

**IN THE HIGH COURT OF SOUTH AFRICA**  
**FREE STATE DIVISION, BLOEMFONTEIN**

Case no: **183/2023**

REPORTABLE: YES/NO

OF INTEREST TO OTHER JUDGES: YES/NO

CIRCULATE TO MAGISTRATES: YES/NO

In the matter between:

**MEMBER OF THE EXECUTIVE COUNCIL OF THE** Applicant  
**DEPARTMENT OF HUMAN SETTLEMENT: FREE**  
**STATE**

and

**ANNA THORIA CHILIZA** 1<sup>st</sup> Respondent

**LONDEKILE CHILIZA** 2<sup>nd</sup> Respondent

**MAVELA** 3<sup>rd</sup> Respondent

**OUPA MOTHOOSELE** 4<sup>th</sup> Respondent

**AZOLA SAJINI** 5<sup>th</sup> Respondent

**THABISA MVUMVU** 6<sup>th</sup> Respondent

**FEKILE BUTHELEZI** 7<sup>th</sup> Respondent

**SESI NKOLI** 8<sup>th</sup> Respondent

|                                 |                             |
|---------------------------------|-----------------------------|
| <b>MALOLO</b>                   | 9 <sup>th</sup> Respondent  |
| <b>TSHOKOLO NKOLI</b>           | 10 <sup>th</sup> Respondent |
| <b>NHLAKANIPHO</b>              | 11 <sup>th</sup> Respondent |
| <b>JAMES JONAS</b>              | 12 <sup>th</sup> Respondent |
| <b>MOSEHLE SENKU</b>            | 13 <sup>th</sup> Respondent |
| <b>FEKILE</b>                   | 14 <sup>th</sup> Respondent |
| <b>MATSEBE RECKS MABONQWANA</b> | 15 <sup>th</sup> Respondent |
| <b>CARLY</b>                    | 16 <sup>th</sup> Respondent |
| <b>SHAUN</b>                    | 17 <sup>th</sup> Respondent |
| <b>CONNY</b>                    | 18 <sup>th</sup> Respondent |
| <b>MATSEKO MOHANOE</b>          | 19 <sup>th</sup> Respondent |
| <b>GLEN RAMASHU</b>             | 20 <sup>th</sup> Respondent |
| <b>ADONISI</b>                  | 21 <sup>st</sup> Respondent |
| <b>MATSOBANE</b>                | 22 <sup>nd</sup> Respondent |
| <b>MJOLI NKANYISO</b>           | 23 <sup>rd</sup> Respondent |
| <b>SELLO LETJHIKI</b>           | 24 <sup>th</sup> Respondent |

|                                       |                             |
|---------------------------------------|-----------------------------|
| <b>MALONDI</b>                        | 25 <sup>th</sup> Respondent |
| <b>MAVELA</b>                         | 26 <sup>th</sup> Respondent |
| <b>FREEDOM</b>                        | 27 <sup>th</sup> Respondent |
| <b>WELCOME KHONTO</b>                 | 28 <sup>th</sup> Respondent |
| <b>PALESA MOKATSANYANE</b>            | 29 <sup>th</sup> Respondent |
| <b>TOM</b>                            | 30 <sup>th</sup> Respondent |
| <b>NTOMBI</b>                         | 31 <sup>st</sup> Respondent |
| <b>NKUMBI</b>                         | 32 <sup>nd</sup> Respondent |
| <b>MAFA MSIMANGA</b>                  | 33 <sup>rd</sup> Respondent |
| <b>MATSHEPO</b>                       | 34 <sup>th</sup> Respondent |
| <b>RADEBE</b>                         | 35 <sup>th</sup> Respondent |
| <b>CHILIZA</b>                        | 36 <sup>th</sup> Respondent |
| <b>TEBOHO</b>                         | 37 <sup>th</sup> Respondent |
| <b>THANDAZA</b>                       | 38 <sup>th</sup> Respondent |
| <b>METSIMAHOLO LOCAL MUNICIPALITY</b> | 39 <sup>th</sup> Respondent |

**CORAM:**                      **P R CRONJé, AJ**

**HEARD ON: 13 APRIL 2023**

**DELIVERED ON: 23 MAY 2023**

**JUDGMENT BY: P R CRONJé, AJ**

This judgment was handed down electronically by circulation to the parties' representatives by email, and release to SAFLII. The date and time for hand-down is deemed to be 11h00 on 23 May 2023.

[1] The Applicant brought an application for eviction of the First to Thirty-Eighth Respondents from various properties situated in Sasolburg. It is alleged that all thirty-eight respondents are unlawful occupiers of the respective erven.

[2] When the matter came before me on 13 April 2023, I informed Adv Mofokeng, for the Applicant, that I could not find a return of service on the Municipality (Thirty-Ninth Respondent). After taking instructions it appeared that service was not effected on the Municipality.

