

**CONSTITUTIONAL COURT OF SOUTH AFRICA**

**CASE NO. CCT: 108/13**

**In the matter between:**

**JABULANI ZULU & 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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**APPELLANTS' PRACTICE NOTE IN TERMS OF PRACTICE**

**DIRECTION NO.5**

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**THE NAMES OF PARTIES AND CASE NUMBER OF THE MATTER**

1.

1.1. Appellant: Jabulani Zulu 389 Others;

1.2. First respondent: Ethekewini Municipality;

1.3. Second respondent: Minister of Police;

1.3.1. Third Respondent: MEC For Human Settlements and  
Public Works of the Province Of  
Kwazulu-Natal;

1.4. Case Number: CCT 108/2013

**NATURE OF THE PROCEEDINGS**

2.

This is an appeal against an order of eviction made by Koen J on 28<sup>th</sup> March 2013, the appellants having been granted leave to appeal by this Court on 31<sup>st</sup> October 2013.

**THE ISSUES TO BE DETERMINED**

3.

The issues are whether the order granted by Koen J:

3.1. amounts to an eviction order;

3.2. is constitutionally permissible in the light of Section 26(3) of the Constitution and the provisions of PIE;

3.3. has the effect typical of legislation and is a decree rather than a court order.

**PORTIONS OF THE RECORD OF CASE NO 3329/2013 NECESSARY****FOR THE DETERMINATION OF THE MATTER**

4.

(i) Founding affidavit, Vol. 2, page 42 – 62

(ii) Answering affidavit, Vol.3, page 125 – 152

(iii) Transcript of hearing for Kruger J, Vol. 4, page 14 – 22.

### **DURATION OF ARGUMENT**

5.

1 Hour for the appellants.

### **SUMMARY OF ARGUMENT**

6.

Section 26(3) of the Constitution and the provisions of PIE guarantee that the eviction of illegal occupiers from land is to be determined by a court after an investigation of the circumstances of the occupier on a case-by-case basis.

7.

The case advanced by the MEC is an attempt to defy these injunctions.

8.

The order granted by Koen J which has a generalised effect typical of legislation and is a decree and not a court order at all.

9.

The form of the order lends itself to abuse by the municipality and the police.

10.

When effect is given to the order people will be evicted without any consideration of the facts and circumstances relating to their eviction.

**LIST OF AUTHORITIES**

- (i) Kayamandi Town Committee v Mkhwaso and Others 1991  
(2) SA 630 (CPD) at 634 H.
  
- (ii) Government of the RSA and Others v Grootboom and Others  
2001 (1) SA 46 (CC) at 79B-C and 86A-B.
  
- (iii) Tswelopele Non-Profit Organisation and Others v The City of  
Tshwane Metropolitan Municipality and Others 2007 (6) SA 511  
(SCA).
  
- (iv) Pheko and Others v Ekurhuleni Metropolitan Municipality 2012  
(2) SA 598 (CC)
  
- (v) Schubart Park Residents' Association and others v City of  
Tshwane Metropolitan Municipality and Others 2013 (1) SA  
323 (CC) at 338 A-E.

(vi) Motswagae and Others v Rustenburg Municipality and Another 2013 (2) SA 613 (CC) at 616 G-H

**L.B.BROSTER SC**

**S.J. LINSOTT**

**I. VEERASAMY**

**CHAMBERS**

**DURBAN**

**12 December 2013**