>2</sup>. The first respondent does not dispute the allegations as set out therein.

3.

The properties forming the subject of the Order are earmarked for housing development and other public services.<sup>3</sup>

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<sup>1</sup> Volume 4; page 42 to 43; annexure “LTA5”

<sup>2</sup> Agreed Statement of Facts

<sup>3</sup> Agreed Statement of Facts; page 7; paragraph 2

4.

After development the housing units will be allocated to persons whose names appear on the first respondent's waiting list. This list has been compiled by the first respondent in terms of the criteria set by the first respondent in accordance with the first and third respondents established housing policy.<sup>4</sup>

5.

On the 25<sup>th</sup> February 2013 officials of the third respondent became aware that one of its properties, namely *Lot 532, Bonela* was being unlawfully invaded.<sup>5</sup>

6.

Vegetation on the property was cleared and preparations undertaken to construct structures thereon.<sup>6</sup>

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<sup>4</sup> Agreed Statement of Facts; page 7; paragraph 4

<sup>5</sup> Agreed Statement of Facts; page 8; paragraph 5

<sup>6</sup> Agreed Statement of Facts; page 8; paragraph 7

7.

An affidavit deposed to by a certain Angel Duma (“Duma”) was communicated to the officials of the third respondent who inferred that Duma and like-minded persons, who supported the content of her affidavit, proposed to undertake the unlawful invasion of vacant properties in the Cato Manor/Bellair and Mayville areas.<sup>7</sup>

8.

Properties owned by the third respondent in Middleton Road, Queensburgh and other properties became the target of land invaders.<sup>8</sup>

9.

In an attempt to prevent the invasions the officials of the third respondent met with the Land Invasion Control Unit (“Land Invasion Unit”) of the first respondent to seek their assistance in repelling the

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<sup>7</sup> Agreed Statement of Facts; page 9; paragraphs 8 to 10

<sup>8</sup> Agreed Statement of Facts; page 10; paragraph 11

invasions. The Land Invasion Unit subsequently succeeded in repelling the invasions until 8 March 2013.<sup>9</sup>

10.

On the 8<sup>th</sup> March 2013 the third respondent received a letter from the LRC asserting the rights of “*the present occupants of shacks..... located in Lamontville*” to occupy the Lamontville property.<sup>10</sup>

11.

Meanwhile the land invasions received publicity in the local press.<sup>11</sup> Consequently based on the information contained in the newspaper articles and investigations undertaken by the third respondent it appeared that an organised campaign of unlawful land invasions had been orchestrated and were being implemented.<sup>12</sup>

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<sup>9</sup> Agreed Statement of Facts; page 10; paragraph 12

<sup>10</sup> Agreed Statement of Facts; page 10; paragraph 13

<sup>11</sup> Agreed Statement of Facts; page 11; paragraph 14

<sup>12</sup> Volume 2; Founding Affidavit; page 50; paragraph 26

## 12.

On the 11<sup>th</sup> March 2013 officials of the first and third respondents met with the representatives of the LRC in order to determine the identities and particulars of the persons being represented by the LRC. It was agreed that the LRC would prepare and submit a list of such persons to the third respondent so that the list of persons could be verified and the third respondent could determine whether the persons whose names appeared thereon were homeless and in need of accommodation. The LRC was unable at that stage to provide such list.<sup>13</sup>

## 13.

On the 13<sup>th</sup> March 2013 a group of unknown persons sought to invade the private property of one Mansoor in Cato Manor. Mansoor engaged the services of a private security company in order to repel the invasion.<sup>14</sup>

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<sup>13</sup> Agreed Statement of Facts: page 12: paragraph 18; Volume 2: page 51: Founding Affidavit: paragraph 29

<sup>14</sup> Agreed Statement of Facts; page 12; paragraph 19

14.

The same individuals thereafter attempted to invade *Lot 1010, Bonela* (“Lot 1010”) which is owned by the third respondent. That attempt was also repelled by the Land Invasion Unit and the Metro Police Unit (“Metro Police”) of the first respondent assisted by the second respondent.<sup>15</sup>

15.

