



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 22/5396

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

16/3/2022
DATE

J Moorcroft
SIGNATURE

In the matter between:

MIHLOTI, ROSE MILANI

First Applicant

VUYISILE, NDINISA HACKLY

Second Applicant

and

EKURHULENI METROPOLITAN POLICE DEPARTMENT

First Respondent

**CITY OF EKURHULENI METROPOLITAN
MUNICIPALITY**

Second Respondent

JUDGMENT

MOORCROFT AJ:

Order

[1] The application was argued on 8 March 2022 and I handed down the following order on 9 March 2022:

- “1. The application is dismissed;
2. The applicants are ordered to pay the costs of the application, and are liable jointly and severally the one paying the other to be absolved.”

[2] The reasons for the order follow below.

Introduction

[3] The applicants' approached to the Court on an urgent basis for the following relief:

1. Dispensing with the forms and service provided in the Uniform Rules of the court and condoning non-compliance with the uniform rules of the court relating to service and time period in terms of Rule 6 (12).
2. Interdicting the first and the second Respondents from evicting the applicants from the property owned by the deceased farmer without a court order.
3. To direct the respondents to compensate each individual who their shacks were demolished and burned a sum of R2000.00 each.
4. The Respondents be directed to restore the applicants.
5. In the event that the Respondents evict the Applicants the Respondents must provide an alternative accommodation with immediate effect.
6. The court to direct the Respondents not to bypass the proceedings of the appeal court, in the matter still pending.
7. Granting further and alternative relief deem fit.
8. Costs of suit jointly and severally against the Respondent who oppose the application.

[4] In the founding affidavit reference is made to a number of applicants listed in separate documents, but only two applicants can be identified namely the deponent to the founding affidavit and the deponent to the confirmatory founding affidavit. The applicants are listed as follows in the application:

- 
1. Jabulani Mpfumo
 2. Dulan Shipalana
 3. Sihle
 4. Sphe
 5. Jimmy
 6. Mtshweni Phillimon
 7. Khaya
 8. Jabu
 9. George Maluleke
 10. Mike Mashala
 11. Rose Milani

[5] The correct name of the first respondent is the Land Invasion Unit and it is an organ of the second respondent, the City of Ekurhuleni Metropolitan Municipality. The incorrect citation does not give rise any prejudice.

[6] The deponent to the founding affidavit informs the Court that she occupied the land in question in April 2021. The occupiers were then evicted on various dates between October 2021 and February 2022.

[7] The deponent alleges that the land in question was owned by a farmer, the late Erasmus who vacated and abandoned the farm in 1992 when all of his possessions were stolen. The land was then vacant from 1993 until 2021 when the deponent occupied it.

[8] If the land was indeed the property of a third party, the third party or his/her estate would have to be cited as a respondent in the application. I am however advised by

counsel for the respondents and this also appears from the answering affidavit that the property belongs to the second respondent and is Council land.

[9] The applicants do not meaningfully describe the land in question. The second respondent filed an answering affidavit confirming that the application relates to erven 1820, 1821 and 1822 Esselen Park Ext 3. The land was vacant. The respondent's deponent (the Acting Divisional Head, Corporate Legal Department) denies that the unlawful occupiers were ever in undisturbed possession of the property.

[10] Land invasion is a frequent occurrence in Ekurhuleni and the second respondent established a specialised unit called the Land Invasion Unit. This would be the real name of the entity cited as the first respondent, but it is merely an organ of the second respondent, and need not be cited separately.

[11] The Land Invasion Unit patrols the second respondent's land on a daily basis to intercept people attempting to invade the land. In this fashion members of the Land Invasion Unit prevented unlawful occupiers from unlawfully erecting illegal structures on the land during January 2022.

[12] The applicants do not have a clear right, or even a *prima facie* right for the purposes of an interim interdict, to occupy the land in question. They do not allege or describe any such right to occupation. The deponent to the answering affidavit points out that even on the applicants' own evidence, they occupied the land without any entitlement to do so.

[13] There are a number of other problems with the relief sought. The description of the land as the 'land of the deceased farmer' cannot be sensibly interpreted. In prayer 3 damages are claimed on application but no case is made out for damages and in

any event, motion proceedings in the Urgent Court are not a suitable forum for a damages claim. In prayer 4 the applicants seek an order that the respondents be directed to “restore the applicants” and the prayer is too vague for sensible interpretation. Similarly, prayers 5 and 6 cannot be meaningfully interpreted.

[14] The applicants also elected not to file a replying affidavit dealing with the pertinent allegations made in the answering affidavit.

[15] I therefore made the order as set out above.



J. MOORCROFT

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG**

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **16 March 2022**

ATTORNEY FOR THE APPLICANTS:

Ms M K Bareki

INSTRUCTED BY:

Kagiso Rakhuba Attorneys

COUNSEL FOR RESPONDENTS:

S Zimema

INSTRUCTED BY:

Renqe Fa Inc Attorneys

DATE OF THE HEARING:

8 March 2022

DATE OF ORDER:

9 March 2022

DATE OF JUDGMENT:

16 March 2022