

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No. : 3738/2004

In the matter between:

MANGAUNG LOCAL MUNICIPALITY

Applicant

versus

THE OCCUPIERS OF THE LAND SITUATED
AT PHASE 3 OF THE GRASSLANDS AREA,
ALSO KNOWN AS BERMAN SQUARE

Respondents

CORAM: VAN COPPENHAGEN J

HEARD ON: 21 APRIL 2005

JUDGMENT: VAN COPPENHAGEN J

DELIVERED ON: 28 APRIL 2005

[1] Applicant is a municipality established in terms of Provincial Notice 182 of 28 September 2000 and also in terms of chapter 7 of the Constitution of the Republic of South Africa.

[2] Applicant in an effort to comply with the terms of section 152

of the Constitution read with section 9 of the Housing Act, No. 107 of 1997, and Local Government: Municipal Systems Act, No. 32 of 2000, particularly chapter 5 thereof drafted and accepted an integrated development plan.

In the execution of the integrated development plan applicant *inter alia* obtained land and is negotiating to obtain further land, so-called Grasslands Housing Development Project, Phases 2 and 3. The development so envisaged entails the ultimate development for low-cost housing.

Phase 2 was developed and 2831 erven were made available for occupation in June 2004.

It was envisaged that 2814 erven, (the application for the establishment of township of which was already submitted) could be developed and be ready for allocation to the landless, homeless and needy early in January 2005.

- [3] The development of Grasslands Phase 3 came a dead stop when the land was affectively rendered a no go area as a result of an invasion which started on the 23rd October 2004.

[4] Applicant applies, having complied with the legally required procedural procedures for the eviction of the persons who are the invaders and/or present unlawful occupiers of the land.

[5] A summary of respondents reply to applicant's application can be found in the passage in paragraph 13 (at paragraph 8.2) of the opposing affidavit which proclaims:

“The applicant alleges that its Housing Sector Plan provides a well-resourced guide to enable the applicant to achieve the objective for the homeless.

I deny the allegation. I must say that if this Housing Sector Plan gives the applicant the right to evict destitute people like the occupiers of Phase 3 of Grasslands, it is not informed of the social economic realities within its jurisdiction. I am convinced that housing is a combination of provision of land, shelter and services, I therefore understand that none of this can be achieved over a short period of time. But we should not turn a blind eye to the fact that a basic need in South Africa right now is access to land. The Housing Sector Plan of the applicant is centralised on the issue of housing as a combination of provision of land, shelter and services. The reality is that the applicant cannot achieve all this at the same time. Many families will remain homeless if the applicant's ambition is to build houses for its inhabitants. I refer the above on report to

the first sentence of paragraph 8.1 of the founding affidavit, which reads as follows:

“Land invasion of this nature seriously affects the applicant’s ability to provide housing and services for the inhabitants.”

There is nowhere in the founding affidavit access to land is mentioned. This goes against the applicant’s objective of addressing homelessness. The applicant is confusing issues. It is either using the wrong strategy of addressing homelessness to the masses or is unwilling to deliver the services in terms of the constitution.

In Phase 2 of the Grasslands inhabitants were provided with land without shelters and social services and not all of the Phase 2 was electrified. The inhabitants of Phase 2 understand that the municipality cannot do everything at once. They can now be patient with the process of housing development.

The respondents in this case do not demand shelter and social services from the applicant. They only demand a basic resource which is land and the others shall follow. This has been available over the years. I don’t understand a sudden change of strategy by the applicant to phase in a strategy that is not going to work.

An eviction of respondents in this case is a clear indication that the applicant does not understand its role as the State organ. The applicant has an obligation to fertilise the grounds for development in the area of social economic rights thereby facilitating the process of development whereby third parties are involved. But in this case the applicant is the one that is caught in the middle. Instead of bringing solutions it is part of the problem.”

- [6] The application is, for the purpose of the Prevention of Illegal Eviction from Unlawful Occupation of Land Act, Act 19 of 1998 (commonly referred to as PIE), an organ of State.

The statutory provision regulating eviction of unlawful occupiers by an organ of State is to be found in section 6 of PIE which reads:

“6. (1) An organ of State may institute proceedings for the eviction of an unlawful occupier from land which falls within its area of jurisdiction, except where the unlawful occupier is a mortgagor and the land in question is sold in a sale of execution pursuant to a mortgage, and the court may grant such an order if it is just and equitable to do so, after considering all the relevant circumstances, and if –

- (a) the consent of that organ of state is required for the erection of a building or structure on that land or for the occupation of the land, and the unlawful occupier is occupying a building or structure on that land without such consent having been obtained; or
 - b) it is in the public interest to grant such an order.
- (2) For the purposes for this section, “public interest” includes the interest of the health and safety of those occupying the land and the public in general.
- (3) In deciding whether it is just and equitable to grant an order for eviction, the court must have regard to -
- (a) the circumstances under which the unlawful occupier occupied the land and erected the building or structure;
 - (b) the period the unlawful occupier and his or her family have resided on the land in question; and
 - (c) the availability to the unlawful occupier of suitable alternative accommodation or land.”