During the night of 13<sup>th</sup> March 2013 a further attempt was made to construct four structures on Lot 1010. The structures were demolished during the morning of the 14<sup>th</sup> March 2013.<sup>16</sup>

16.

On the 14<sup>th</sup> March 2013 an article appeared in the local newspaper confirming that land invaders caused a local councillor to flee from his home.<sup>17</sup>

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<sup>15</sup> Agreed Statement of Facts; page 12; paragraph 20

<sup>16</sup> Agreed Statement of Facts; page 13; paragraph 21

17.

On the 15<sup>th</sup> March 2013 the third respondent launched an urgent application in the KwaZulu-Natal High Court, Durban under Case Number: 2778/2013 against Duma and her supporters. In that application the third respondent sought an Order interdicting Duma and her supporters from invading and or occupying the properties owned and or controlled by the third respondent in Cato Manor.<sup>18</sup> The Order was granted.

18.

On the same day at a meeting between representatives of the first and third respondents and the LRC a list of persons allegedly in occupation of the Lamontville property was provided to the first and third respondents by the LRC.<sup>19</sup>

19.

19.1 At the meeting the representatives of the first respondent expressed concern about the ongoing land invasions.

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<sup>17</sup> Agreed Statement of Facts; page 13; paragraph 22 and Volume 2; page 105; Annexure “F”

<sup>18</sup> Agreed Statement of Facts; page 13; paragraph 23

<sup>19</sup> Agreed Statement of Facts; page 14; paragraph 24

19.2 They indicated further that all known and existing informal settlements had been audited and properly documented for allocation and accommodation purposes.

19.3 They explained that they have a plan in place for homeless low income earners to acquire houses and that they have a target of providing 8500 units per year. They noted that problems were being experienced in accommodating people who live in so-called squatter and transit camps.

19.4 Consequently the LRC was questioned about where the persons who claimed that they were living on the Lamontville property had come from.<sup>20</sup>

20.

It was agreed that the list provided by the LRC would be verified and that the LRC would provide the first respondent with information as to where their clients had come from.<sup>21</sup>

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<sup>20</sup> Agreed Statement of Facts; page 14; paragraph 25

<sup>21</sup> Agreed Statement of Facts; page 14; paragraph 26

21.

Doubts were expressed by the representatives of the third respondent whether the persons whose names appeared on the list were in fact genuinely homeless and in need of accommodation.<sup>22</sup>

22.

The Land Invasion Unit of the first respondent indicated to the third respondent that they were not prepared to protect the properties unless their conduct is sanctioned by an order of court authorising them to do so.<sup>23</sup>

23.

Consequently the third respondent sought the Order authorizing the first and second respondents from preventing the invasions of its properties.

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<sup>22</sup>Agreed Statement of Facts; page 15; paragraph 27

<sup>23</sup>Volume 2; page 59; Founding affidavit; paragraph 57

24.

The objective behind the grant of the Order was to prevent unlawful invasions of the properties which unlawful invasions were ostensibly designed to afford the invaders preference in the allocation of housing which the first and third respondents (“the State”) is obliged to provide to the needy in a systematic and organised basis.<sup>24</sup>

3. **THE ARGUMENT IN SUPPORT OF INTERVENTION**

25.

In seeking leave to intervene the appellants contended that they were in occupation of one of the properties (the Lamontville property), mentioned in the Order, and that they have been unlawfully evicted therefrom.

26.

The appellants allege that they took occupation of the Lamontville property from September 2012 (being a date prior to the grant of the

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<sup>24</sup> *Government of the Republic of South Africa and Others v Grootboom* 2001 (1) SA 48 CC at paragraph 92

Order) and that their homes were destroyed on 24 separate occasions since then.<sup>25</sup>

27.

The appellants allege that as they are “*the occupiers* [of the property] (they) *have a clear interest in the application. Madlala Village falls within the area affected by the order and the operation of the order will directly and substantially affect its residents as it would result in our homes being demolished and the removals of our meagre assets.*”<sup>26</sup>

#### 4. **THE ARGUMENT AGAINST INTERVENTION**

28.

