



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

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Application Number: 4214/2015

In the matter between:

FREE STATE SOCIAL HOUSING COMPANY

Applicant

and

JULIANA ROSSOUW

1st Respondent

JM MALAHA

2nd Respondent

ADAM CEASAR

3rd Respondent

ELIZABETH FARLAND

4th Respondent

PAULENE NAICKER

5th Respondent

SHALLOTE BLOM

6th Respondent

AARON SEBOKOLODI

7th Respondent

MATTHIEU DJEBI

8th Respondent

PULANE CHEGODI

9th Respondent

DISEBO MALOISANE

10th Respondent

MIRANDA B ASSON

11th Respondent

OUPA MESELANE

12th Respondent

THAKANE NDLONDLO T/TSULUBA

13th Respondent

LIBUSENG KHABO

14th Respondent

ELGIN FEMELE

15th Respondent

MOKAMOSHOT MOILWA

16th Respondent

MA MATSIE

17th Respondent

MOTHEO KUOAPE MOERANE

18th Respondent

SYLVESTER THAHANE

19th Respondent

MOGOS TWELDEMEDHIN

20th Respondent

THEMBA MAZIBUKO

21st Respondent

KOFI SIAW

22nd Respondent

THEMBA JONAS

23rd Respondent

T TSUNKE

24th Respondent

NTOMBIKAYISE MHALAMBI

26th Respondent

NTHAMA LITABE

27th Respondent

MARTINA VOOGT

28th Respondent

ANNETTE SELOMANE

29th Respondent

TESHOME FIRDE

30th Respondent

MALEFU NTHABI

31st Respondent

MAPASEKA OLIPHANT

32nd Respondent

MOHALE MATSUMA SM

33rd Respondent

K BOOM

34th Respondent

DAN KGOTHULE

35th Respondent

BANDILE MASUMBA

36th Respondent

MPHO MPEAKE

37th Respondent

MARIA LITHAKO/THULO

38th Respondent

NTHABELENG YAWA

39th Respondent

<u>VATISWA MALGAS</u>	40 th Respondent
<u>MAGRET MENONG</u>	41 st Respondent
<u>THULANI MAPHALALA</u>	42 nd Respondent
<u>ANDILE GALAMFANA</u>	43 rd Respondent
<u>EXCELL MLANDU</u>	44 th Respondent
<u>ISABELLA VIMBELA/THEBE</u>	45 th Respondent
<u>AZIZ LIMBABA</u>	46 th Respondent
<u>ANDRIAS MOLELEKI</u>	47 th Respondent
<u>ELIAS MOLOI</u>	48 th Respondent
<u>LERATOE NENE</u>	49 th Respondent
<u>SANJA PELSER</u>	50 th Respondent
<u>MELITA M MOTLAPING</u>	51 st Respondent
<u>ARON J RAPHUTSI</u>	52 nd Respondent
<u>MASABATHA MAKAE</u>	53 rd Respondent
<u>POTSO JANTJIE</u>	54 th Respondent
<u>KHWEJANE NTIMUTSE</u>	55 th Respondent
<u>NONTEMBEKO GUGU</u>	56 th Respondent
<u>SSM MOGOERA-LEEPILE</u>	57 th Respondent
<u>LEBOHANG MAPOTA</u>	58 th Respondent
<u>LESELWANE NTSHEKHE</u>	59 th Respondent
<u>THANDI NANGU</u>	60 th Respondent
<u>LORETTA MOHUTSIWA</u>	61 st Respondent
<u>GODFREY RIKHOTSO</u>	62 nd Respondent
<u>LEBOHANG SHONGWE MM</u>	63 rd Respondent
<u>TINY MOSHOU</u>	64 th Respondent
<u>VICTOR LEKHONE</u>	65 th Respondent
<u>THOLWANE METHOLA</u>	66 th Respondent
<u>UTOMO MAKHOBA</u>	67 th Respondent
<u>PAULUS CHAP</u>	68 th Respondent

<u>JULIA MOKHACHANE</u>	69 th Respondent
<u>NOZI NTULINI</u>	70 th Respondent
<u>BOITUMELO KEKANA</u>	71 st Respondent
<u>XHOLILE KUBHEKA</u>	72 nd Respondent
<u>DENEO POTSANE</u>	73 rd Respondent
<u>ELIAS RAPILE TSA</u>	74 th Respondent
<u>TRHEPISO LETOOANE</u>	75 th Respondent
<u>AS MOTSWERE</u>	76 th Respondent
<u>MC MONKHI</u>	77 th Respondent
<u>ELIAS DIRE</u>	78 th Respondent
<u>TEBOGO POOE</u>	79 th Respondent
<u>OUPA MONEI</u>	80 th Respondent
<u>SARAH KGONGWAANA</u>	81 st Respondent
<u>JOHANNA SPICKER</u>	82 nd Respondent
<u>SIVIWE THABATHA</u>	83 rd Respondent
<u>AZARIAL MOKEKI AM</u>	84 th Respondent
<u>EDWIN MAILE</u>	85 th Respondent
<u>KJ NKEANE</u>	86 th Respondent
<u>ALFRED BUSHULA</u>	87 th Respondent
<u>SIMANGELE TLADI</u>	88 th Respondent
<u>ANSLEN NGEULUE</u>	89 th Respondent
<u>ANNAH VAN ROOYEN</u>	90 th Respondent
<u>THANDI RADEBE</u>	91 st Respondent
<u>L MARIPE</u>	92 nd Respondent
<u>KENALEMANG JACK</u>	93 rd Respondent
<u>KITSO TIMENYANE</u>	94 th Respondent
<u>THANDI MAKHETHA</u>	95 th Respondent
<u>SIMON MOFOKENG</u>	96 th Respondent
<u>MG MOLELLE</u>	97 th Respondent

NOLENE HAAS

98th Respondent

SETAI MANGOELA SP

99th Respondent

MANGAUNG METROPOLITAN MUNICIPALITY 100th Respondent

JUDGMENT BY:

VAN ZYL, J

DELIVERED ON:

22 APRIL 2016

- [1] This application was instituted in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 ("PIE"), for the eviction of the 1st to the 99th respondents, as alleged unlawful occupiers of the Units in Phase 2 of the Brandwag Development, Brandwag, Bloemfontein.
- [2] The 100th respondent, the Mangaung Metropolitan Municipality ("the Municipality"), is the legal successor of all rights and obligations of the Bloemfontein Transitional Local Council and the Mangaung Local Municipality. I will therefore henceforth only refer to the Municipality without differentiating between the respective entities.

