

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case No: CCT 42/12

In the matter between:-

**PONTSHO DOREEN MOTSWAGAE
FOURTEEN OTHERS**

First Applicant
Second to Fifteenth Applicants

and

**RUSTENBURG LOCAL MUNICIPALITY
PROMPTIQUE TR 9 CC**

First Respondent
Second Respondent

FIRST RESPONDENT'S HEADS OF ARGUMENT

INTRODUCTION

1. This is an application for leave to appeal to the Constitutional Court against the decision of the North West High Court dismissing an interdict which the applicants sought against the first respondent, being the Rustenburg Local Municipality, ("the Municipality"), and the granting of a counter-application in favour of the Municipality in the same proceedings.

2. In response to the dismissal, the applicants launched applications for leave to appeal to both the Court *a quo* and the Supreme Court of Appeal, which applications were also dismissed.¹
3. The applicants are residents in dilapidated houses in a township known as Thlabane Extension 1 in the Rustenburg District. The Municipality is the regulating authority for housing in this area. Although a construction-related close corporation, Promptique TR 9 CC ("Promptique"), was cited as the second respondent, it never participated in the proceedings. Promptique was the entity who was busy installing engineering services in close proximity to the dwellings when the urgent application was launched.
4. The applicants sought an interdict to prohibit the Municipality and the construction company from "entering" on the properties of the applicants, to "demolish the structures" on these properties and from "threatening" the applicants. Costs of the application were reserved pending the outcome of arbitration proceedings which the applicants then envisaged. The demolition of the

¹ Record: pp 325-326 Court Order (North West High Court); p 327 Court Order, Supreme Court of Appeal

structures was never envisaged when the services were installed although demolition will have to take place in the long term. This will, however, necessitate alternative housing before demolition can commence.

5. The Municipality, in its counter-application, sought an order restraining the applicants from interfering with the construction process, subject thereto that alternative accommodation was tendered. The construction activities which gave rise to the urgent application related to the installation of engineering services in respect of a housing project known as the redevelopment of Thlabane Female Hostel. No construction is currently taking place.
6. The Municipality has still not been able to demolish the dilapidated structures. The applicants refuse to apply or take up alternative accommodation, this has a direct effect on the redevelopment program. The fears raised in the urgent application are not valid.

7. The constitutional issues on which the applicants rely, relate to the provisions contained in sections 25(6) and 26(3) of the Constitution of the Republic of South Africa, Act No. 108 of 1996 ("the Constitution"). These provisions deal with the tenure of land and the access to housing.

Preliminary matters

8. The application for leave to appeal to this Court was set down for hearing on 27 November 2012, and included directives from the Chief Justice to the legal representatives in respect of the record and arguments which had to be lodged on behalf of the parties.
9. The applicants' representatives failed to lodge the record timeously, which necessitated an application for condonation.
10. Although the applicants' legal representatives were directed to file their written argument on or before 11 September 2012, these were still outstanding by the time the written argument on behalf of the Municipality had to be lodged.

11. The submissions in these Heads of argument are therefore made without the benefit of the applicants' arguments. In the event that the applicants submit written argument before the hearing, the Municipality's legal advisers will seek an opportunity to supplement these heads of argument.

APPLICATION FOR LEAVE TO APPEAL

12. The decision whether to grant or refuse leave to appeal is a matter for discretion of this Court. Leave to appeal will be granted if firstly, the application raises a constitutional matter and secondly, whether it is in the interests of justice to grant leave to appeal. A finding that the application raises a constitutional issue is not decisive, leave to appeal may be refused if it is not in the interests of justice to hear the case.²

² *S v Boesak* 2001 (1) SA 912 (CC) at para [12]; *National Education Health and Allied Workers Union v UCT* 2003 (3) SCA 1 (CC) at para [25]; *Ingeldew v The Financial Services Board* 2003 (4) SA 584 (CC) at para [13]

FACTUAL BACKGROUND

13. The applicants consist of apparently 15 women who live in 11 free-standing houses in the township of Thlabane Extension 1; these houses being collectively known as the Thlabane Female Hostel. I say apparently due to the fact that there is a dispute between the parties as to the identity of the applicants and the circumstances under which they live.
14. The applicants rely on a schedule for identifying the respective applicants, their addresses (stands) and the period for which they have lived on these premises.³
15. During March 2009 the Municipality conducted a survey, shortly before the application was launched in the court of first instance, by interviewing the inhabitants of the relevant houses. The interview was conducted by one Kenneth Mokono, an allocation officer employed by the Municipality.⁴