In the founding affidavit under Case Number: 3329/2013 the third respondent acknowledged that “*although there are persons occupying [the] property in Lamontville, it is disputed that such persons are entitled to occupy the property. The Applicant proposes, in due course and should its negotiations with the LRC fail, to launch proceedings for*

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<sup>25</sup> Volume 3: page 128: Answering Affidavit: paragraph 8

<sup>26</sup> Volume 3; Answering Affidavit; page 128; paragraph 8

*their eviction.*”<sup>27</sup> It was and is self-evident that no relief was sought or granted against the appellants in the application.

29.

In fact on the 25<sup>th</sup> April 2013 the appellants launched an application in the KwaZulu-Natal High Court, Durban under Case Number: 4431/2013 for an Order interdicting the first, second and third respondents from demolishing any of the structures or dwellings or shelters erected by them on the property and a further Order directing the first, second and third respondents to construct for those individual appellants who were evicted from the Lamontville property on the 19<sup>th</sup> and or the 24<sup>th</sup> April 2013 and who still require such structures, 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.

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<sup>27</sup> Volume 2; Founding Affidavit; page 58; paragraph 51

## 30.

The first respondent together with the second and third respondents have opposed the application under Case No. 4431/2013. The first respondent accordingly argues that:

- 30.1 The Order granted on the 28<sup>th</sup> March 2013 was directed at preventing the invasion of the Lamontville property and other properties *subsequent* to the date of the grant thereof.
- 30.2 The Order did not justify the eviction of any persons (including the Lamontville occupiers and the appellants) who were admittedly in occupation of the Lamontville property *prior* to the date of the grant thereof. Furthermore it is submitted that the Order does not authorise the *eviction* of any persons from any of the properties subsequent to the grant thereof.
- 30.3 The appellants have in any event instituted separate legal proceedings for an Order restoring them to their occupation of the Lamontville property.

30.4 Accordingly the appellants do not have a legal interest which entitles them to intervene in the application in order to seek the discharge of the Order.

31.

In fact it is trite that an applicant for leave to intervene must establish:

31.1 “*a direct and substantial interest*” in the subject matter of the litigation;<sup>28</sup>

31.2 A *legal interest* in the subject matter of the litigation that may be *prejudicially affected* by the judgment of the Court is required.<sup>29</sup>”

32.

It is not sufficient for the applicant to merely state that he or she has an interest in the matter. He or she must make allegations that would show:

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<sup>28</sup> *Henri Viljoen (Pty) Ltd v Awerbuch Bros* 1953 (2) SA 151 (O) at 167

<sup>29</sup> *Henri Viljoen (Pty) Ltd v Awerbuch Bros* 1953 (2) SA 151 (O) at 168-70

32.1 he or she has a *prima facie* case;

32.2 the application is:

32.2.1 seriously made; and

32.2.2 it is not frivolous.<sup>30</sup>

33.

It is sufficient for the party seeking leave to intervene to rely on allegations which, if they can be proved in the main action, would entitle him or her to succeed.<sup>31</sup>

34.

It has been demonstrated above that the rights of the appellants are not affected by the Order which ostensibly seeks to prevent land invasions subsequent to the grant of the Order. Furthermore neither the appellants

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<sup>30</sup> *Elliott v Bax: In re Bax v The African Life Assurance Society Ltd* 1923 WLD 228 at 231

<sup>31</sup> *Ex parte Moosa: In re Hassim v Harrop-Allin* 1974 (4) SA 412 (T) at 416F

nor anyone else for that matter can be evicted in terms of the Order. Consequently anyone who can show that they had been in occupation of the properties, mentioned in the Order, prior to the grant of same cannot be removed from the property or properties without a valid Court Order.

35.

Although it has been said that the Court has a discretion where a party seeks leave to intervene<sup>32</sup> there has been no authoritative definition of the limit of that discretion.<sup>33</sup>

36.

Accordingly in the light of the aforementioned submissions, it is submitted that this Honourable Court cannot and should not exercise its discretion to grant leave to the appellants.