[3] I also conveyed my concern that there does not appear to be returns of service on a number of the Respondents. There are in fact only sixteen (16) returns of service, whereas there are thirty-eight Respondents who are allegedly in unlawful occupation of the erven.

[4] A perusal of the file furthermore indicated that VDW Attorneys withdrew as attorneys of record of the First to Thirty-Eighth Respondents excluding the Eighth and Tenth Respondents. The notice was filed with the Registrar of this Court on 25 November 2022. The notice *inter alia* states:

*"KINDLY TAKE FURTHER NOTICE that the First to Thirty-Eighth Respondents excluding the Eighth and Tenth Respondent, last-known*

*address is c/o the Sixth Respondent residing at House 4[...], RDP House, Z[...], Sasolburg with electronic mail address: [tf\[...\]@gmail.com](mailto:tf[...]@gmail.com) and [a\[...\]@gmail.com](mailto:a[...]@gmail.com).”*

[5] On 31 March 2023, Legal Aid South Africa filed a notice of appointment as attorneys of record on behalf of the Sixth, Fifteenth and Thirty-Second Respondents.

[6] Mr Geyer of Legal Aid South Africa, Bloemfontein office, informed me that he does not have instructions to argue the matter as Mr N H Prinsloo of Legal Aid South Africa at Vereniging is the attorney who deals with the matter. Mr Prinsloo is also the author of the Heads of Argument on behalf of the three Respondents.

[7] The Sixth, Fifteenth and Thirty Second Respondents were present at Court. I requested Mr Geyer to establish from the Sixth Respondent whether her address is the address which the other Respondents, who were not present at Court, elected to receive notices. Mr Geyer informed me that it is not the position.

[8] Rule 16(1) of the Uniform Rules of Court provides:

*“If an attorney acts on behalf of any party in any proceedings, such attorneys shall notify all other parties of this fact and shall supply an address where documents in the proceedings may be served.”*

[9] I could find no indication in the file that the other Respondents were informed of the withdrawal. As conveyed by Mr Geyer, the Sixth Respondent is not the representative acting on their behalf or who are mandated to receive papers for the other Respondents at her address.

[10] I requested that Advocate Mofokeng and Mr Geyer discuss the lack of service on the Municipality and other Respondents as well as the default of the other Respondents as they did not file Heads of Argument, but it appeared to me on the record that they still had interest in the application. I requested them to see whether

they would be able to structure some form of draft order for continuation of the matter. I requested feedback from them by 5 May 2023.

[11] Advocate Mofokeng subsequently prepared a memorandum, dated 5 May 2023, which was filed with my Registrar. Therein she reported that Ms Kebi, representing the State Attorney, and Mr Geyer exchanged contact details for exchanging information pertaining to the issues raised and to prepare a structure for the draft order. She informs that service was subsequently effected on the Municipality.

[12] It appears that the State Attorney had been trying to contact Mr Geyer, however, to no avail. No reply was received from Mr Geyer pursuant to my request. On 16 May 2023, Advocate Mofokeng prepared another memorandum informing me that both she and her attorney experience challenges to get hold of Mr Geyer and that his cell phone goes to voice mail. She would only be available to argue the matter on 20 July 2023.

[13] At date of this order, the return of service on the Municipality have not yet been filed.

[14] It is imperative that this matter be dealt with as soon as possible as it was already enrolled and postponed or removed from the roll since 3 February 2022.

## **ORDER**

[15] I therefore make the following orders:

1. The Application is postponed to 20 July 2023.
2. Leave is granted to the Applicant, if it deems it necessary, to amend its Notice of Motion and file supplementary affidavits, if any, on or before 15 June 2023.

3. Leave is granted to the Respondents to file supplementary affidavits, if any, on or before 23 June 2023.
4. Leave is granted to the Applicant, if it deems necessary, to file supplementary replying affidavits, if any, on or before 30 June 2023.
5. Leave is granted to the Applicant to file supplementary heads of argument by no later than 12:00 on 12 July 2023.
6. Leave is granted to the Respondents to file supplementary heads of argument by no later than 12:00 on 14 July 2023.
7. The Notice of Set-down shall be served on all the Respondents by the Sheriff. In the event that the Sheriff is unable to effect service, leave is granted that service be effected by attachment to the affected properties and by public address system.
8. There is no order as to costs.

**P R CRONJé, AJ**

On behalf of the Applicant: Adv R B Mofokeng  
Instructed by: Office of the State Attorney  
BLOEMFONTEIN

On behalf of Sixth, Fifteenth and  
Thirty Second Respondents: Mr W Geyer  
Legal Aid South Africa  
Bloemfontein

On behalf of other Respondents: No appearance