The salient facts of the applicant's case:

- [3] The Municipality is the registered owner of Erf 29469, Erf 29470 and Erf 29471, situated in Bloemfontein Extension 77. The Municipality and the Consortium consisting of Kopana Investments (Prop) Ltd and National Real Estate (Prop) Ltd concluded a certain Property Management Agreement, dated

21 May 2009, in terms of which the Consortium was appointed as the lawful agent of the Municipality for the management and maintenance of the Brandwag Project as defined therein. On 10 October 2009 the Municipality ceded, assigned and transferred all its rights and obligations in terms of the aforesaid Property Management Agreement to and in favour of the applicant, as cessionary without recourse, subject thereto that notwithstanding the aforesaid, the Municipality shall continue to fulfil and to carry out such obligations as may be required by legislation or State Policy guidelines, in conjunction with the applicant, to achieve the intent and purpose and implementation of the Property Management Agreement by the Consortium. A copy of the Deed of Cession (“the cession agreement”), with annexures thereto, is attached to the founding affidavit as annexure “B”. A performance agreement concluded between the Municipality and the applicant is one of the attachments.

- [4] During or about 9 July 2010 a Notarial Agreement of Lease (“the notarial lease”) concluded between the Municipality and the applicant was registered. In terms of the notarial lease the applicant leases the aforesaid erven from the Municipality from the effective date of 1 February 2010 until 31 January 2025. A copy of the notarial lease is attached to the founding affidavit as annexure “A”.
- [5] Both the aforesaid performance agreement and the lease agreement contain, *inter alia*, the following definitions:

“**Approved Project** means a social housing project in a

restructuring zone approved by a provincial government pursuant to an application for capital grant funding to undertake the acquisition, development, conversion or upgrading of buildings for social housing.”

“**Brandwag Project** means the approved project for the management, maintenance and refurbishing of the existing 351 municipal flats situated in the suburb called Brandwag, Bloemfontein located on certain land on the attached site layout plan number 399/02, attached hereto as Annexure “A”, as well as the design, build and development of approximately 592 new flats on the same land.”

“**Social Housing** means a rental or co-operative housing option for low to medium income households at a level of scale and built form which requires institutionalised management and which is provided by social housing institutions or other delivery agents in approved projects in designated restructuring zones with the benefit of public funding as contemplated in the Act (Social Housing Act, 16 of 2008).”

- [6] The Brandwag Project is therefore a social housing project and in terms of clause 7.1 of the lease agreement the applicant is obliged to develop the property by the construction of housing units and rental accommodation suitable for low to medium income households.
- [7] In terms of clause 4.6 of the Social Housing Policy for South Africa, approved in June 2005 and attached to the founding affidavit as annexure “C”, a person only qualifies for a social housing subsidy to lease a unit or flat in a social housing project if the total gross monthly household income is not below

R1 500.00 and not more than R7 500.00. Should the gross monthly household income at any time fall outside the aforesaid income band, such occupant no longer qualifies for the social housing project and is disqualified from occupying a flat or unit in the project.

[8] The 1st to 99th respondents are occupants of the units in phase 2 of the Brandwag Project. They previously concluded written lease agreements with the Municipality. In terms of clause 2.3 of the said lease agreements the leasing is subject to the provisions of the applicable Housing Legislation as well as the terms and conditions agreed upon between the parties and contained in the respective lease agreements.

[9] The applicant states the following in paragraph 22 of its founding affidavit:

“Respondents 1 – 99 are currently in occupation of the abovementioned property. Those respondents have no legal right to occupation of the property and are in unlawful occupation of the said premises. I must draw the attention of the Honourable Court to the fact that the applicant brought a similar application against the same respondents earlier this year under Application Nr 5295/2015 which application was unsuccessful. Although the presiding Judge did not provide written reasons for the dismissal of the application, he *inter alia* found in his *ex tempore* decision that the said respondents had valid lease agreements in place and were therefore not in illegal possession of the property. The applicant has in the meantime corrected this and has served written notices of cancellation on respondents 1 – 99 as per Annexure D 1-99 attached hereto. Proof of service is attached hereto as Annexure

DD 1- 99.”

[10] Prior to the launch of the aforesaid unsuccessful application, a social facilitation tenant consultation exercise was conducted and performed, a report of which is attached to the founding affidavit as annexure “E”, dated 8 March 2013.

[11] According to the applicant the number of tenants illegally occupying the units is ninety-nine, of which five are pensioners. The illegal occupants can be categorised into three categories:

1. they do not qualify in terms of the scheme;
2. they do not verify and refuse to verify their particulars;
and/or
3. they are not paying their rent.

[12] The following allegations are contained in paragraph 27 of the founding affidavit:

“The applicant has for several reasons, including humanitarian reasons, decided not to renew the application for eviction immediately after the unsuccessful application. After the service of the notices of cancellation in April 2015, and in view of the winter season, additional time was afforded to the respondents to vacate the property on a voluntary basis. The good intentions of the applicant were met with a refusal to vacate. Most of the respondents are not paying monthly rental as well as municipal charges for water and other service charges as more fully appear from Annexure F.”

[13] It is pointed out that the applicant is a non-profitable

organization who is totally dependent on rental income to be able to fulfil its contractual obligations.

[14] The applicant avers that the respondents' illegal occupation also cause prejudice to people who qualify for social subsidies but that cannot be accommodated due to the respondents' unlawful occupation. All the respondents are well aware and were informed by the latest in December 2014 that they will have to vacate the properties to enable the applicant to perform its contractual obligations to renovate the units.

[15] Regarding alternative housing, the applicant states the following in paragraph 30 of the founding affidavit:

"The applicant is in a position to provide temporary accommodation to the respondents should they be evicted for a period of one month in a different block of flats in the same development. The offer is conditional in that the respondents should pay for electricity and water. No rental will be charged for the month. MMM has also offered to assist those tenants earning less than R 3500.00 and more than R 7500.00 as per Annexure G. I can confirm that the offer still stands."

Consideration of the merits of the application with specific reference to the grounds of opposition by the respondents:

[16] Most of the respondents' answering affidavits are almost identical and contain similar defences based on the same grounds. I will consequently record and deal with most of the defences without reference to the specific affidavits.

Locus Standi:

[17] According to the respondents, the applicant does not have the necessary *locus standi* to bring the application. The cession agreement and the notarial lease do not constitute a basis for such *locus standi*. The applicant is not the owner nor the person in charge of the property as defined in sections 1 and 4(1) of PIE.

