

IN THE HIGH COURT OF SOUTH AFRICA

DURBAN & COAST LOCAL DIVISION

Case No...../2006

In the matter between

BHEKUYISE NGCOBO

First Applicant

MOTALA FARM DEVELOPMENT COMMITTEE

Second Applicant

and

eTHEKWINI MUNICIPALITY

First Respondent

FOUNDING AFFIDAVIT

I the undersigned

BHEKUYISE NGCOBO

do hereby make oath and state:

The Parties

- 1 I am an adult male resident of the Motala Farm, Informal Settlement, situated near the Motala Heights Library in the

district of Pinetown (Ward 15)), KwaZulu-Natal. I have resided at Motala Farm since 1994. I am unemployed, save for the odd jobs that occasionally come my way. I am the first applicant.

- 2 The second applicant is **MOTALA FARM DEVELOPMENT COMMITTEE** ('the Committee'), a voluntary association, established by the informal settlers in and around the Motala Farm area, to promote and protect their rights and interests particularly with regard to their right to decent housing, water and sanitation. The second applicant has no fixed address. I am also the chairperson of the second respondent. The second respondent is also a member of the Abahlali Basemjondolo (also known as the Shack Dwellers Movement). Members of the Committee have passed a resolution authorising me to bring this application on their behalf. A copy of the Resolution is annexed marked "**MFDC1**"
- 3 The first respondent is the **eTHEKWINI MUNICIPALITY**, care of the care of the Head : Legal Services, 12th Floor, Shell House, corner Aliwal and Smith Streets, Durban. I am advised that it was established by virtue of Provincial Notice 343, 2000 (KwaZulu-

Natal) of 19 September 2000 and that it is a level of government in the local sphere as contemplated in chap 7 of the Constitution.

- 4 The facts contained in this affidavit are true and correct, and within my personal knowledge, save whether the context indicates otherwise. The submissions of law are made on the advice of my attorney.

THE ISSUE

- 5 The First Respondent has since October 2001 embarked on it's 'Slum Clearance Project, aimed at addressing the needs of housing, health and safety of people living in the informal settlements in its area of jurisdiction. This project is run in conjunction with the KZN Department of Housing. The first respondent has declared its intention to relocate people living at Motala Farm to a new area called Nazareth Island, about 15km from where we presently live.
- 6 In the process of carrying out these relocations, the first respondent (on the basis of information conveyed to our attorney) seek to relocate the 'owner' of a shack and his family. More than one family almost always occupies these shacks. As the 'owner' and his family leave the informal settlement, the respondent's Land Invasion Unit enter the site and demolish the existing structures. As a result, the remaining

occupants of the structure vacate by the erstwhile owner are now being demolished, without any due and lawful process being followed.

- 7 These demolitions have been taking place over the last week. During this time, approximately 20 families have been relocated to Nazareth Island. However an equal number if not more have been rendered homeless as a result of the shacks in which they lived, being torn down.
- 8 The respondent and its officials have indicated that they intend demolishing the entire shack settlement at Motala Farm. This includes my shack as well as that of all other residents. I therefore bring this application not only in my own interests, but in the interest of the residents of Motala Farm who have been rendered homeless and those who will become homeless unless the respondent's conduct is curtailed by this Honourable Court. Many of the residents are remaining on site, guarding their belongings, in the event that the respondent's officials attempt to carry out further demolitions.
- 9 Neither any resident nor I is aware of any Court Order that exists authorising the demolition of shacks in Motala Farm, nor is it the contention of the respondent that such Order exists or is necessary in the circumstances.

THE FACTS

- 10 Motala Farm has existed as an informal settlement for over 15 years. It is located on the outskirts of Pinetown's industrial hub, close to Westmead and the Edgewood College of Education. People who have come to Pinetown in search of employment and who have nowhere to stay, often make their way to our settlement to seek shelter. The settlement is also close to schools in the residential area of Motala Heights. Public transport routes are also fairly close. I grew up in Nkandla, Zululand and came to Durban seeking employment in 1995. I was unable to find employment and sought shelter with my aunt, Mngwengwe, who lived at House No. 149 in Motala Farm.
- 11 Over the years, I eventually found employment in Westmead and saved enough money to buy materials and build my own shack. I presently reside in House No. 480 with my three children and my wife. I am presently unemployed. My wife is employed on a casual basis as a domestic worker in the nearby residential area. Our situation is not dissimilar from that of other families living in Motala Farm.
- 12 Although the settlement is located on a steep slope, we have not experienced any danger or damage to property over the years as a result of heavy rains. In addition, the municipal officials have never before informed us that our shacks constituted a potential source of danger. The conditions in which we live are far from adequate. There is a gravel road via which we acquire access to the site. A washing bay was erected a few years ago by the Department of Public Works,

as well as ablution facilities. This is the only source of clean drink water for the community at the informal settlement. This is evident from the picture taken by our attorney, referred to as **'PIC 1'**.