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<sup>32</sup> *Venter v Wicht's Garage* 1927 CPD 364 at 365

<sup>33</sup> *United Watch & Diamond Co (Pty) Ltd v Disa Hotels Ltd* 1972 (4) SA 409 (C) at 416A

37.

This is especially so in the light of the fact that the appellants did not and do not assert that:

37.1 they have any right, let alone a lawful right, to occupy the properties including the Lamontville property if they were not already in occupation thereof as at the date of the grant of the Order.

37.2 they have any interest in the invasion of any of the properties mentioned in the Order.

38.

It is therefore submitted that the Order did not and does not affect the entrenched rights of the appellants who allege that they were in occupation of the Lamontville property prior to the grant of the Order.

39.

The appellants' rights in any event are being enforced by the application which is pending in the KwaZulu-Natal High Court, Durban under case number: 4431/2013.

5. **IS THE ORDER A NULLITY?**

40.

The *amici curiae* submits that the Order is a nullity in that “*the residents were not joined in the proceedings which resulted in the MEC order*”<sup>34</sup>

41.

In *Lewis & Marks v Middel*<sup>35</sup> the Court observed as follows:

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<sup>34</sup> Affidavit of Mzimela; pages 12 to 14; paragraphs 42 to 49

<sup>35</sup> 1904 (TS) 291 at 303

*“.....where legal proceedings are initiated against a party, and he is not cited to appear, they are null and void; and upon proof of invalidity the decision may be disregarded, in the same way as a decision given without jurisdiction without the necessity of a formal order setting it aside.”*

42.

In *Dada v Dada*<sup>36</sup> the Court observed as follows:

*“When an action has begun without due citation of the defendant, the subsequent proceedings are null and void and any judgment given is of no force or effect whatsoever.....nevertheless, when an action has begun without due citation, the defendant has a right to have the proceedings set aside.”*

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<sup>36</sup> 1997 (2) SA 287T at 288C -E

43.

In *Kayamandi Committee v Mkhwaso and Others*<sup>37</sup> the Kayamandi Town Council sought an eviction order against 150 squatters from land that had been earmarked for residential development. The applicant cited only nine of the respondents and alleged that it was unable to establish the names of the remaining respondents.

44.

The Court refused to grant any order against the “*unidentified occupiers, the faceless respondents*” and held that the applicant had other remedies available to it in the form of the Prevention of Illegal Squatting Act No. 52 of 1951.

45.

The facts *in casu* are fundamentally distinguishable from those in the aforementioned cases and in other matters in which the above dicta has been adopted.

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<sup>37</sup> 1991 (2) SA 630 C

46.

The first point of departure lies in the fact that the first portion of the relief sought by the third respondent was granted against the first and second respondents both of whom were cited as parties to the application. There is and can be no basis justifying the setting aside of the Order granted against the first and second respondents unless they seek to do so.

47.

The second point of departure lies in the fact that the Order was sought against a background of orchestrated land invasions which had taken place and which the third respondent legitimately feared would continue. It was clearly impossible for the third respondent or even the first respondent for that matter, in the prevailing circumstances, to establish the identities of such prospective invaders.

48.

What is important is to bear in mind the fact that the Order was not intended to be and is not an eviction Order. It does not authorise the

eviction of any persons. Its objective was and remains to prevent the threatened obviously unlawful invasion of the third respondent's properties.

49.

No persons have any lawful right to invade any properties, whether such properties are owned by the first and or the third respondents or which properties are privately owned.

50.

Despite the fact that the unknown and unidentified potential invaders were not cited as parties to the application it is submitted that this is an appropriate case in which the relief granted in favour of the third respondent be preserved especially as the party aggrieved by the Order (the appellants) have launched proceedings under Case Number: 4431/2013 to protect their rights.

6. **DOES THE ORDER VIOLATE THE APPELLANTS  
RIGHT IN TERMS OF SECTION 26(3) OF THE  
CONSTITUTION?**

51.

The Order was not intended to and does not authorise the evictions of any persons from any of the properties.

52.

The Order may not be relied upon as justification for the eviction of any persons from the properties.

53.