[18] Section 4(1) of PIE determines as follows:

“Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier.”

“Owner” and “person in charge” are defined as follows in section 1 of PIE:

“**owner**” means the registered owner of land, including an organ of state;

person in charge means a person who has or at the relevant time had legal authority to give permission to a person to enter or reside upon the land in question;”

[19] The relevant parts of clauses 4.3, 4.4 and 4.5 of the notarial lease determine as follows:

“4.3 The Lessor shall grant the Lessee vacant possession of the Property with effect from the Commencement Date.

4.4 ...The parties shall jointly endeavour to ensure that all relevant processes are completed with the least possible delay to enable the Lessee to have full and uninterrupted occupation of the whole of the property...

4.5 In the event that any person or group of persons, other than persons authorised by the Lessee, at any time after the Commencement Date unlawfully occupy or seek to unlawfully occupy the Property, the Lessor shall render all such assistance as reasonably may be required by the Lessee, at the cost of the Lessee, in order to evict such person or persons from the property.” (Own emphasis)

[20] As stated in the founding affidavit, clause 7.1 of the notarial lease obliges the applicant to construct housing units and rental accommodation suitable for low to medium income households on the property. Clauses 13.2, 13.3 and 13.4 of the lease agreement then provide the applicant with the following rights:

“13.2 The Lessee shall be entitled to sublease the existing municipal flats comprising the Brandwag Project as from the Effective date.

13.3 The Lessee shall further be entitled, in respect of the further housing units once completed, to enter into subleases with tenants who meet the criteria contemplated in the Social Housing programme and as recorded and agreed by the Parties from time to time.

13.4 The Lessee shall further be obliged to manage and maintain all the housing units...”

[21] When the aforesaid rights and obligations of the applicant are considered in conjunction with the definition of “person in charge”, it is evident that the applicant is the “person who has...legal authority to give permission to a person to enter or reside upon the land in question”.

[22] I consequently find that the applicant does have the necessary *locus standi* to have instituted the application.

Res Judicata:

[23] The current application was instituted after the previous eviction application under Application Nr 5295/2014 had been dismissed. According to the respondents the applicant has not shown any new grounds in support of the current application that did not form part of the previous unsuccessful application. The Court has therefore already pronounced itself on the grounds for and the merits of the application.

[24] However, the respondents also averred as follows in their response to paragraph 22 of the founding affidavit, which I cited in paragraph [9], *supra*:

“22.1 I further like to mention that the applicant is misleading the Honourable Court that the application under case number 5295/2015 was dismissed solely for the reason that myself and other respondents herein have a binding lease agreement and which same has not been terminated and/or cancelled herein.

22.2 The said application was dismissed again for the reason that the Hundredth Respondent did not provide a report which is mandatory in terms of the provisions of the PIE Act that our eviction will be “just and equitable” or not.

22.3 Furthermore, the said application was also dismissed as there is no alternative accommodation and/or land that have been earmarked for all of us in the event the Court grants an order for eviction.

22.4 It is my submission that the Application was dismissed because all the Respondents had valid and legal lease agreements.”

[25] The parties seem to be *ad idem* at least regarding the fact that the existence of the lease agreements constituted a (or the only) reason why the previous application was unsuccessful. I will return to the alleged other reasons.

[26] In **National Sorghum Breweries Ltd (t/a Vivo African Breweries) v International Liquor Distributors (Pty) Ltd** 2001 (2) SA 232 (SCA) at 239 E – 240 B, the following principles were re-affirmed:

“[2] The requirements for a successful reliance on the *exceptio* were, and still are: *idem actor*, *idem reus*, *eadem res* and *eadem causa petendi*. This means that the *exceptio* can be raised by a defendant in a later suit against a plaintiff who is 'demanding the same thing on the same ground' (*per* Steyn CJ in *African Farms and Townships Ltd v Cape Town Municipality* 1963 (2) SA 555 (A) at 562A); or which comes to the same thing, 'on the same cause for the same relief' (*per* Van Winsen AJA in *Custom Credit Corporation (Pty) Ltd v Shembe* 1972 (3)

SA 462 (A) at 472A - B; see also the discussion in *Kommissaris van Binnelandse Inkomste v ABSA Bank Bpk* 1995 (1) SA 653 (A) at 664C - E); or which also comes to the same thing, whether the 'same issue' had been adjudicated upon (see *Horowitz v Brock and Others* 1988 (2) SA 160 (A) at 179A - H).

[3] The fundamental question in the appeal is whether the same issue is involved in the two actions: in other words, is the same thing demanded on the same ground, or, which comes to the same, is the same relief claimed on the same cause, or, to put it more succinctly, has the same issue now before the Court been finally disposed of in the first action?

[4] ...

[5] Nor are the respective claims based on the same grounds or same cause of action." (Own emphasis)

[27] It is common cause that the lease agreements between the Municipality and the respondents were still in existence during the institution and adjudication of the unsuccessful application. The cancellation of the lease agreements did therefore obviously not constitute the ground or cause of the unsuccessful application, whilst it clearly does so in the current application. Although similar relief is being sought in this application to that which was sought in the unsuccessful application, it is based on a new ground or cause, namely, the cancellation of the lease agreements. In such circumstances *res judicata* cannot, in my view, successfully be raised as a defence.

[28] The two additional grounds which the respondents allege constituted further reasons why the previous application was dismissed, are to be considered against the background of the following principles summarised in **Erasmus Superior Court Practice**, D.E. van Loggerenberg, at OS, 2015, D1-291:

“The *onus* is on the party raising the defence to prove it. To determine whether a matter is *res judicata* the judgment, order and pleadings must be examined. The record of the previous action should be produced, or adequate reasons for the non-production should be given. It has been said that if there is any doubt as to any of the essentials required to be proved, the plea will fail.”

[29] Although the presiding Judge in the previous application did not provide written reasons for his judgment, he apparently gave an *ex tempore* judgment. That, as well as the proceedings as such, would have been recorded. It is general practice that when a Judge delivers an *ex tempore* judgment, any party to the proceedings is entitled to request a transcribed copy of such a judgment (and of the proceedings if need be) from the officially appointed scribes. The respondents failed to provide any such transcription and no reason or explanation for their failure has been advanced in the answering papers. In the circumstances where the parties are not *ad idem* regarding the question whether the presiding Judge in fact pronounced himself on these two issues, I am unable to properly adjudicate the defence of *res judicata* on these grounds in the absence of the aforesaid transcriptions. The respondents have therefore not discharged their onus in this regard.