'PIC 1'

13 Prior to the recent evictions and relocations, the settlement was home to approximately 227 families. It is necessary to point out that the land is owned by the municipality and that occupants at Motala farm occupied the land over the years without the consent of the local authority. As an informal settlement, the area grew over time.

14 In and during September 2006 the respondent began relocating families to the nearby site of Nazareth Island, and this was accompanied by the demolition of the shacks vacated by their erstwhile

owners. The manner in which these relocations and demolitions take place, is the following :

- a. persons who are regarded as “owners” of shacks, such as my Aunt Mngwengwe who occupied House No. 149 are approached with an offer to relocate to Nazareth Island;
- b. Once the offer is accepted, the respondent arranges for the ‘owner’s” belonging such as beds, clothing and other items to be transported to the new site by truck;
- c. The remaining occupants, who may have been sub-tenants or people merely seeking shelter on a day to day basis and occupying a single room in the shack, were left behind.
- d. The shack vacated only by the erstwhile owner is then demolished, leaving the sub-tenants and other occupants without any shelter for them and their children.

15 In and during October 2006 our committee was informed that the respondent intended carrying out further evictions at the informal settlement. We approached attorneys Shanta Reddy & Associates for assistance. The said attorneys then issued a letter on our behalf to the Mayor and the Municipal Manager, requesting that the respondent clearly indicate their intentions for the residents of Motala Farm. A copy of this letter is annexed marked “B1”. No response was received from the respondent.

16 On Saturday, 28 October 2006 the officials and members of the respondent's Land Invasion Unit entered the settlement and carried out the relocation of about 20 families. As these families were department, the structures in which they lived were demolished without regard for the remaining occupants of the shacks, who lived in these dwellings together with those who had relocated.

17 A picture of the destruction left behind by the Land Invasion Unit is evident from the photograph below, referred to as “**PIC 2**” and annexure “**B2**”



“**PIC 2**”

18 On Sunday, 29 October 2006 members of the Land Invasion Unit again arrived at the settlement intending to destroy further shacks.

Members of our committee and the community thwarted these attempts and chased off the people who wished to continue their unlawful conduct from the day before. These actions by the respondents officials and servants caused tremendous emotions distress to the elderly, women and children at the settlement. Their actions were in blatant disregard for the dignity of people living in the settlement, and in callous disregard for the consequences of their actions. When questioned about where people were going to live if shacks were demolished, the officials simply gave no answer other than to say that they were following instructions.

19 A further letter was issued to the Mayor on 31 October 2006 pointing out that the actions over the weekend were in disregard for the law. A copy of this letter is annexed hereto marked “**B3**”. As a result of attorney Shanta Reddy becoming ill, we sought the assistance of our present attorney at the Legal Resources Centre Mr M R Chetty. On 31 October 2006 our attorney addressed a letter marked “**B4**”

20 On 1 November 2006 our attorney at the Legal Resources Centre , , held a number of telephonic discussions with the Head of Legal Services of the respondent, Mr Sibisi, as well as with officials at the respondent’s Inner West District offices, including Mr Knightingale and Ms K Mkhize. The situation had become urgent as members of the Land Invasion Unit has arrived on the scene and had attempted

to continue with their demolition of the shacks. A skirmish then ensued between the shack dwellers and the respondent's officials, as a consequence of which the latter fired rubber bullets at the residents. As the ensuing skirmish, a number of residents including myself, were injured and sprayed with tear gas. When I attempted to lay a complaint of assault at the Pinetown Police Station, the police simply refused to accept my complaint.

- 21 An intern from the Legal Resources Centre enquired from the official in charge, a Mr Terry Goudling, whether he had any Court Order to carry out the evictions. He advised that he had none, and that he was simply acting on an email instruction given to him by the Housing Department's Ms K Mkhize.
- 22 This email instruction was confirmed by Ms Mkhize to our attorney. As a result, an urgent letter annexed hereto marked "**B5**" was addressed to Ms Mkhize at the respondent's Housing Department. Instead of attempting to resolve the situation, the respondent accused our attorney of "harassment". A copy of the respondent's response is annexed hereto marked "**B6**".
- 23 On 3 November 2006, after an inspection of the site the day before, our attorney addressed a further letter to the respondent, clarifying the position and sought a meeting with the respondent to avert a battle between the residents and the officials of the respondent. A

copy of this letter is annexed marked “**B7**”. No response was received.

24 Over the weekend of 5 November 2006 I attended a meeting at which a member of the Ward Committee, a Councillor Dimba, was present. The said Councillor then issued a warning to me that the evictions of residents at the informal settlement at Motala Farm would continue until every single person was cleared from the site. He indicated that the evictions would start on Tuesday, 7 November 2006. As a result of the threat, a number of male residents have stayed away from work wanting to guard their meagre belongings and defend their dwellings from being destroyed.