Commenting on the quoted statutory provision Sachs J says:

“Simply put, the ordinary prerequisites for the municipality to be in a position to apply for an eviction order are that the occupation is unlawful and the structures are either unauthorised, or unhealthy or unsafe. Contrary to the pre-constitutional position, however, the mere establishment of these facts does not require the court to make an eviction order. In terms of section 6, they merely trigger the court’s discretion. If they are proved, the court then may (not must) grant an eviction order if it is just and equitable to do so. In making its decision it must take into account of all relevant circumstances, including the manner in which occupation was effected, its duration and the availability of suitable alternative accommodation or land.”

- in **PORT ELIZABETH MUNICIPALITY v VARIOUS OCCUPIERS** 2005 (1) SA 217 (CC) 232 B – D.

- [7] It was common cause that the respondent, if they did not invade the land known as Grasslands Phase 3 then at least took occupation thereof as from the 23rd October 2004 without the consent of the applicant.

Request by respondent to discuss the unlawful conduct were turned down by many of the respondents, in fact an invitation by applicant for mediation later on was also snubbed by them.

Without (almost) exception none of the unlawful occupiers were without some form of shelter prior to their unlawful occupation of the land in Grasslands Phase 3. The main complaint was one of “landlessness”.

The application for the eviction was commenced on the 1st November 2004 i.e. only eight days after the first unlawful occupiers moved onto the land.

The invasion of the land has put a dead stop to the proposed and envisaged development of the land for housing, thereby depriving hundreds if not thousands of persons who are similarly landless and needy but who are patiently waiting their turn on existing waiting list to receive a land allocation in

Grasslands Phase 3.

[8] Applicant conceded that no land was available to relocate the unlawful occupiers if the eviction should be ordered.

[9] On the facts in this matter (compare **PORT ELIZABETH MUNICIPALITY v VARIOUS OCCUPIERS** *supra* p. 323) it must follow that the respondents are legally to blame for the predicament in which they find themselves, many of them could by reason of the fact that they are on the waiting list for land, had they but bided time, have been on land legally allocated in Grasslands Phase 3 to them. (Compare **GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND OTHERS v GROOTBOOM AND OTHERS** 2001 (1) SA 46 (CC) paragraph 10.)

[10] I conclude that it is, on the facts just and equitable that respondents be evicted.

[11] Applicant did not move for an order for costs.

[12] The following order to issue:

1. That all unlawful occupiers and/or occupants of any portion of the land situated at Phase 3 of the Grasslands area, also known as Berman Square, Bloemfontein as more fully appear from annexure "X1" hereto and marked invaded area be ordered to:

- 1.1 Vacate the said area and/or land on or before the 1st June 2005.

- 1.2 Remove the buildings and/or structures that the respondents erected upon the said land and/or area that were occupied by the respondents on the aforesaid land on or before the 1st June 2005.

2. That should the respondents and/or unlawful occupiers and/or occupants and/or any of them refuse and/or neglect to vacate the said land and/or area and/or still be

present thereon the 2nd June 2005 that

2.1 the sheriff for the district of Bloemfontein is ordered to forthwith on the 2nd June 2005 or as soon as possible thereafter to evict the respondents and/or the unlawful occupiers and occupants of the said land and/or area or so many of them as still may be present thereon on the 2nd June 2005 there from.

2.2 that the sheriff for the district of Bloemfontein is ordered to forthwith on the 2nd June 2005 or as soon as possible thereafter, demolish and remove any building or structure erected upon the said land and/or area that were occupied by any such respondent and/or unlawful occupier and/or occupant and for this purpose to solicit the assistance of the South African Police Services or whom ever in the opinion of the sheriff for the

district of Bloemfontein, may be able and capable to assist him to so demolish and remove the aforesaid buildings and/or structures from the said land and/or area so as to ensure that such buildings and/or structures be demolished and removed there from and

2.3 the sheriff for the district of Bloemfontein is ordered to, should it become necessary, to request this court in writing to authorise any person, including, but not limited to the South African Police Services for the district of Bloemfontein to assist the sheriff for the district of Bloemfontein to carry out a order for the eviction of the respondents and/or unlawful occupiers and/or occupants of the said land and/or area and to demolish and/or remove such buildings or structures as may still be erected upon the said land and/or in the presence of the sheriff for the district of Bloemfontein and subject to such

conditions as the court may determine.

G. VAN COPPENHAGEN, J

On behalf of applicant: Adv. P.J.T. de Wet
Instructed by:
Naudes Attorneys
BLOEMFONTEIN

On behalf of respondent: Adv. R.J. Nkhahle
Instructed by:
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