Any eviction which may be carried in terms of the Order is illegal and falls to be set aside.

54.

The provisions of section 26 (3) of the Constitution requires that no person may be evicted from their home or have their home demolished without a Court Order after considering the relevant circumstances.

55.

For the above provisions of section 26 (3) of the Constitution to apply, the person must be in occupation of his or her home, even if such occupation is unlawful. Where the person or persons illegally invade land the provisions of section 26 (3) of the Constitution do not apply to them.

56.

Furthermore the rights contained in section 26 (3) of the Constitution may be limited in the circumstances which justify the limitation of such right.

57.

Examples of such circumstances are:

- 57.1 Where the persons have occupied the land in order to coerce a State organ into providing housing on a preferential basis.<sup>38</sup>
- 57.2 Where the occupation creates a genuinely urgent or pressing danger.<sup>39</sup>
- 57.3 Where there are two competing groups of homeless people who seek access to the same piece of land, and a choice must be made as to which of them will occupy it.<sup>40</sup>

58.

It is clear that the appellants had invaded the property in order to coerce the first and third respondents (being State organs) into providing

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<sup>38</sup> *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 CC at paragraph 92

<sup>39</sup> *Groengras Eiendomme (Proprietary) Limited and Other v Elandsfontein Unlawful Occupants and Others* 2002 (1) SA 125 T at paragraph 28

<sup>40</sup> *City of Cape Town & Another v The Occupiers of Erf 4832 Phillipi*, Unreported decision under Case Numbers: 5746/2000 and 5747/2000 (C) at page 12

housing to them on a preferential basis and to the exclusion of the first and third respondents other housing beneficiaries. Consequently any rights which the appellants may have possessed in terms section 26 (3) of the Constitution, which rights the first respondent denies, have been limited.

59.

It is submitted therefore that the Order does not violate any rights of the appellants as set out in section 26(3) of the Constitution.

7. **THE CAUSA OF LAND INVASIONS IN THE ORDER**

60.

There can be no question about the fact that land invasions especially organised land invasions, which are orchestrated for the specific purpose

of securing preferential allocation of housing, is inimical to the systematic provision of adequate housing on a planned basis.<sup>41</sup>

61.

The State is obliged to take reasonable steps where possible to ensure that land invasions do not occur.<sup>42</sup>

62.

*In President of the Republic of South Africa and Another v Modderklip Boerdery (Proprietary) Limited (Agri SA and Others amici curiae) (supra)*<sup>43</sup> Langa A C, J. observed as follows:

*“Land invasions of this scale are a matter that threatens far more than the private rights of a single property owner. Because of their capacity to be socially inflammatory they have the potential to have serious*

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<sup>41</sup> *Government of the Republic of South Africa and Others v Grootboom and Others* (supra) at paragraph 92

<sup>42</sup> *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 paragraph 43

<sup>43</sup> *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 paragraph 45

*implications for stability and public peace. Failure by the State to act in an appropriate manner in the circumstances would mean that Modderklip, and others similarly placed, could not look upon the State and its organs to protect them from invasions of their properties. That would be a recipe for anarchy.”*

63.

The Order obtained by the third respondent, in preventing land invasions, was designed to ensure that law and order was and is preserved and that the rule of law was and is not subverted”.<sup>44</sup>

64.

The Learned Acting Chief Justice continued as follows:<sup>45</sup>

*“The progressive realisation of access to adequate housing, as promised in the Constitution, requires careful*

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<sup>44</sup> *President of the Republic of South Africa and Another v Modderklip Boerdery (Proprietary) Limited (Agri SA and Others amici curiae) (supra)* at paragraph 46

<sup>45</sup> *President of the Republic of South Africa and Another v Modderklip Boerdery (Proprietary) Limited (Agri SA and Others amici curiae) (supra)* at paragraph 49

*planning and fair procedures made known in advance to those most affected. Orderly and predictable processes are vital. Land invasions should always be discouraged. At the same time, for the requisite measures to operate in a reasonable manner, they must not be unduly hamstrung so as to exclude all possible adaptation to evolving circumstances.”*

65.