³ Application for leave to appeal: Founding affidavit para 3 p 278; Annexure FA1, p 303

⁴ Survey: Answering affidavit: para 15.2 - 15.7.6; Annexure AA1 - Survey, pp 88; Confirmatory affidavit, Mr Mokono, p 188

16. The survey findings by Mr Mokono differ from the applicants' schedule.
17. Only 7 applicants were identified as occupants.⁵ The remaining applicants were not occupants of the houses when the survey was carried out.⁶
18. The registered owner of all stands to which the applicants lay claim is the North West Province. The Province is in the process of transferring the erven to the Municipality as part of its housing policy. The North West Housing Corporation attends to the transfer of these erven. The North West Province and North West Housing Corporation are not parties to these proceedings. In respect of the Constitutional aspects now raised by the applicants, these institutions are interested and affected parties.

⁵ The applicants who were identified as occupants were Ms Motswagae (1st applicant), Ms Shalwane (4th applicant), Ms Tshite (5th applicant), Ms Ramatshego (7th applicant), Ms Masike (10th applicant), and Ms Mogotusi (11th applicant) and Ms Raboroko (15th applicant)

⁶ Answering affidavit: para 15.2 p 58; Survey: annexure AA1 p 88

19. The conduct of the Municipality in respect of the redevelopment of the Thlabane Female Hostel is supported by the Province and the North West Housing Corporation.⁷
20. The houses relevant to this application are 4-roomed houses of which two rooms per house were allocated to single women and pensioners in the pre-1994 housing strategy. The applicants do not pay any rent and, as appears from the Municipality's survey, some applicants have sublet their rooms.⁸
21. From the survey conducted by the Municipality it appears that several occupants sub-let these properties to third parties who live in desperate circumstances.
22. In addition to Mr Mokona's factual survey, an environmental health inspection was executed by the Municipality's Department of Community Development on 22 June 2009. Their observations were recorded in a memorandum dated 25 June 2009. The four

⁷ Answering affidavit: para 15.7 p 60; Supporting affidavit: Confirmatory affidavit Mr Letselela, Chief Executive Officer and employee of the North West Housing Corporation: pp 158-160; Windeed report of deeds searches of the respective erven, pp 162-180

⁸ Survey: p 88

main contentions in this report described the current situation as follows:

- ° The houses are in a dilapidated state, meaning the structures are in a state of despair (sic) as a result of age and because there is no ownership of those houses nobody is taking good care of the houses, as cracks could be observed from outside the yards. The general condition of the houses is unsightly and degrades the image of the area.
- ° Despite the houses being on (sic) that state it is not accepted for two different households to share that limited or small space, whereby one household has only one entrance and exit. This poses a health hazard and threat as in cases of fire, the (sic) would not be a emergency or alternative exit.
- ° There is no sufficient cross ventilation and this poses a risk for transmission of communicable diseases and let alone privacy where children are concerned.
- ° The environment is not conducive to live in or even raise a healthy and functional family and the situation demeans human dignity."⁹

23. On 25 June 2009 the Municipality's Building Control and Regulations Department made a recommendation that the houses be demolished because they were inhabitable and also due to the

⁹ See Memorandum: 25 June 2009, annexure AA3 p 93

fact that the structures caused a danger. The finding that the structures contravene the National Building Regulations and Building Standard Act, 108 of 1997, are articulated as follows:

"These houses are severely damaged and they qualify to be declared dilapidated dwelling units and can collapse at any time, which as a result are hazardous to provisions of safe living conditions and environment.

The houses of 36 square metres are divided with a wall in between which means that the tenant has one bedroom with a kitchen which also serves as a living room. There is only one window from one side and the bedroom has no window.

According to the National Building Regulations, Regulation 0400, a bedroom should be 6 square metres for habitable space, but in this instance the house is not meeting the minimum requirements. In some of these houses the foundation walls are not firmly attached to the ground. The attached pictures show the structures look like (sic) as well as some structural defects. ..."

24. The poor condition of the houses is common cause.¹⁰
25. The application launched by the applicant in May 2009 was directed at prohibiting the Municipality and the construction

¹⁰ Replying affidavit: para 37.1 p 213

company from commencing with installation of engineering services to these properties. It is important to make the differentiation between installation of engineering services and demolition of the hostels.

