IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG NORTH, HIGH COURT PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.
05.05.10
DATE SIGNATURE

05/05/2010
CASE NO: 12289/2010

In the matter between:

PPC AGGREGATE QUARRIES (PTY) LTD	Applicant
and	
THE PEOPLE WHO INTEND INVADING THE REMAINING EXTENT OF THE FARM SKURWEPLAAS 353, J.R., TSHWANE, GAUTENG.	First Respondent
THE UNKNOWN PEOPLE WHO INVADED THE REMAINING EXTEND OF THE FARM SKURWEPLAAS 353, J.R., TSHWANE, GAUTENG	Second Respondent
THE CITY OF TSHWANE METROPLITAN MUNICIPALITY	Third Respondent

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J U D G M E N T

MAKGOKA, J:

[1] This is an application brought on urgency by the applicant, seeking against the first and second respondents, the relief stated in the notice of motion as follows:

> 2. that a *rule nisi* be issued, with return day the 16th of March 2010 at 10H00 inviting any affected or interested person to give reasons why the following interim order should not be made:
>
> 2.1 that the First Respondents be interdicted from invading and taking possession of the property known as the Remaining extent of the farm Skurweplaas 353, J.R., Tshwane, Gauteng ("the property") and more specifically the following:
>
> 2.1.1 from invading and erecting houses/structures on the said property;
>
> 2.1.2 from erecting houses/structures on the said property;
>
> 2.1.3 from attempting to prevent the Sheriff of the above Honourable Court and/or the Tshwane Metro Police and/or the South African Police, from carrying out the duties in preventing illegal invasion of the said property;
>
> 2.1.3.1 carrying out their duties in preventing the unlawful invasion and/or occupation of the said property;
>
> 2.1.3.2 taking any steps to prevent the construction of any structures on the properties.
>
> 2.2 That the sheriff of the above Honourable Court and/or Tshwane Metro Police and/or the South African Police Services be mandated

and requested to assist the Applicant in its activities and endeavours to prevent the unlawful invasion and/or occupation of the property and take the necessary steps preventing same.

3. That the interim order referred to in paragraph 2 above has immediate effect pending the return day referred to above.

4. That the Sheriff be authorised to serve the order, together with the notice of motion, founding affidavit and annexures on the First and Second Respondents in the following manner:

   4.1 by attaching the order together with the notice of motion and founding affidavit and annexures on a notice board to be erected on the property;

   4.2 that a copy of the order, together with the notice of motion and founding affidavits, be available for inspection for any Respondent intending to oppose this application at the office of the Applicant's attorney of record;

   4.3 that the order and the notice of motion (not the founding affidavits) be read out loudly over a public address system in the English language and in the Northern Sotho language and for that purposes, if necessary, to make use of translators from the English language in the last mentioned language.

5. That the sheriff of the above Honourable Court and/or Tshwane Metro Police and/or the South African Police Services be mandated and requested to assist the Applicant in serving the notice of motion, founding affidavit and order, as the case may be, in terms of the procedure set out above.

6. That any Respondent or person opposing this application be ordered to pay the costs of the application, jointly and severally with others.

[2] The application, which was opposed by the first and second respondents, came before Van der Byl AJ on 2 March 2010, in the urgent court, on which occasion a *rule nisi*, returnable on 16 March 2010, was issued, incorporating prayers 2 - 6 of the notice of motion as more fully set out in the preceding paragraph.

[3] On the return date, 16 March 2010, the *rule nisi* was extended to 23 March 2010. On that occasion, the third respondent was ordered to file a report to the court by 18 March 2010 at noon, which report had to set out the following:

> "What steps it (the third respondent) has taken and steps it intents or is able to take in order to provide alternative land and/or emergency accommodation for the occupiers of the Remaining Extent of the farm Skuwerplaas 353 ("the property") in the event of them being evicted and when such alternative land or accommodation can be provided;
>
> What alternative land and/or shelters they have available for First and Second Respondent should they be so evicted;
>
> What steps can be taken to alleviate the effects of the current occupation of the property if the occupiers are not immediately evicted and pending alternative land or accommodation being made available."

[4] The matter was therefore before me in the urgent court on the extended return date of the rule nisi granted on 2 March 2010. After hearing argument, I made an order confirming paragraph 2 of the *rule nisi*. In addition thereto I made the following ancillary order:

> "3. That the Third Respondent be ordered to:

3.1 Conduct a full audit of the personal particulars of the unlawful occupiers of the Applicant's property present thereon at 24th March 2010 at 14H00 within a period of seven (7) days hereof and to present it to the Applicant and First and Second Respondents' legal representatives within seven (7) days thereafter;

3.2 That the Third Respondent provides the unlawful occupiers referred to in the audit access to land on or before 31st May 2010.

4. That irrespective of whether the Third Respondent complies with its obligations referred to in paragraph 3 above or not, that the Applicants will be entitled to proceed and to evict the unlawful occupiers from the Applicant's property known as the Remaining Extent of the farm Skurweplaas 353, J.R., Tshwane, Gauteng on the 1st of June 2010.

5. That the sheriff of the above Honourable Court and/or Tshwane Metro Police and/or the South African Police Services be mandated and requested to assist the Applicant in its activities and endeavours in executing the task of evicting the First and Second Respondents from the Applicant's property. "

[5] When I made the above order, I indicated to the parties that due to the pressurised nature of the urgent court, I did not intend to state my full reasons therefor, and that any party desiring such reasons, may direct a request to my registrar in that regard. The first and second respondent, by way of a formal notice in terms of rule 49 (1) (c) of the Uniform Rules of Court, filed such a request on 1 April 2010, which notice was laid before me on 12 April 2010, on resumption of the second term. The following are my reasons for the order I made on 24 March 2010.