Lis Alibi Pendens:

- [30] Some of the respondents allege that similar applications have previously been instituted against them by the applicant, based on the same cause of action and in respect of the same subject-matter, which applications are still pending.
- [31] With regards to this allegation by the 98th respondent and him referring to Application Nr 3953/2013, the applicant confirmed in its replying affidavit that it has given instructions to its attorneys of record in that matter to withdraw the said application with immediate effect. An instructing letter to that effect is attached to the replying affidavit as annexure “PKM1”. In these circumstances the defence of *lis pendens* cannot be upheld in so far as the 98th respondent is concerned.
- [32] It is further alleged by the applicant in its replying affidavit that in those few instances where the applicant brought a similar application against some of the other respondents, those proceedings have either lapsed or have been withdrawn by the applicant. The applicant also correctly points out that the Court in any event has a discretion to proceed with the present application, especially as no answering affidavits were filed in the previous proceedings as the applicant did not proceed with those applications.
- [33] In **Keyter NO v Van Der Meulen and Another NNO** 2014 (5) SA 215 (ECG) at 217 F – 220 B the following relevant principles were applied when the defence of *lis pendens* was raised:

“[10] The defence of *lis alibi pendens* arises when four requirements are met. They are that: (a) there is litigation pending (b) between the same parties (c) based on the same cause of action and (d) in respect of the same subject-matter. *Lis alibi pendens* does not, if successfully invoked, put an end to the plaintiff's or applicant's case. Rather, it allows for the staying of the later matter pending the final determination of the earlier matter. Once the earlier proceedings have been finalised, however, the later proceedings will be struck by, and terminated by, the defence of *res judicata*. In *Nestlé (South Africa) (Pty) Ltd v Mars Inc* Nugent JA said the following:

'The defence of *lis alibi pendens* shares features in common with the defence of *res judicata* because they have a common underlying principle, which is that there should be finality in litigation. Once a suit has been commenced before a tribunal that is competent to adjudicate upon it, the suit must generally be brought to its conclusion before that tribunal and should not be replicated (*lis alibi pendens*). By the same token the suit will not be permitted to be revived once it has been brought to its proper conclusion (*res judicata*). The same suit, between the same parties, should be brought only once and finally.'

[11] The court is vested with a discretion as to whether to stay proceedings or to hear the matter despite the earlier pending proceedings. In *Loader v Dursot Bros (Pty) Ltd* Roper J dealt with this aspect when he said:

'It is clear on the authorities that a plea of *lis alibi pendens* does not have the effect of an absolute bar to the proceedings in which the defence is raised. The Court intervenes to stay one or other of the proceedings, because it is *prima facie* vexatious to bring two actions in respect of the same subject-matter. The

Court has a discretion which it will exercise in a proper case, but it is not bound to exercise it in every case in which a *lis alibi pendens* is proved to exist'

The exercise of this discretion is determined with reference to what is just and equitable, as well as the balance of convenience.

[12] As far as the onus is concerned, Harms states that as the later proceedings are presumed to be vexatious, the party who instituted those proceedings bears the onus of establishing that they are not, in fact, vexatious. He or she does so by satisfying the court that despite all of the elements of *lis alibi pendens* being present, justice and equity and the balance of convenience are in favour of those proceedings being dealt with.

...

[20] In my view, therefore, considerations of both justice and equity and of the balance of convenience favour the determination of the merits of this matter despite the pending action. Consequently, the *lis alibi pendens* defence fails."

[34] In so far as there may still be any other similar applications pending against one or more of the current respondents (which I do not find, but accept for the sake of argument), I am convinced that it indeed is just and equitable that the merits of the current application be determined. To do so is, in my view, in fact in the interest of the respondents. All the respondents have had ample opportunity to oppose the current application and to file answering affidavits. They have incurred costs and have most probably been suffering from emotional stress due to their active participation in the current application. It would serve absolutely no purpose for the current application to be stayed pending the finalisation of any

such other similar application, especially in view of the fact that any affected respondents will then still have to file answering affidavits in such other application and proceed with the litigation process in those proceedings and in the process unnecessarily incur even further costs. Contrary thereto, the current application is ripe for hearing and finality can be reached in the longstanding dispute and concomitant litigation between the parties by the adjudication of this application. Therefore, even if it is to be accepted that all of the elements of *lis pendens* may be present (which again I do not find), justice and equity and the balance of convenience clearly favour the determination and finalization of the current application.

Lease agreements between the Municipality and the respondents:

- [35] The respondents allege that they have valid lease agreements with the Municipality, which have not been ceded to any third party and which have not been cancelled by the Municipality. According to them there is also no indication whether the representatives of the applicant and the Municipality were duly authorised to have signed the letters of cancellation.
- [36] It is evident from the totality of the application papers that the applicant accepts for purposes of this application that the respondents previously concluded lease agreements with the Municipality pertaining to the relevant units they are currently occupying. Most of the respondents also attached copies of their respective lease agreements to their answering affidavits.
- [37] The essence of the contents of all these lease agreements is

similar and I will therefore deal with them simultaneously. In terms of the lease agreements the lease period shall endure from the commencement date of the lease “*until it is terminated by either of the parties by 1 (one) calendar month`s written notice, which notice shall be given on or before the 25th day of the previous month*”. As already indicated earlier, the applicant avers that written notices of cancellation have been served upon the respondents and proof of such service was attached to the founding affidavit.

[38] The relevant parts of the aforesaid notices of cancellation read as follows:

“Kindly be advised that your agreement of lease of the abovementioned unit is hereby cancelled and in terms of our general terms of your lease agreement, you are hereby given a one (1) month notice effective from today the 10th April 2015.

You are therefore requested to vacate the above property on or before the 10th May 2015 failing which you shall leave us with no option but to proceed with legal proceedings against yourself which you shall be liable of the legal cost should you not adhere to this notice.”(sic)

The notices are dated 9 April 2015 and were on face value thereof signed by the “*CEO on behalf of Free State Housing Company*” and by an “*Official on behalf of Mangaung Metropolitan Municipality*”.

[39] From the returns of service it is evident that the said notices were served upon the respondents by the sheriff in terms of the Rules of Court on 10 April 2015. Although it was not required

that the cancellation letters were to be formally served upon the respondents, I presume that the applicant decided upon formal service by the sheriff for purposes of proof of such service. I am satisfied that proper service of the notices upon the respondents has been effected in terms of the Rules of Court and in accordance with clause 15 of the lease agreements.