26. Installation of services commenced in close proximity of erf 1441 of Thlabane Extension 1. I draw attention to the fact that it was never intended by the Municipality to demolish any houses without consent and without providing alternative accommodation.¹¹ The implementation of the construction activities were, however, based on a long-protracted process wherein the community participated in the process to deliver low cost housing to a huge community.
27. The process formally began on 24 August 2004 when the mayoral committee of the Municipality approved the redevelopment of Thlabane Female Hostel.¹² The background to this decision should be considered against the Municipality's obligation to provide a fast-growing community with low cost housing. The Rustenburg

¹¹ Answering affidavit: para 19.2 p 67

¹² Founding Affidavit: application for leave to appeal annexure FA13 p 347

area is a fast-growing urban area surrounded by large mines in the immediate vicinity of the town. There is clearly a shortage of land to accommodate high density development such as redevelopment of the Thlabane Female Hostel. It was therefore a logical decision taken by the Municipality through this densification process to optimise use of its own land in a township already proclaimed.¹³

28. In order to obtain funds from the Housing Department of the North West province, the Municipality is bound to comply with the Housing Code, which is a government objective to undertake housing development in terms of the Housing Act, No. 107 of 1997 ("the Housing Act"). Chapter 10 of the Housing Code provides for the redevelopment of existing hostels situated in townships. The Housing Code provides in general that single-sex hostels such as Thlabane Female Hostel have to be upgraded in a participation process, as is defined in Chapter 10. There is a dispute as to whether the Municipality has complied with the requirements of the Housing Code.

¹³

Answering affidavit: para 19.3 p 67

29. From May 2005 to February 2009, several meetings took place.¹⁴ In summary, the applicants took part in the public participation process until February 2008. This was a critical period in which the development proposals for the Thlabane Female Hostel and the implementation of the housing policies of the Municipality were conveyed to the community and the applicants.
30. It is common cause that the first applicant was elected to represent the Thlabane Hostel residents on a so-called "local negotiations group" referred to as a "LNG". She participated in this process until February 2008.
31. In the Municipality's answering affidavit it does not refer to meetings and details of discussions which took place in the period during 2006 and 2007. The applicants deal with these negotiations in their replying affidavit with reference to meetings which took place in this period.¹⁵

¹⁴ Answering affidavit: para 19-10 to 19.57, pp 70-81; Replying affidavit: para 46-70 pp 218-226; Leave to appeal: Founding affidavit: paras 31-62 pp 291-300

¹⁵ Answering affidavit: para 14.5 - 14.11, pp 200-202

32. In this period it became clear to the applicants that the Thlabane Female Hostel would be demolished to make way for higher-density family units; the proposed units to consist of 83 family units.¹⁶
33. In order to give effect thereto, the construction of the 83 family units would have to take place within a relatively short period of six months.
34. Persons who would be affected by the construction, could apply for RDP houses.
35. The applicants were assured that no one would be removed from the existing dwellings before completion of RDP houses were allocated to them.
36. Due to the fact that some of the affected parties contended that they held ownership of the land through a Deeds of Grant in terms of the provisions of the Native Trust and Land Act, Act 18 of

¹⁶ Answering affidavit: para 19.42.1, p 77; Replying affidavit: para 14.8, p 201 and para 65, p 223

1936, these persons were called upon to provide proof of such ownership.

37. The applicants were assured that the newly built units would be rented out at affordable prices and the affected parties were encouraged to apply for RDP housing as this housing would be free and in certain specified circumstances ownership would be granted to them provided the requisites for ownership were met. The RDP houses were to be erected in Karlien Park, an RDP development within the first respondent's housing program and was offered to the affected parties as they were not happy with the RDP project in Seraleng.
38. At the meetings the attendees were reminded of the fact that the Municipality's consultation doors were open to anyone who wished to consult with officials in regard to any issue relating to the redevelopment project.
39. In response to the call for proof of ownership by way of Deed of Grant, a number of occupants presented the first respondent therewith. Not one of the applicants, however, are holders of a

Deed of Grant and can claim ownership to property in Thlabane Extension 1.¹⁷

40. It is common cause that between February 2008 and February 2009 the relationship between the applicants and the Municipality broken down totally.
41. What the Municipality endeavoured to implement by its housing program was to provided access to housing to persons with no income and to people with different classes of income. Housing would therefore be provided according to this criteria.¹⁸
42. The applicants were not satisfied with the fact and failed to apply for the housing offered to them.
43. The Municipality offered accommodation to people who can afford to pay a rental for premises, i.e. to those earning in excess of R2 500,00 per month.

