



**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Case No: 14732/2024

In the matter between:

**THOSE PERSONS IDENTIFIED IN ANNEXURE "A"
TO THE NOTICE OF MOTION WHO ARE UNLAWFULLY
OCCUPYING ERF 95582 (TUIN PLEIN PARK), HOPE STREET,
WANDEL STREET, VREDE STREET THEY INTERSECT,
ROODEHEK STREET FROM WHERE IT MEETS HOPE STREET
UNTIL MCKENZIE STREET, THE WHOLE OF WESLEY STREET
FROM WHERE IT MEETS HOPE STREET TO WHERE IT
MEETS MCKENZIE STREET, THE WHOLE OF GLYNN STREET
FROM WHERE IT MEETS HOPE STREET ACROSS THE
INTERSECTION OF SOLAN ROAD UP UNTIL MCKENZIE
STREET, THE WHOLE OF BUITENKANT STREET FROM
WHERE IT MEETS ROODEHEK STREET**

First Applicants

**THOSE PERSONS (WHOSE FULL AND FURTHER
PARTICULARS) ARE UNKNOWN TO THE APPLICANT
WHO ARE UNLAWFULLY OCCUPYING ERF 95582
(TUIN PLEIN PARK), HOPE STREET, WANDEL
STREET, VREDE STREET THEY INTERSECT,
ROODEHEK STREET FROM WHERE IT
MEETS HOPE STREET UNTIL MCKENZIE
STREET, THE WHOLE OF WESLEY STREET FROM
WHERE IT MEETS MCKENZIE STREET, THE WHOLE OF
GLYNN STREET FROM WHERE IT MEETS HOPE STREET**

Second Applicants

**ACROSS THE INTERSECTION OF SOLAN ROAD
UP UNTIL MCKENZIE STREET, THE WHOLE OF
BUITENKANT STREET FROM WHERE IT MEETS
ROODEHEK STREET**

and

**THE NATIONAL MINISTER OF SOCIAL DEVELOPMENT
MINISTER OF SOCIAL DEVELOPMENT: WESTERN CAPE**

First Respondent
Second Respondent

In re:

In the matter between:

CITY OF CAPE TOWN

Applicant

and

**THOSE PERSONS IDENTIFIED IN ANNEXURE "A"
TO THE NOTICE OF MOTION WHO ARE
UNLAWFULLY OCCUPYING ERF 95582
(TUIN PLEIN PARK), HOPE STREET, WANDEL
STREET, VREDE STREET THEY INTERSECT,
ROODEHEK STREET FROM WHERE IT
MEETS HOPE STREET UNTIL MCKENZIE
STREET, THE WHOLE OF WESLEY STREET FROM
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MEETS MCKENZIE STREET, THE WHOLE OF GLYNN
STREET FROM WHERE IT MEETS HOPE STREET
ACROSS THE INTERSECTION OF SOLAN ROAD
UP UNTIL MCKENZIE STREET, THE WHOLE OF
BUITENKANT STREET FROM WHERE IT MEETS
ROODEHEK STREET**

First Respondents

**THOSE PERSONS (WHOSE FULL AND FURTHER
PARTICULARS) ARE UNKNOWN TO THE APPLICANT**

Second Respondents

**WHO ARE UNLAWFULLY OCCUPYING ERF 95582
(TUIN PLEIN PARK), HOPE STREET, WANDEL
STREET, VREDE STREET THEY INTERSECT,
ROODEHEK STREET FROM WHERE IT
MEETS HOPE STREET UNTIL MCKENZIE
STREET, THE WHOLE OF WESLEY STREET FROM
WHERE IT MEETS HOPE STREET TO WHERE IT MEETS
MCKENZIE STREET, THE WHOLE OF GLYNN STREET
FROM WHERE IT MEETS HOPE STREET
ACROSS THE INTERSECTION OF SOLAN ROAD
UP UNTIL MCKENZIE STREET, THE WHOLE OF
BUITENKANT STREET FROM WHERE IT MEETS
ROODEHEK STREET**

JUDGMENT

SIPUNZI AJ

Introduction

[1] This is an opposed application for the joinder of the National Minister of the Department of Social Development ("The National Minister") and the Minister of the Department of Social Development Western Cape Provincial Government ("The Provincial Minister") as third and fourth respondents in the main application, and as second and third respondents in the counter application filed simultaneously under case number 14732/2024.