[40] I agree with the contentions by the respondents that the said lease agreements had been concluded with the Municipality and therefore the cancellation thereof had to be effected by the Municipality. Like I have already indicated, the cancellation notices do seem to have been signed by a representative of the Municipality. In response to the respondents' challenge of the authority of such signatory, the applicant avers in the replying affidavit that Mr Malefetsane Mokoena signed the letters on behalf of the Municipality and that he was, at the time, duly authorised to do so. As confirmation of this averment, a letter was attached to the replying affidavit, dated 30 March 2015, and which letter was written on the formal letterhead of the Municipality. The said letter was signed by Mr MM Moekoena, the Head: Human Settlements, and was addressed to Mr MD Mokoena, the *“General Manager: Mixed Development, Sub-Directorate: Mixed Development, Directorate: Human Settlements”*. The letter reads as follows:

“You are hereby appointed as acting Head: Human Settlements from the 1st April to 9th April 2015. You will be expected to carry out all the duties and functions attached to the post of the Head: Human Settlements.”

[41] In view of the last mentioned allegations and supporting document and considering that the cancellation notices were signed within the time period during which Mr MM Mokoena acted in the said position, I have to find that Mr Mokoena is the one who signed the cancellation notices on behalf of the Municipality and that he was duly authorised thereto.

[42] In my view it was not necessary or a requirement for valid cancellation that a representative of the applicant had to sign or countersign the letters of cancellation. I therefore deem it unnecessary to deal with the issue of the authority of the said representative.

[43] Many of the respondents aver that their right to occupation of the units emanate from their lease agreements with the Municipality and not from any provisions of the Social Housing Policy, hence non-compliance with the Social Housing Policy do not render their occupation illegal.

The respondents also allege that the determination of the criteria of what constitutes “low to medium income households” can only be determined by the Minister by notice in the Government Gazette and same has not been published. In the absence of such a determination, the applicant cannot rely on an alleged obligation to construct housing suitable for low to medium income households.

Some of the respondents furthermore dispute the allegations by the applicant that their rental payments and/or electricity

payments are in arrears. Some of the respondents also aver that the applicant fails to pay money over to Centlec which they as tenants paid to the applicant towards their electricity accounts.

[44] The last mentioned issues are however, in my view, irrelevant for purposes of considering the validity of the cancellation of the lease agreements. The fact of the matter is that the lease agreements provide for termination thereof by either party by one month`s notice. The right to cancel is not subject to any conditions. It is therefore not necessary for the applicant to show or proof non-compliance with any of the provisions of the lease agreements and/or of other applicable legislation, Policies or Rules by the respondents in order to rely on its cancellation of the lease agreements. In terms of the lease agreements the applicant was entitled to cancel the lease agreements even in the absence of any misconduct or breach of such provisions by the respondents.

[45] In the premises I conclude that the applicant`s cancellation of the lease agreements with the respondents by means of the cancellation notices, constituted a valid cancellation of the said lease agreements.

Illegal Occupiers:

[46] The respondents deny that they are illegal occupiers of the relevant units which they are occupying. In **Resnick V Government of the Republic of South Africa and Another**

2014 (2) SA 337 (WCC) at 339 C reference was made to a two stage enquiry which should be followed in matters like this:

“It is clear that PIE has set out a twofold enquiry. The court first determines whether the person in respect of whom the eviction order is sought is an unlawful occupier. If that is the case, then, secondly, it decides whether, after considering all the relevant circumstances, it is just and equitable to grant such an order.

- [47] The common law principle for evictions based on the *rei vindicatio* expressed in **Ndlovu v Ngcobo; Bekker and Another v Jika** 2003 (1) SA 113 (SCA) at para [46] is as applicable to evictions in terms of PIE:

“When the owner acknowledges (without there being any legal obligation to do so) that the occupier has or had a right of occupation (for example in terms of a lease), the owner has, in addition, to prove that the right no longer exists or is no longer enforceable, for example that the lease between them has expired or been cancelled lawfully (see *Graham v Ridley (supra)*; *Chetty v Naidoo (supra* at 21)).”

- [48] An illegal occupier is defined in section 1 of PIE as follows:

“**unlawful occupier** means a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996 (Act 31 of 1996).”

[49] The respondents' entitlement to occupy the current units indeed emanated from their lease agreements with the Municipality. Considering my finding regarding the validity of the cancellation of the said lease agreements by the Municipality, I cannot but find that the respondents are currently illegal occupiers of the said units.

Procedural Requirements:

[50] No allegations are made by the respondents in the answering affidavits regarding any alleged non-compliance with the procedural requirements prescribed by PIE. In my view the said procedural requirements have in fact been complied with by the applicant.

Just and Equitable:

[51] Section 4(7) of PIE determines as follows:

“If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.”

The aforesaid period of six months is calculated from the date that the occupation becomes unlawful. See **Ndlovu v Ngcobo; Bekker and Another v Jika**, *supra*, at 123 F – 124 A. The provisions of section 4(7) are therefore applicable to the respondents.

- [52] In the judgment of **Ekurhuleni Metropolitan Municipality and Another v Various Occupiers, Eden Park Extension 5** 2014 (3) SA 23 (SCA) at para [19] several circumstances and factors which should be taken into account when considering whether the eviction is just and equitable, were determined and highlighted:

“[19] Thus both the Constitution and PIE emphasise that the court must take into account all relevant factors before granting an eviction order. As Wilson notes, the enquiry to be undertaken is therefore whether, given all the relevant factual, legal and socio-economic circumstances, it is just and equitable to order the eviction of the unlawful occupier.

'This requires a court to make a value judgment, but it must not do so in a vacuum.'

There are various considerations relevant to this determination, as outlined both in the Act and through the case law, with each factor taking on either an increased or lesser importance depending on the prevailing factual matrix of each matter. According to Chenwi the following are potentially relevant to the enquiry:

'(i) (T)he manner in which the occupation was effected; (ii) the duration of the occupation; (iii) the availability of suitable alternative accommodation or land; (iv) reasonableness of offers made in connection with suitable alternative accommodation or

land; (v) the timescales proposed relative to the degree of disruption involved; (vi) the willingness of the occupiers to respond to reasonable alternatives put before them; (vii) the extent to which serious negotiations have taken place with equality of voice for all concerned; and (viii) the gender, age, occupation or lack thereof and state of health of those affected.”