[6] Skuwerplaas is a portion of Mooiplaats farm, situated on the west of Atteridgeville Township. The others are portion 15, 18 and 25. Portion 15 is also owned by the applicant, whereas portion 25 is owned by the an entity named Golden Thread (Pty) Ltd. Portion 18 is owned by the municipality. This is where an informal settlement called Itireleng is situated. Portions 15, 25 and Skuwerplaas all surround Itireleng informal settlement.

[7] During October 2009, individuals unlawfully occupied portion 15. The applicant obtained an order on 8 December 2009 for the eviction of the unlawful occupiers. On the day the occupiers were evicted, namely 11 January 2010, the unlawful occupiers simply crossed over to portion R/25 and commenced to erect shacks thereon. Portion R/25 is owned by an entity named Golden Thread (Pty) Ltd. When they were prevented Tshwane Metro Police from occupying R/25, simply crossed over onto Skuwerplaas, and began to erect shacks.

[8] As at 11 February 2010 there were 24 complete structures, 9 incomplete structures and 4 families preparing ground for settlement. By 15 February 2010 the number of complete structures was 29, incomplete structures at 9. The number of families preparing ground for settlement had increased to 15.

[9] This application brings into sharp focus, the ever-competing rights enshrined in the Constitution of the Republic of South Africa Act 108 of 1996, (“ the Constitution”) namely the equality right under ss 9 (1) and (2) on one hand and the right to adequate housing (s26), on the other.

[10] The general principles applicable to matters such as the present, were comprehensively, and with customary lucidity, stated by Langa ACJ (as he then was) in *President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd (Agri SA and Others,* ***Amici Curiae*** *2005 (5) SA 3 (CC)*. The key principles (relevant to the present application), can be summarized as follows:

1. The State has an obligation, and a key role to play in resolving disputes between private land owners and unlawful occupiers;

2. It was unreasonable to expect a private entity to bear the State's obligation to provide unlawful occupiers with accommodation;

3. The problem of homelessness, a direct consequence of apartheid, legacy, should be addressed with progressive consciousness, underpinned by careful planning and fair procedures made known in advance to those mostly affected;

4. Land invasions should be discouraged as they have the potential to have serious implications for stability and peace, leading to anarchy.

[11] In the present case, the State, through the municipality, expressed its frustrations at not been able to marshall resources in an orderly and dignified manner, as a result of lack of co-operation and untruthfulness on the part of the occupiers. In an affidavit attested to by Mr. Rakgoale, the Executive Director in the

Housing and Human Settlement Department, City of Tshwane Metropolitan Municipality, he states the following at paragraph 4.2 of his affidavit:

> "This (sic) invasions are systematic and pre planned. There is a common element of "fraud and deceit". People are made to pay before they are allowed to put-up their shacks. People who receive the money are neither owners of the property nor officials of the municipality. "

[12] In paragraph 3 he continues:

3.1 "The Municipality officials have been collecting data of people living in all informal settlements…"

3.2 The process of data collection is very slow. Some of the obstacles are due to wrong information and fear. People whose residential status in the country is questionable are not willing to give the correct information or give no information at all.

3.3 Some people are found to be earning in excess of R3 500.00 and already on the housing waiting list.

[13] In paragraph 5 he concludes:

> "The Municipality cannot address the "plight" of faceless people. The alleged people "in need" do not provide personal required details in order for the Municipality officials to be able to determine if they qualify as "indigent and homeless people" without alternate homes."

[14] The frustration expressed on behalf of the municipality, is borne out by the paucity of information in the answering affidavit, purportedly on behalf of the occupiers. Mr. Sello Lucas Mogagane, is one of the occupiers. He deposed to an

answering affidavit on his own behalf and *"on behalf of all other occupants of Skuwerplaas"*. He states that there were about 80 shacks as at 12 March 2010 (the day he deposed to his affidavit).

[15] Mr. Mogagane stated his own personal circumstances as follows: he is 32 years old and unemployed, he lives in a shack on the occupied property with his wife. His wife, 27 years old and pregnant, works as a cleaner and ears R1 700.00 per month. He moved to portion 25 in November 2009 from Atteridgeville, where he was a backyard dweller paying R300.00 per month. He was one of the group evicted from portion 25 on 11 January 2010, who then simply moved over to Skurweplaas. Due to the continuous threats of eviction, he had to send his 7 year old child to his family in Mokopane, Limpopo Province.

[16] Mr. Mogagane fails to inform the court exactly who the unlawful occupiers are. It should be recalled in this regard that he purports to depose the answering affidavit on behalf of the occupiers. I do not expect him to set out the individual personal particulars of each occupier- an overview of their background would have sufficed.

[17] I was satisfied that the applicant had, at law, established a proper case for the eviction of the occupiers. There is no obligation on the applicant to see to the alternative resettlement of the occupiers. That aspect concerns the municipality and the occupiers. I would therefore grant an order for eviction. In order to facilitate an orderly and dignified eviction process, I am of the view that a period of two months should be sufficient for the municipality to discharge its constitutional

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duties towards the occupiers. The effect thereof is that the eviction is suspended for two months.

[18] One is acutely aware of the inherent danger that the nature of the order is such that prospective unlawful occupiers can use it to "jump the queue" with the hope that the municipality would be ordered to make land available upon illegal occupation of land. That should be discouraged and the apparent leaders of these communities should ensure that the message goes out there that the courts would not countenance disorder and anarcy, which are inimical to the spirit and purport and ethos of our Constitution.

[19] For the above reasons, I made the order on 24 March 2010.

T M MAKGOKA
JUDGE OF THE HIGH COURT