[2] The opposition is on the basis that the Departments have no interest in the rules that the City of Cape Town sought to enforce on the respondents in the main

application. Further thereto, that the relief of constitutional invalidity of the rules imposed by the City of Cape Town as a condition to the provision of alternative accommodation have no effect or bearing on the Departments and their Legislated and Constitutional obligations. The applicant in the main application (The City of Cape Town) filed a notice to abide.¹

The Background

[3] In the main application, the City of Cape Town sought the eviction of the respondents (in the main application) from certain public parks, road reserves and pavements within the Central Business District of Cape Town. Conversely, these respondents were offered alternative accommodation in the Safe Spaces. There were certain conditions and rules that would regulate their admission and continuous conduct of the residents into these Safe Spaces. A dispute arose on the enforcement and validity of some rules.

[4] In order to succeed, inter alia, the City of Cape Town has to demonstrate that the evictions were just and equitable, by also providing suitable alternative accommodation or land to those it sought to evict.² The Safe Spaces Programme was an initiative of the City of Cape Town, particularly designed to close a gap that would be occasioned by the anticipated eviction and sought to provide those evicted with adequate accommodation. They would be fully run and operated by the City of Cape Town.

¹ Notice to abide, dated 11 December 2024, page 38 of the application for joinder bundle

² Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998, Section 6(3)(c)

[5] When the application for eviction became opposed, the counter-application challenged specific rules attached to the alternative accommodation provided by the City of Cape Town. It is on the strength of the counter application that the joinder of the National Minister and Provincial Minister of the Departments of Social Development issued.

[6] 'The impugned rules which became the subject matter of the counter application imposed lockout and abstinence conditions for residents, in that:

- a) Rule 1-2: The lockout rule - Preventing admission to the Safe Spaces after 20h00 unless prior arrangements have been made and agreed upon;
- b) Rule 8: The abstinence rule- Coming to the Safe Spaces under the influence of alcohol or any other drugs will not be permitted; and
- c) Rule 14: Residents are required to vacate the Safe Spaces between 8h30 and 17h00 daily.'³

[7] Among others the applicants alleged that the impugned rules were invalid and not consistent with the rights that are promised in the Constitution of the Republic of South Africa, 1996.

Submissions

[8] The applicants submitted that the subject matter of the counter application related to the broader responsibilities of the provincial and the national departments, hence they have a direct and substantial interest. The applicants made specific

³ Answering affidavit- Joinder application, paragraph 7, page 60 of the joinder application bundle

reference to the Western Cape Government Norms and Standards for Shelters for Homeless Adults and the Prevention of and Treatment for Substance Abuse Act 70 of 2008 as the specific instruments that find relevance to the dispute over the validity of the impugned rules.

[9] Mr Montzinger, for the applicant, submitted that the Safe Spaces should be regarded as falling under the category of shelters as provided for in the Norms and Standards of the Provincial Department of Social Development. He acknowledged that the Safe Spaces were neither 'shelters' under the Western Cape Norms and Standards for Shelters for Homeless Adults nor 'service centres' under the Prevention of and Treatment for Substance Abuse Act 70 of 2008 (Substance Abuse Act). However, the emphasis was that, to the extent that the impugned rules may render the Safe Spaces inaccessible to substance and drug users and those with substance and drug use disorders, there were implications for the Departments, due to their legal obligations to people that are suffering from substance and drug use disorders.

[10] According to the applicants, in the event that they were successful in the counter application, such might have a substantial impact on the manner the departments regulated their programmes on people that are homeless and on drug related matters. In essence, they argued that, although the Safe Spaces were operated and funded by the City of Cape Town as alternative accommodation to the anticipated eviction, the interpretation of the responsibilities of the Departments should follow an inclusive approach, to implicate the Departments' interest.