[53] The Municipality itself did not institute the current application. I am consequently of the view that section 6 of PIE is not directly applicable in this instance. In **Port Elizabeth Municipality v Various Occupiers** 2005 (1) SA 217 (CC) the Constitutional Court differentiated as follows between the provisions of section 4 and section 6 of PIE:

“[24] PIE provides some legislative texture to guide the courts in determining the approach to eviction now required by s 26(3) of the Constitution. Its preamble makes clear that it was enacted to do so. Its central operative provisions are s 4, which deals with evictions sought by owners or persons in charge of property, and s 6, which is concerned with eviction proceedings brought by organs of State. There is considerable difference in detail between the two provisions. They emphasise that a distinction has to be made on the basis of whether the application for eviction is brought by the owner of property or by the municipality. This case deals with proceedings brought under s 6 by the municipality and does not require us to consider whether it would have taken a different form if it had been brought directly by owners themselves under s 4. Despite their differences, both sections emphasise the central role courts have to ensure equity after considering all relevant circumstances”.

[54] However, the issue of the availability of suitable alternative housing and a Municipality’s obligation in this regard is still very applicable

and crucial in deciding the question of whether the eviction will be just and equitable. In the aforesaid **Port Elizabeth Municipality** – judgment the following was stated at paras [28] to [29]:

“[28] There is therefore no unqualified constitutional duty on local authorities to ensure that in no circumstances should a home be destroyed unless alternative accommodation or land is made available. In general terms, however, a court should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only as an interim measure pending ultimate access to housing in the formal housing programme.

[29] The availability of suitable alternative accommodation will vary from municipality to municipality and be affected by the number of people facing eviction in each case. The problem will always be to find something suitable for the unlawful occupiers without prejudicing the claims of lawful occupiers and those in line for formal housing.”

In the judgment of **Sailing Queen Investments v The Occupational LA Colleen Court** 2008 JDR 0056 (W) the said obligation of a Municipality was dealt with in para [9] of the judgment:

“[9] In any event, once respondents such as those in the present matter are evicted, it inevitably becomes the responsibility of the City either as a result of the homelessness of the respondents, or the need to resort to further unlawful occupation for shelter. Therefore, any eviction order made by this Court in the main application would inevitably affect the City. In my view, no eviction order can be just and equitable without the intervention of the City in matters such as the present. Our Courts have interpreted both PIE and the Housing Act 107 of 1997 (“the Housing Act”) as imposing obligations on municipalities not only to fulfil their

obligations under section 26 of the Constitution but also to cater for individuals in emergency situations, to provide information regarding their fulfilment of statutory requirements for plans to provide access to adequate housing in terms of section 26 of the Constitution and their implementation. The information regarding the City's fulfilment of such obligations is fundamental to a Court being able to determine whether or not eviction is just and equitable.

[55] In the matter of **City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others** 2012 (6) SA 294 (SCA) the obligations of a Municipality in the aforesaid regard were dealt with in detail:

[39] Much of the litigation around evictions has dealt with contentions by various local authorities that they do not owe constitutional obligations to provide emergency accommodation to persons evicted from their existing homes and facing homelessness as a result. Contentions that they were not obliged to provide emergency housing (*Grootboom*); alternative land on a secure basis (*Port Elizabeth Municipality*); use their own funds to provide emergency accommodation (*Rand Properties*); and provide emergency accommodation to persons evicted at the instance of private property owners (*Blue Moonlight*); have all been advanced and rejected by this court and the Constitutional Court. Now that it is clearly established that local authorities do owe constitutional obligations to persons evicted from their homes who face homelessness as a result, it is appropriate to set out their obligations to the court in proceedings of this type. I deal only with cases where, on the principles set out above, they are joined in the litigation, and the applicant alleges that the circumstances of the eviction are such that it may result in homelessness, and engage their constitutional obligations in regard to the provision of temporary emergency accommodation.

[40] The general approach of local authorities, so far as it can be discerned from the reported cases, has been to file with the court a general report detailing its current housing policy without addressing the facts of that particular case. That is inadequate. In addition to such a report it must deal directly with the facts of the particular case.”

[56] The aforesaid obligation of a Municipality is also to be considered in conjunction with section 7(2) of PIE:

“7 Mediation

(2) If the municipality in whose area of jurisdiction the land in question is situated is the owner of the land in question, the member of the Executive Council designated by the Premier of the province concerned, or his or her nominee, may, on the conditions that he or she may determine, appoint one or more persons with expertise in dispute resolution to facilitate meetings of interested parties and to attempt to mediate and settle any dispute in terms of this Act: Provided that the parties may at any time, by agreement, appoint another person to facilitate meetings or mediate a dispute, on the conditions that the said member of the Executive Council may determine.

(3) Any party may request the municipality to appoint one or more persons in terms of subsections (1) and (2), for the purposes of those subsections.”

[57] In the **Sailing Queen Investments**-judgment, *supra*, para [14] , the following was stated regarding a Municipality`s obligation to become involved in mediation:

[14] ...Furthermore, section 7(1) of PIE enjoins the municipality to apply its mind to mediation in an endeavour to resolve a dispute when receiving a section 4(2) notice whether the application fell under section

4(6) or 4(7) of PIE. It would simply be untenable to contemplate that a municipality served with a notice in terms of section 4(2) of PIE, would be under no obligation to react to such a notice in any manner whatsoever.

[58] In **Occupiers of 51 Olivia Road, Berea Township, and 197 Main Street, Johannesburg v City of Johannesburg and Others** 2008 (3) SA 208 (CC) the Constitutional Court dealt with the aforesaid mediation aspect in detail. The following are the main principles expressed by the Court:

[13] It became evident during argument that the city had made no effort at all to engage with the occupiers at any time before proceedings for their eviction were brought. Yet the city must have been aware of the possibility, even the probability, that people would become homeless as a direct result of their eviction at its instance. In these circumstances those involved in the management of the municipality ought at the very least to have engaged meaningfully with the occupiers both individually and collectively.

[14] Engagement is a two-way process in which the city and those about to become homeless would talk to each other meaningfully in order to achieve certain objectives. ...

[15] Engagement has the potential to contribute towards the resolution of disputes and to increased understanding and sympathetic care if both sides are willing to participate in the process. People about to be evicted may be so vulnerable that they may not be able to understand the importance of engagement and may refuse to take part in the process. If this happens, a municipality cannot walk away without more. It must make reasonable efforts to engage and it is only if these

reasonable efforts fail that a municipality may proceed without appropriate engagement. ...

[16] ...In the light of these constitutional provisions a municipality that ejects people from their homes without first meaningfully engaging with them acts in a manner that is broadly at odds with the spirit and purpose of the constitutional obligations set out in this paragraph taken together.