¹⁷ Answering affidavit: para 19.42 - 19.48, pp 77-79

¹⁸ Answering affidavit: para 19.17 - 19.29 pp 72-73

44. In respect of the other affected parties, the Municipality offered alternative accommodation to those people who did not qualify to occupy the rental premises as a result of their income.
45. The alternative accommodation was first tendered in a township called Seraleng, and later the township of Karlien Park in order to satisfy the complaints. The applicants were dissatisfied with the decision of the Municipality and derailed the process after February 2008.
46. The applicants' stance in this respect can be summed up from their replying affidavit where they state as follows:

"As long as the upgrading / renovation of our houses are to our benefit, we do not have a problem with any proposed upgrading/ renovation of the area."¹⁹

Their reasoning appears to be based on the following conclusion:

"We have never had security of tenure in the past. With advent of the new South Africa we were hopeful of getting ownership of our houses, our hopes have been sadly misplaced."²⁰

¹⁹ Replying affidavit: para 54 p 220

47. It is against this background that the urgent application was launched by the applicants.

DECISION OF THE COURT A QUO AND APPLICANTS' PROSPECTS OF SUCCESS ON APPEAL

48. It is contended on behalf of the applicants that the Court erred in the following respects. The relief claimed in the urgent application - not to interfere with the applicants' peaceful possession - was final interdictory relief. The specific acts which the applicants sought to interdict were:

- 48.1. entry upon the premises;
- 48.2. demolition of structures on the properties;
- 48.3. threats against the applicants.

The applicants had no legal basis for their occupation

49. The Court did not make a finding that the applicants had no legal basis for their occupation. The finding in this respect reads as follows:

²⁰ Replying affidavit: para 60 p 222

"... The applicants are currently occupying the said dwellings without any contractual basis therefor."²¹

50. The contention of the applicants in this respect, that the Court made a finding as to the legal basis for their occupation is factually incorrect.
51. The Court effectively found, when considering the applicant's clear right, that it was the right to "remain and live peacefully" on the property that needed protection.²²
52. The conflicting rights of the parties, namely the applicants' right to privacy to remain in the hostel on the one hand was weighed up against the Municipality's right to enter onto the land in order to install engineering services to property belonging to the North West Province.
53. The legal basis for the reason why the applicants occupied the premises and the manner in which the Municipality's housing policies are applied were not part of the *lis* between the parties,

²¹ Judgment: para 11 p 308

²² Judgment: para 28 p 318

nor was it applied when the applicants' "clear rights" were considered.

54. The Court *a quo* was not called upon to declare the rights of the applicants in the housing policy.
55. Within this context, the Court *a quo* made the following finding:

"The applicants right to privacy and to remain in the structures on the stands in the meantime have not been affected by the construction activities."²³

56. The applicants rights were measured not as an "owner" but as an "occupier", which is factually correct.
57. The applicants' cause of action was never that of an owner. Similarly the protection of informal land rights were never considered, due to the fact that it did not form part of the applicants' cause of action.

²³ Judgment: para 28 p 318

58. The applicants' right to privacy and to remain in the houses were acknowledged. This acknowledgement related directly to the two constitutional issues raised in these proceedings.

Spoliation

59. The conduct of the Municipality to install engineering services on its own land only affected the applicants' relief to prohibit the Municipality to enter onto the property for this purpose.
60. The facts relating to the relief were not pleaded in the context of a spoliation claim. The relief sought was final in nature and, in general terms, spoliation orders are final.
61. The relief claimed was also not directed at any deprivation of possession.
62. The Municipality's general obligation to maintain and install engineering services can hardly be frustrated by reliance on the

principle of spoliation. Spoliation implies a deprivation and not a mere disturbance of possession.²⁴

63. The factual basis for this claim of spoliation was not part of the applicants' cause of action. If that would have been the case, the Municipality's specific rights to maintain and install engineering services in the township would have been pleaded.