[11] The Respondents contended they had no direct and substantial interest in both main and the counter applications. They submitted that the Safe Spaces were a program of the City of Cape Town. The rules that are the subject of dispute between the city and the respondents in the main application were the sole creation of the City and had no potential impact to the Departments and their programmes. Furthermore, they rejected the applicant's claim that the Departments were the regulators of the shelters and contended that there was no legal framework that imposed such responsibilities on them. According to the respondents, the Western Cape Government Norms and Standards were only imposed on Non-profit Organisations (NPO) that were funded by the Provincial Minister.

[12] Ms Williams, for the respondents, argued that the applicants' case for the joinder was based on incorrect interpretation of the scope of the Substance Abuse Act. She also submitted that the rules that were the subject matter of the dispute did not trigger the direct and substantial interests of the respondents. Accordingly, they would not be adversely affected by any court order that resolved the dispute over the rules which sought to regulate the Safe Spaces. She was emphatic in that the legal issues in the main application and the counter application had no legal bearing on the mandate and responsibilities of the Departments.

Issue

[13] There are two pertinent questions that arise from the factual matrix outlined above. Firstly, whether the dispute over the validity of the Rules in the Safe Spaces may fall within the ambit of the Legal framework that creates obligations for the Provincial Minister and the National Minister of Social development.

[14] Secondly, whether the Provincial Minister and the National Minister of the Department of Social Development have direct and substantial interest in the relief sought in the main and or counter applications, thereby necessitating their joinder as respondents to both applications.

The Law

[15] This application has its foundation on Uniform Rule 10 which provides for the Joinder of parties and cause of action. The test in joinder applications is trite and also set out in *ABSA and Another v Naude*⁴, namely; *"The test is whether or not a party has a direct and substantial interest in the subject matter of the action, that is a legal interest in the subject matter of the litigation which may be affected prejudicially by the judgment of the court..... The rule is that any person is a necessary party and should be joined if such person has a direct and substantial interest in any order the court might make, or if such an order cannot be sustained or carried into effect without prejudicing that part, unless the court is satisfied that she or he has waived his or her right to be joined."*

Evaluation

[16] Counsel for both parties dealt with the applicable substantive legal principles sufficiently. They also agreed on the applicable test in regard to joinder.⁵ They only differed on the application of the set principles to the issues that are contentious between the parties. In a nutshell, consideration must closely examine if the roles imposed by the *Substance Abuse Act* to the Departments create interests to the

⁴ *ABSA Bank Limited v Naude* N.O 2016 (6) SA 540 (SCA), paragraph 10; and echoed in *JSC & Another v Cape Bar Council and Another* 2013 (1) SA 170 (SCA), para 12

⁵ *ABSA Bank Limited v Naude*

operations within Safe Spaces and on matters that relate to the rules which regulate the relationship between the City and the residents. Another area of application of the principles will be the extent or the relevance, if any, of the applicability of the *Norms and Standards for Shelters for Homeless Adults* of the Provincial Department to the impugned rules in the Safe Spaces.

The Substance Abuse Act

[17] The specific Rules that are the subject matter in this joinder application exclusively apply to the Safe Spaces, which are run and operated by the City of Cape Town Municipality. The argument of the applicants in regard to what are the likely implications of the enforcement of these Rules to the Department necessitates a closer reading of the objectives of the Substance Abuse Act, namely, “2. The purpose of this legislation is:

- a) to combat substance abuse in a co-ordinated manner;
- b) provide for the registration and establishment of all programmes and services, including community based services and those provided in treatment centres and halfway houses;
- c) create conditions and procedures for the admission and release of persons to or from treatment centres;
- d) provide prevention, early intervention, treatment, integration and aftercare services to deter the onset of and mitigate the impact of substance abuse;
- e) establish a Central Drug Authority to monitor and oversee the implementation of the National Drug Master Plan;
- f) promote a collaborative approach among government departments and other stakeholders involved in combating substance abuse; and

g) provide for the registration, establishment, deregistration and disestablishment of halfway houses and treatment centres.”