[17] ...

[18] And, what is more, s 26(2) mandates that the response of any municipality to potentially homeless people with whom it engages must also be reasonable. It may in some circumstances be reasonable to make permanent housing available and, in others, to provide no housing at all. The possibilities between these extremes are almost endless. It must not be forgotten that the city cannot be expected to make provision for housing beyond the extent to which available resources allow. As long as the response of the municipality in the engagement process is reasonable, that response complies with s 26(2). ...”

[59] Mr Mohkele, appearing on behalf of the respondents, submitted that the applicant failed to make out a proper case that it will be just and equitable that an eviction order be granted. In this regard he contended that the applicant did not properly deal with the issue of the availability of suitable alternative housing. He furthermore submitted that the Municipality failed to properly mediate the dispute between the parties in an endeavour to resolve the dispute. Mr Mokhele pointed out that the report attached to the founding affidavit as annexure “E” is dated 12 March 2013, hence even before the previous unsuccessful

application. He submitted that it is evident from the said report that subsequent meetings were to be held, but no feedback was provided to the Court.

[60] Mr Lubbe, appearing on behalf of the applicant, accentuated the fact that not only is the Municipality offering temporary accommodation free of charge for a month in a different block of flats in the same development as set out in its replying affidavit, but it is also offering assistance with the relocation of those respondents that are earning less than R 3500.00 per month and more than R 7500.00. In addition he indicated that he has instructions that the Municipality is offering temporary accommodation on the same premises pending the finalization of the project to those respondents who qualify to eventually be accommodated in the new units. Those respondents will in the meantime be granted the opportunity to apply for such accommodation.

[61] I will now deal with facts and circumstances which are in my view relevant to consider in the current application in deciding whether an eviction order is just and equitable.

[62] It is firstly important to take cognisance of the fact that it is evident from their lease agreements that the respondents' initial occupation of the units were already based upon an approved housing scheme in Brandwag (clause 2.2 of the lease agreements) and which occupation were then already made subject to the applicable Housing Legislation (clause 2.3 of the lease agreements). The amount of their monthly rentals is

based on their monthly income (clause 5.6 of the lease agreements) and therefore the concomitant commitment in the same clause to immediately advise the Municipality of any change in their income. The existence and applicability of a housing scheme have therefore been to the knowledge of the respondents from the commencement of their lease periods and could therefore not have now taken them by surprise.

[63] The applicant has a contractual duty to perform the construction of housing units and accommodation in accordance with the notarial lease it concluded with the Municipality. The applicant is not the owner of the land and is therefore not in a position to merely decide not to continue with the development.

[64] Right at the outset when the Municipality resolved on 11 August 2011 to implement the current Brandwag Project, specific resolutions were then already taken regarding measures to relocate the tenants who do not qualify for the scheme. Specified erven were identified and allocated for this purpose. The said resolutions are contained in annexure “G” to the founding affidavit.

[65] It is evident from the report, annexure “E”, that options regarding alternative accommodation were in fact discussed with the tenants from the outset during March 2013 already. Although it is correct that no follow-up to that report was provided to the Court, it is evident from correspondence attached to the answering affidavits of some of the respondents that the consultation process has in fact continued throughout

2014 and at least until February 2015 (p. 730 – p. 734 of the papers).

[66] This application has served before Court on numerous occasions and before different Judges. On some of those occasions the matter was only postponed to grant some of the respondents a further opportunity to oppose the application. However, on 8 October 2015 my colleague, Daffue J, issued an order of eviction against some of the respondents who did not oppose the application. On 19 November 2015 my colleague, Ebrahim J, granted an eviction order by agreement between three of the respondents and the Municipality, but in terms of which order agreements were concluded regarding temporary alternative accommodation as offered by the Municipality. A number of the respondents cited in this application have therefore already been evicted. The applicant also alleges in its founding affidavit that other illegal tenants have also previously already been evicted from the property under case numbers 3065/2014 and 2316/2014. The respondents who are currently opposing this application are therefore the only remaining tenants of a bigger group of initial tenants.

[67] Although many of the respondents have been occupying their units for quite a number of years already, they have been aware of the implementation of the current housing scheme and the necessity for their relocation should they not qualify for it, since 2013 already. It has now also been approximately 16 months since they received the cancellation notices and they have been in illegal occupation of the units since then. During this period of

time many have been living free of charge as they have not been paying their monthly rentals and their electricity accounts. It is evident from annexure “F” to the founding affidavit that at 17 August 2015 the illegal tenants at the time, which included the respondents, had a combined outstanding rental and electricity bill of R 2 576 744.73.

[68] The enormous negative financial implications for the Brandwag Project and for the applicant as a result of the respondents’ refusal to vacate their units are also evident from annexure “F”. In addition it can cause the impossibility to later continue with the next phase of the Project. The successful and effective implementation of Social Housing Schemes is in the interest of society as a whole. In this instance the respondents’ conduct cause severe prejudice to people who do qualify for social subsidies but who cannot be accommodated due to the respondents’ illegal occupation of the units.

[69] Although there are a number of pensioners, elderly people, women and children who will be affected by an eviction order, I am of the view that in the particular circumstances of this matter they have had ample opportunity to make alternative arrangements for accommodation, either by themselves or in conjunction with the relocation initiatives of the Municipality. The respondents cannot in the circumstances be categorised as people that will be “homeless”.

[70] In the circumstances and when taking into account the interest of all relevant stakeholders, I am of the view that it is just and

equitable to evict the respondents.

Date of eviction:

[71] In terms of sections 4(8) and 4(9) of PIE the following need to be considered:

“4(8) If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine-

(a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and

(b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a).

4(9) In determining a just and equitable date contemplated in subsection (8), the court must have regard to all relevant factors, including the period the unlawful occupier and his or her family have resided on the land in question.”

[72] It is evident from the answering affidavits that many of the respondents have children at school nearby Brandwag. I do not consider it just and equitable that such children should be involved in any relocation process, either with regards to their household or to their schools, before the winter school holidays. I therefore

intend to determine a date on which the units have to be vacated only after the close of schools for the holidays.