Alternative remedy

64. The administrative process to provide housing to a municipality's community and the process to give effect thereto, should not be confused with the Municipality's decision to commence with the redevelopment program. The decision of the Municipality is not included in the record. It reads as follows:

"MINUTES COUNCIL : 30 AUGUST 2004 REDEVELOPMENT OF
MUNICIPAL FEMALE HOSTELS IN THLABANE

1. That the proposal for the redevelopment of Thlabane Female Hostels into high densities, new flats, family apartments be approved;

²⁴

Silberberg & Schoeman: The Law of Property, 5th ed., p 295

2. That the erven on which the Thlabane Female Hostel are currently standing, be consolidated.
 3. That the hostel redevelopment subsidies be applied for in respect of this project;
 4. that subject to the approval of No. 3 above, an architectural firm be deployed to design the redevelopment of Thlabane Hostels."²⁵
65. It appears that the applicants do not object to this decision. What the applicants object to is the decision during 2006 and 2007 to render housing in different classes and claim rental for the proposed new units in the development, which require a monthly income of not less than R2 500,00.
66. If the applicants felt aggrieved about this internal decision taken by a structure within the Municipality, an appeal process is provided for under the provisions of section 62 of the Local Government : Municipal Systems Act, No. 32 of 2000 ("the Systems Act").
67. The applicants are correct that a replying affidavit was filed and that the Court a quo made a finding that no replying affidavit was

²⁵

Answering affidavit: para 19.9; annexure AA6

filed. The fact that the court erred in this respect is in itself not sufficient for a finding that it is in the interests of justice to grant leave to appeal. In considering this "error" it is important to note that it is, in any event, trite that the applicants' locus standi and cause of action must be set out in the founding affidavit/s and not in the replying affidavit/s.

HOUSING CODE

68. The attack on the Municipality due to its apparent non-compliance of the Housing Code did not form part of the applicants' case in the founding affidavit which served before the Court a quo.
69. The nature of the Housing Code is that it forms part of the policy documents within the housing sector. The Municipality contends that it complied with the provisions of the Housing Code.²⁶
70. In the applicants' replying affidavit it is contended, for the first time, that the Municipality failed to comply with the principles of

²⁶ Answering affidavit: para 19.5 - 19.9, pp 68 and 69

the Housing Code.²⁷ In this respect, the main dispute between the parties are realistically not on this level. The relief claimed in the notice of motion does not deal with the application of the Housing Code and the pleadings filed by the respective parties have not been structured to take cognisance thereof.

71. The dispute as contemplated by the applicants lie, as far as the Housing Code is concerned, against the administrative function level of the Municipality to deliver housing. The non-compliance with the Housing Code relates to the Municipality's decision taken during August 2004. The Municipality's decision to redevelop the area where the Thlabane Female Hostels are situated into high-density units and the application of its housing policy are factual disputes between the parties which need to be resolved in the proper forum. A possible review of this decision did not form part of the case before the Court a quo.

²⁷

Replying affidavit: para 43 p 216

72. The general rule is that a matter should not go on appeal if the appeal does not bring an end to the dispute between the parties.²⁸
73. The Housing Code and the application thereof was not part of the applicants' claim or the relief sought.

Ownership

74. Claim to ownership to the respective houses comprising the Thlabane Female Hostel was first made in a letter from the applicants' attorney, L du Plessis, on 12 May 2009²⁹ and made as follows:

"7. We are of the opinion that the women need to get title deed(s) of the property based on the following:

7.1 In terms of the upgrading of land Tenure Rights Act 112 of 1991, which is to provide for the upgrading and conversion into ownership of certain rights granted in respect of land, any land tenure right mentioned in

²⁸ See *Van Niekerk v Van Niekerk* 2008 (1) SA 76 (SCA) at 78B-E - where the general rule is stated as follows: "(6) In considering the question of appealability, the consideration is that it is undesirable to have a piecemeal appellate disposal of the issues in litigation and that it is advisable to limit appeals to certain orders; ... (7) Generally speaking, the balance of convenience more often than not requires that the case be brought to a conclusion at the first level and the whole case then be appealed. ..."

²⁹ Founding affidavit: annexure "H", p 26

schedule 1 and which was granted in respect of any erf or any other piece of land in a formalised township, shall be converted into ownership.

7.2 Schedule 1(1) mentions any Deed of Grant or any right of leasehold as defined in proclamation 293 of 1962.

7.3 Many of the women have certificates of occupation of a letting unit, issued under proclamation 293 of 1962.

8. Our instructions are to demand from you:

8.1 An undertaking that you will not continue with the construction plus renovation of the women's houses.

8.2 That the houses be transferred to our clients in title."

75. As appears from this demand, the applicants' claim to ownership is based on certificates of occupation issued to "many of the applicants".

76. In the replying affidavit two certificates of occupation were annexed relating to erven 1455 and 1375.³⁰ The remaining applicants were apparently unable to find their occupation certificates.