[18] Furthermore, the Substance Abuse Act provides for the “Central Drug Authority and Supporting Structures” and establishes the “Central Drug Authority (CDA).”⁶ The powers and duties performed by the CDA are conferred and imposed on it by or in terms of the Substance Abuse Act. The list of the members is exhaustive and definitive on the role, powers and identity of the members who compose the CDA. The list does not include the Municipalities and its officials or, in this context, the City of Cape Town and any of its officials.⁷ The characteristics of Safe Spaces programme, do not feature in either fulfilment of the objectives of the Substance Abuse Act and on the list of bodies that are envisaged in the CDA.

[19] Due regard must be had to the definition of the community-based services⁸ in the Substance Abuse Act, with the view to consider if the Safe Spaces may fall within that category. If they do, such would certainly arouse the interest of either the Provincial or the National Minister. The essence of the impugned rule 8, which is also referred to as the ‘abstinence rule’, actually demonstrates that the Space Spaces are not open to the admission of substance or alcohol users. To the extent that rule 8 expressly prohibits entry of people under influence of alcohol or drugs from the facilities, implies that the Safe Spaces are intended to be alcohol and drug free zones.

⁶ Substance Abuse Act, 2008, Chapter 10, Section 53

⁷ Section 53(2) (a-u)

⁸ Substance Abuse Act, 2008, Chapter 10, Section 1, “Community-based services, means services provided to persons who abuse or are dependent on substance and to persons affected by substance abuse while remaining within their families and communities.”

[20] Therefore the Safe Spaces are neither intended for treatment; rehabilitation and of any service to substance users or those with substance use disorders and under the Substance Abuse Act. In the context of the impugned rules, the Safe Spaces, do not fit the description of community-based services, and by implication, are neither community-based service centres or as envisaged in the Substance Abuse Act. It is unlikely that any outcome from the challenge of these rules would induce any changes to the Departments.

[21] In terms of the eviction application, these facilities are intended to provide alternative accommodation or residences, in anticipation of the evictions that are sought by the City of Cape Town. This form of accommodation does not meet the criteria of facilities envisaged in the Substance Abuse Act. Safe Spaces also do not provide any services⁹ contemplated in the Substance Abuse Act or under the mandate of the Departments.

[22] These features highlight an irreconcilable disconnect and fails to provide factors to demonstrate that the Departments may be interested and substantially affected by the manner of the Rules which regulate the relationship between the Safe Spaces and seekers of alternative accommodation. The applicants' argument fails to appreciate that the relationship between the City of Cape Town and the prospective residents in the Safe Spaces, regardless of the outcome of the counter application, does not trigger the application of the Substance Abuse Act, and mandate of the Departments in any shape and form.

⁹ Substance Abuse Act, 2008, Chapter 10, Section 1, "Services means prevention, early intervention, treatment, reintegration and aftercare and any other interventions."

Norms and Standards for Shelters for Homeless Adults

[23] Coming to the submission by Mr Montzinger that the Safe Spaces must be considered as shelters in the context of the Western Cape Government Norms and Standards for Shelters for Homeless Adults. "A shelter" is a safe place where homeless adults can be stabilised in a physical structure on a temporary basis to provide in their immediate needs, and work towards rebuilding human dignity and self-reliance."¹⁰ As part of the contractual relationship between the Provincial Department and the NPOs which establish and operate the 'Shelters', they are required to be registered with the Department. That is not the case with the Safe Spaces. The form of accommodation offered by the Safe Spaces, which is provided in the spirit of PIE,¹¹ do not meet the characteristics of 'shelters' in the context of these Norms and Standards. Furthermore, this is not part of the subject matter of the counter application, therefore, even if the applicants succeed, the order of court will likely not vary the current form of the Safe Spaces in that respect.