- [73] I have already mentioned that some of the respondents have been residing in the units for a long period of time. I do take that into account in my determination of a date. However, as I have also concluded, the respondents have known about their potential relocation for a long time already and could have started with the necessary arrangements in the meantime.
- [74] Considering Mr Lubbe`s instructions that the applicant will enable the respondents to in the meantime apply for new accommodation within the Brandwag Project, I deem it necessary to make certain orders in this regard to make the process practically more feasible for the respondents. It is in my view also in the interest of the respondents to be advised as soon as possible whether they do qualify for accommodation in the Brandwag Project, or not. In Modderfontein Squatters, Greater Benoni City Council v Modderklip Boerdery (Pty) Ltd (Agri SA and Legal Resources Centre, *Amici Curiae*); President of the Republic of South Africa and Others v Modderklip Boerdery (Pty) Ltd (Agri SA and Legal Resources Centre, *Amici Curiae*) 2004 (6) SA 40 (SCA) the following principles were stated regarding a Court`s obligation to provide effective relief:

“[42] Courts should not be overawed by practical problems. They should 'attempt to synchronise the real world with the ideal construct of a constitutional world' and they have a duty to mould an order that will

provide effective relief to those affected by a constitutional breach. *Fose v Minister of Safety and Security* held that -

'(a)ppropriate relief will in essence be relief that is required to protect and enforce the Constitution. Depending on the circumstances of each particular case the relief may be a declaration of rights, an interdict, a *mandamus* or such other relief as may be required to ensure that the rights enshrined in the Constitution are protected and enforced. If it is necessary to do so, the courts may even have to fashion new remedies to secure the protection and enforcement of these all-important rights.' (In para [19].)

'I have no doubt that this Court has a particular duty to ensure that, within the bounds of the Constitution, effective relief be granted for the infringement of any of the rights entrenched in it. In our context an appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the right entrenched in the Constitution cannot properly be upheld or enhanced. Particularly in a country where so few have the means to enforce their rights through the courts, it is essential that on those occasions when the legal process does establish that an infringement of an entrenched right has occurred, it be effectively vindicated. The courts have a particular responsibility in this regard and are obliged to "forge new tools" and shape innovative remedies, if needs be, to achieve this goal.' (In para [69].)

[43] What 'effective relief' entails will obviously differ from case to case."

[75] Should a respondent qualify for accommodation in the new Brandwag Project, it means that he/she would also (still) have qualified for accommodation in his/her current unit had it not been

for the Project. In these circumstances I consider it just and equitable that the alternative accommodation which the Municipality is offering on the same premises pending the finalization of the Project, should be provided free of charge in so far as rental is concerned.

- [76] Taking all the relevant circumstances into consideration, I consider it just and equitable that the respondents should vacate the property by 30 June 2016.

Costs:

- [77] Regarding the costs of the application, I do not consider the usual order that costs follow the outcome as appropriate in the circumstances of this matter. I have already mentioned that the respondents were initially provided with their current accommodation in terms of a Housing Scheme which was clearly intended to subsidise their accommodation because of their relatively low income. Although allegations are now being made regarding the respondents' alleged failure to pay rental and/or that they do not qualify in terms of the scheme and/or that they refuse to verify their particulars, these are not the operative reasons for the cancellation of their lease agreements. The implementation of the Brandwag Project is the sole and actual reason for the termination of their leases. The respondents can therefore not be faulted for the fact that they have to evacuate their units. Such evacuations and relocations are obviously coupled with huge financial, emotional and other similar distresses. In these circumstances and where the project which is the cause of the

situation in which the respondents find themselves in, is in public interest, but to the detriment of the respondents, I, in the exercising of my discretion, consider it in the interest of justice that the applicant be ordered to pay the costs of the application, including all reserved costs, but excluding the reserved costs of 10 December 2015.

[78] The costs of 10 December 2015 were reserved when the application had to be postponed due to the sudden and unforeseen hospitalization of the respondents' attorney of record. In those circumstances the applicant cannot be penalised with the wasted costs of the respondents. However, for the reasons already recorded, I am of the view that the respondents ought not to pay any of the costs of the applicant. In the circumstances I deem the appropriate order that each party should pay its own costs. Regarding any possible costs on the side of the respondents for that day, their attorney of record will however not be entitled to claim any such costs from the respondents.

Order:

[79] The following order is consequently made:

1. The remaining respondents and any persons occupying through them the property known as the Brandwag Project Phase 2, hence the respondents and persons who have not already agreed to vacate and/or been evicted in terms of the court orders dated 8 October 2015 and 19 November 2015

respectively, are evicted from the property. These remaining respondents are the following:

3rd, 9th, 11th, 12th, 14th, 15th, 16th, 17th, 18th, 21st, 25th, 31st, 32nd, 34th, 35th, 36th, 37th, 38th, 40th, 41st, 42nd, 43rd, 44th, 51st, 52nd, 53rd, 54th, 56th, 57th, 61st, 62nd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 75th, 79th, 85th, 90th, 91st, 92nd, 93rd, 95th, 97th and 98th.

2. The aforesaid respondents, and any persons occupying through them, must vacate the property by 30 June 2016, failing which the Sheriff and/or persons mandated by the said Sheriff, are authorised to evict such respondents and persons still occupying the property.
3. The Sheriff is further authorised, if required, to call in the assistance of the SAPS.
4. Those respondents who qualify for housing in the Brandwag Housing Project may apply in writing to the applicant for such accommodation on or before 11 May 2016 and all such applications must be considered and finalised by the applicant, and the outcome thereof communicated to the relevant respondents, on or before 26 May 2016.
5. The applicant is ordered to provide alternative accommodation on the same premises free of charge to those respondents that do qualify pending their relocation to the refurbished/new units/flats. Such respondents will

however be responsible for payment of the water and electricity usage pending their said relocation.

6. The applicant is ordered to pay the costs of the application, including all reserved costs, but excluding the reserved costs of 10/12/2015, which costs each party is to pay its own. Regarding the wasted costs of 10/12/2015, the respondents' attorney of record is not entitled to claim any of those costs from the relevant respondents. Considering previous costs orders made against the respondents in this application, the aforesaid costs of the application to be paid by the applicant, are to be restricted to the pro rata costs of the respondents mentioned in paragraph 1 above.
7. The applicant is ordered to forthwith serve this order on the respondents mentioned in paragraph 1 above, personally or by affixing a copy of the order on the door of the premises occupied. The said order is to be accompanied by an application form for purposes of applying for the accommodation referred to in paragraph 4 above, which documentation should also reflect the full contact details and address of the applicant.

C. VAN ZYL, J

On behalf of the Applicant:

Adv. J. Lubbe SC
On instructions of:
Maroka Attorneys
BLOEMFONTEIN

On behalf of the Respondents:

Mr L.M. Mokhele
On instructions of:
L.M. Mokhele Attorneys Inc.
BLOEMFONTEIN