³⁰

Replying affidavit: para 6.1 and 6.2 p 197

77. In the application to the Court a quo and in the application for leave to appeal, the claim to ownership was not seriously repeated.
78. The applicants contend that the possible entitlement to ownership should have been applied and investigated in the application of the Housing Code.
79. Due to the importance of the Deeds of Grant, it is common cause that the Municipality has called for these documents in the redevelopment process of Thlabane Female Hostel.³¹
80. The aspects relating to ownership require a ventilation of facts and the effect thereof in respect of proclamation R.293 of 1962 in respect of this specific township.³²
81. A successful claim of ownership will have a direct effect on the redevelopment of the Thlabane Female Hostels and the proposed 83 family units.

³¹

Answering affidavit: para 19.3 p 77

³²See *Member of Executive Council Responsible for Local Government and Finance, KwaZulu-Natal v North Central and South Central Local Council Durban and 18 Others* [1999] 3 All SA 5 (N)

82. The applicants have not seriously pursued this claim since 2009. In the premises such a claim, if it exists, should be easily ventilated through an application for a declarator in respect of the applicants' rights. In this context, it is contended that the issue with regard to ownership by the applicants is not a triable issue in this format.

CONSTITUTIONAL ISSUES RAISED

The Constitutional issue raised refers in the first instance to section 25(7) which reads as follows:

"(6) **Property**

A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress."

83. This provisions should be read with section 25(1), which reads as follows:

"(1) No-one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property."

84. When the urgent application was launched there was no deprivation of property as envisaged in section 25(1) of the Constitution. If the applicants contend that any deprivation took place when the decision was taken to redevelop the Thlabane Female Hostels these contentions, and facts upon which they now seek to rely, were not ventilated in the Court a quo.
85. Without a detailed factual ventilation of the allegation of deprivation, it is impossible to deal therewith. The aspect of ownership was not seriously relied on when the application was launched.
86. At all stages the applicants constitutional rights were recognised by the Municipality and by the Court a quo. The applicants' right to property was recognised in the finding in respect of the applicants' clear right.

Housing

87. The Constitutional aspect on which the applicants rely in this regard reads as follows:

"26. **Housing**

- (1) Everyone has a right to have access to adequate housing.
- (2) ...
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions."

88. Similarly, the eviction and demolishing of the properties were not ventilated or decided upon in the Court a quo. Although the current stalemate between the applicants and the Municipality might result in orders to this effect, the Municipality has throughout tendered alternative accommodation.

INTERESTS OF JUSTICE

89. As stated above, as far as Constitutional issues are concerned, the factual bases were not ventilated in the Court a quo and

consequently the Constitutional Court will act as the court of first instance. It is an accepted principle that this Court will not ordinarily act as a court of first instance.³³

90. The applicants' prospects of success on the merits was weighed and considered by both the Court a quo and the Supreme Court of Appeal. In both instances the application for leave to appeal was dismissed. This is in itself an indication that the applicants' have no prospects of success.³⁴

91. Even in circumstances where the Municipality has taken a decision to redevelop the Thlabane Female Hostel and further taken a decision that only successful applicants in their housing project will be entitled to qualify for the proposed family units to be erected, can the existing dilapidated units in which the applicants live not be demolished without a court order. This also relates to the eviction of the applicants, which will have to precede any demolishing of these units.

³³ See *National Gambling Board v Premier KwaZulu-Natal and Others* 2002 (2) SA 715 (CC), para [38]; *Wallach v High Court of SA Witwatersrand Local Division* 2003 (5) SA 273 (CC), para [7]

³⁴ See *Xinwa and Others v Volkswagen SA (Pty) Ltd* 2003 (4) SA 390 CC para [17]

92. The applicants' claim to land rights and their right of access to housing are closely intertwined. Put differently, the stronger the applicants' right to land, the greater the prospect of a secure home. Thus the need to properly ventilate these issues.³⁵ The accuracy of pleadings are also dependent upon the North West Province and the North West Housing Corporation. In circumstances where the eviction and demolishing of the Thlabane Female Hostel have not been ventilated prior to the current claim of ownership, it can be foreseen that these parties will participate in such litigation.

CONCLUSION

93. In the circumstances, it is respectfully contended that the application for leave to appeal falls to be dismissed.

L G F PUTTER

Counsel for the first respondent

³⁵ *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) at para [19]

Chambers, Sandton

September 2012