

1. COUNSEL APPEARING

1.1 For the applicants:

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1.2 For the first respondent:

LGF Putter 011 324 0500
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2. THE NATURE OF THE PROCEEDINGS

This is an application for leave to appeal against the judgment of the North West High Court, Mafikeng per Hendricks J handed down on 15 September 2011 (*“the Order”*). Should leave be granted, the applicants pray for interdictory relief.

3. **THE ISSUES THAT WILL BE ARGUED**

The issue to be argued and determined is the nature of a municipality's obligations and duties under Chapter 10 of the Housing Code, which governs public sector redevelopments, and in particular whether the applicants are entitled to remain in their homes pending their consent to the proposed hostel redevelopment, and their voluntary removal, or an eviction order granted under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE") and section 26 of the Constitution.

4. **PORTIONS OF THE RECORD NECESSARY FOR DETERMINING THE MATTER**

The whole record is necessary for determining the matter.

5. **ESTIMATE OF DURATION OF ORAL ARGUMENT**

One day.

6. **SUMMARY OF ARGUMENT FOR THE APPLICANT**

6.1 The municipality was obliged to comply with the Housing Code in undertaking housing developments. Chapter 10 of the Housing Code provides for the redevelopment of existing hostels situated in townships.

- 6.2 In its actions, the municipality did not follow the principles, guidelines or standards prescribed by the Housing Code.
- 6.3 It did not comply with the principles applicable to such a redevelopment, including the requirements:
- 6.3.1 of a participative process, with hostel dwellers engaging at the highest level of decision making,
 - 6.3.2 that all hostel residents are ordinarily eligible for accommodation under such a redevelopment scheme – the determination of eligibility would also have required the municipality to consider the applicants' status as occupiers,
 - 6.3.3 to compile a socio-economic survey of hostel residents (which had to be undertaken as a pre-condition for an application in terms of Chapter 10), and
 - 6.3.4 the principle of displacement - redevelopment applications would only be considered if alternative accommodation was secured as well as the acceptance of such accommodation by displacees.

- 6.4 Furthermore, the municipality did not comply with the requirements of section 26(3) of the Constitution, as it threatened the demolition of the applicants' homes which was not authorised by a court order.
- 6.5 Although the High Court's order amounted to an eviction order, there was no enquiry by the court into the relevant circumstances (including the personal circumstances of the applicants).
- 6.6 The appropriate response of the High Court ought to have been to grant the applicants the interdictory relief sought and to order the municipality to comply with provisions of the Housing Code, and obtain the applicants' consent to the development alternatively to obtain an eviction order prior to attempting to demolish their homes.

7. **MAIN AUTHORITIES ON WHICH THE APPLICANTS WILL REPLY**

The authorities on which particular reliance will be placed during oral argument, include those that are highlighted by asterisks in the list of authorities.

N VAN NIEUWENHUIZEN (SC)

M O'SULLIVAN

Counsel for the Applicants

Chambers

PRETORIA and CAPE TOWN

25 September 2012