In *Groengras Eiendomme (Proprietary) Limited and Other v Elandsfontein Unlawful Occupants and Others* (supra)<sup>46</sup>, Rabie, J. observed as follows:

*“The occupants perpetrated this mass land invasion in a very short space of time and only from approximately a month ago and this is apparently still going on. It appears that the land invasion might have been started or, at least, encouraged by persons or organisations for political or other ulterior motives. Asking the proposed occupants to pay an amount of money, under whatever*

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<sup>46</sup> 2002 (1) SA 125 T at paragraph 28

*guise, could conceivably instil the perception in some that the unlawful occupation can in some way be justified and thereby luring more unsuspecting persons to occupy the land unlawfully. It is impossible to know where each of the occupants came from .... The property occupied is not fit for habitation. There is no infrastructure, no water, no toilet or ablution facilities and no facilities for waste and garbage disposal. The danger of disease breaking out is of high probability and the risk of contamination also affects those living downstream on the stream running through the property and of neighbouring areas.”*

66.

Also in the matter of *The City of Cape Town v Unlawful Occupiers, Erf 1800, Capricorn (Vrygrond Development) and Others*<sup>47</sup>, N. C. Erasmus, J. observed as follows:

*“In my view, the most compelling factor weighing in applicants’ favour is simply that it is imperative that land invasions are denounced and rejected as an appropriate*

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<sup>47</sup> 2003 (6) SA 140 C at 151 I to J

*way to enforce one's Constitutional right to access to adequate housing”*

67.

In *City of Cape Town and Another v The Occupiers of Erf 4832 Phillipi*<sup>48</sup> Brand J. stated that the only difference between those who lawfully applied for housing and the unlawful occupiers, where that one had conducted themselves lawfully and the others unlawfully. He further stated that to condone land invasions would be to allow the law of the jungle to prevail rather than the rule of law. This cannot be permitted.

68.

In the case of *Paarl Municipality v The Occupiers of Houses situated at certain erven in Mbekweni, Paarl*<sup>49</sup> the Court stated that although housing delivery was slow by anyone's standards, this is not a justification for anyone taking the law into their own hands. If disgruntled citizens were to follow their example, the country would soon be plunged into chaos. It is sad that land invaders consider

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<sup>48</sup> Unreported decision under Case No. 5746 and 5747 of 2000 (C)

<sup>49</sup> Unreported decision under Case Number. 8937/2000 (C)

themselves more deserving of housing than those that lawfully wait for same.

69.

Accordingly in the light of the increased numbers of land invasions and threats of same the third respondent together with the first and second respondents, , as an Organs of State, are enjoined to prevent the land invasions and maintain the Rule of Law.

70.

Consequently the Order that was granted by Koen, J. did not and cannot affect or infringe any of the rights of any of the appellants. Those rights are in any event being enforced through the mechanism of the application under case no. 4431/2013.

71.

In the event that the verification exercise, which the parties agreed on, reveals that the appellants are indeed homeless and in need of

accommodation then they will be provided with accommodation at the very least on a temporary basis. The third respondent has undertaken to do so.

72.

Should the verification exercise reveal that they are not genuinely homeless and or in need of accommodation then there would be no obligation on the part of the first and the third respondents to provide them with any accommodation.

73.

It should be pointed out that doubt exists regarding the appellants' claims as it is unlikely that some 390 persons would be rendered homeless at approximately the same time in or about September 2012 when the first respondent has audited and registered all the persons occupying informal settlements and those who are in need of accommodation.

9. **CONCLUSION**

74.

Accordingly it is submitted that Kruger, J did not misdirect himself, in any respect, in refusing the application for leave to intervene.

75.

In the appellants Heads of Argument it is submitted, on behalf of the appellants, that they seek a costs Order against the first respondent in respect of the proceedings on the 10<sup>th</sup> May 2013.

76.

The appellants have demonstrated no basis for the Order for costs that they seek against the first respondent, especially as the first respondent is not the applicant in the proceedings which gave birth to the Order in question.

77.

In all of the circumstances it is submitted that the appeal be dismissed with costs.

**N. BHAGWANDEEN**

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