[24] The Safe Spaces are fully funded and operated by the City of Cape Town, without any contractual connection to the Departments. There is also undisputed evidence that the Norms and Standards only find application to the shelters that are funded by the Provincial Department. In fact, Norms and Standard form part of the contractual arrangements between the Provincial Department and the operators of the shelters. With this background, one finds no basis upon which the Safe Spaces could assume the character of a 'shelter', within the operation of the Department's Norms

¹⁰ Western Cape Government Norms and Standards for Shelters for Homeless Adults, Section 3: Definitions

¹¹ PIE, Section 6(3)(c)

and Standards. There has been no indication that the anticipated outcome of the counter application sought to change these existing features of the Safe Spaces.

[25] The above outlined characteristics and rules of the Safe Spaces and their likely bearing to the MEC and the National Minister of Social Development, brings one to the *JSC and Another v The Cape Bar (supra)* which is instructive on the applicability of the test of interest of a third party to a dispute. It was held that, *'It has now become settled law that the joinder of a party is only required as a matter of necessity, as opposed to a matter of convenience, if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned. The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder plea.'*¹²

[26] The essence of the applicants' approach seems to be borne out of the perceived connection of the Departments of Social Development to general matters that implicate the welfare of some vulnerable groups within the community. Mr Montzinger also submitted that the respondents may only be required to provide some opinion on how the matrix between the City of Cape Town and the respondents in the main application should be modelled in future. The applicants were unable to demonstrate that any tangible interests the Departments were likely to be prejudiced by any order of the court in relation to the challenged rules in the counter application.

[27] There was another submission that the order in the main application may affect how the Departments operate the Safe Spaces in future. This argument is at odds

¹² Paragraph 12

with the proven facts that the Safe Spaces are independently operated and fully funded by the City of Cape Town with no connection to the Departments. The distinction between the government funded shelters and the Safe Spaces remains irreconcilable. The dispute over the constitutional validity or suitability of the rules within the Safe Spaces remains too remote a matter of concern to the Departments. Their joinder would be prejudicial because they are likely to remain spectators when the substantive issues prevailing in the applications would be ventilated.

[28] The applicants have not provided sufficient grounds in support of their contention that the Departments have interest at all in the issues that prevail between the City and the potential Safe Spaces residents and any anticipated court orders. The impugned rules upon which they may regulate the alternative accommodation, depending on the outcome of the counter applications, created no connection to the responsibilities and general mandate of the Departments and therefore no interests in the sense of Rule 10.

[29] The subject matter of the dispute in the Safe Spaces and outcomes of both applications do not arouse the interests of both Departments. The substance of the prevailing dispute does not render the Departments to be necessary parties, individually and collectively. They need not be joined as they lack direct and substantial interest in any order the court might issue, even at the level of convenience for any of the parties involved in the dispute.¹³

¹³ JSC & Another v The Cape Bar Council and Another 2013 (1) SA 170 (SCA),

[30] In conclusion, the applicants have not demonstrated that they are entitled to the relief sought in the notice of motion. The joinder of the Provincial and the National Departments of Social Development will not be necessary in the main and the counter applications. They each lack direct and substantial interest in both applications.

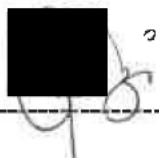
Costs

[31] The applicant has sought an order that costs are costs in the main application. The respondents agreed with the submission of the applicant, in the event that they are joined to the applications. They would however not seek costs from the applicants if the court found that the joinder was unnecessary, with which I agree.

Order

[32] The following order is therefore made:

1. The application for the joinder of the National Minister of the Department of Social Development and the Minister of the Department of Social Development - Western Cape is dismissed.
2. Each party to bear their costs of the application.



SIPUNZI AJ

Acting Judge of the High Court

Appearances

For the applicants: Adv Montzinger

Instructed by: Ndifuna Ukwazi Law Centre

For the respondents: Adv Williams

Instructed by State Attorney: Mr David Mashigo

Hearing Date: 10 June 2025

Judgment Date: 19 June 2025

This judgment was handed down electronically by circulation to the parties' representatives by email.