25 Our attorney addressed a further demand to the respondent, annexed hereto marked “**B8**”. No response has been received. In addition, our attorney made several telephone calls to the offices of the Legal Services Department of the respondent on 7 November 2006. He has been unable to raise Mr Sibisi or any other official from his department.

26 As set out above, I am not aware of any Order of court that requires the demolition of the shacks, in our informal settlement, and none has been shown us. I submit that no one has the power to engage in an exercise such as the demolition of a home without being authorized by the courts. I accordingly ask the Court to protect us

before the respondent's officials arrive to effect further demolitions. The situation has the propensity to turn ugly, with the respondent's officials eager to use force at the slightest excuse.

27 The residents of the settlement and I fear that unless this Court protects us from the unlawful actions of the Municipality, its protection services will return and re-commence the demolitions.

28 I now set out the law that applies in relation to this issue.

29 Firstly, I am advised that the Bill of Rights in the Constitution provides in s 26(3) that *"No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions."*

30 Secondly, I am advised that the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 ('the Act') provides in its preamble, that the rights contained in s 26(3) of the Constitution must be protected; that the Courts must ensure that the eviction of unlawful occupiers is done in a fair manner; and lastly, that the Courts must ensure that special consideration is given to the rights of the elderly, children, disabled people and particularly households headed by women.

- 31 Thirdly, I am advised that a fundamental principle of the common law of South Africa is that a person may not take the law into his own hands.
- 32 The facts set out above demonstrate how the Municipality has taken the law into its own hands when dealing with us, in defiance of the Constitution and the law. I am advised by my attorney that the respondent have acted in a similar, high-handed manner in demolishing structures in Chatsworth, Durban. In that instance, an interdict to prevent them from continuing with their unlawful conduct was issued by this Court. I accordingly submit that there is a pattern of blatant disregard for the law and in particular for the rights of disadvantaged communities, guaranteed by the Constitution.
- 33 Moreover, while the respondent is in the process of relocating people to Nazareth Island, it has given no consideration as to where the remaining occupants of the structures should be accommodated. I am advised and submit that even if the respondents did have an Order of court for our eviction, such order could only have been granted if there had been consideration given to alternative accommodation for those being evicted. No such evidence exists, nor am I aware of any. No notice has been given to any resident to move. No alternative accommodation has been provided.

- 34 The demolitions of shacks have been a devastating event for our community. Those who have been left homeless have in some instances left the settlement out of sheer exasperation, while neighbours have taken others in.
- 35 The failure of the respondent to provide my attorney attorney with an undertaking that all demolitions will cease forthwith is causing us great distress and anxiety. As set out above, some residents have remained at hoime to guard their belongings. This entails another hardship in that for every day that a resident remain at home, he or she is unable to earn a livelihood to feed their family.
- 36 We have no objection in principal to the respondent's plans to relocate occupants of informal settlements. We too, have the right to live in an environment that is not mired by squalor and danger. Our children deserve better. We however have nowhere to go. Some residents have been offered relocation. They have refused, contending that the respondent's are competent to carry out in-situ upgrading. That however is a separate matter on which the respondent should engage with the community. As long at the respondent has no plans to relocate all the residents of Motala Farm, it cannot proceed with

its wanton eviction of the residents. These evictions are also an affront to our dignity as law abiding members of the community.

37 In addition to the rights that we have to housing in terms of s 26 of the Constitution, our children are given further rights to shelter by virtue of s 28(1)(c). This Court is directed by s 28(2) to regard as paramount anything that is in a child's best interests. Our children also attend schools in and around Motala Heights, Pinetown and Claremont. Their education has been disrupted by these recent events. This right too is protected by section 29 of the Constitution.

38 Infringements of our right to property include our right not to be arbitrarily deprived of our property except in terms of a law of general application as provided in s 25(1).

39 In the circumstances I submit that there is no other satisfactory and effective remedy to secure the relief I and other families seek. I submit that we have taken all reasonable measures to get the respondent to act within the framework of the law.

40 It is clear from the above that we have a clear right to an interdict to stop the respondent from demolishing our shacks and assaulting us. I fear that if the interdict is not granted, further assaults and unlawful evictions will be launched and cause us irreparable harm. If we are granted the relief we seek, the respondent will suffer no prejudice. There is no other satisfactory remedy available to us.

In the circumstances, I pray that it may please this Honourable Court to grant the relief contained in the notice of motion to which this affidavit is annexed, or such other relief as this Honourable Court deems just and equitable.

DEPONENT

I HEREBY CERTIFY that the Deponent has acknowledged that s/he knows and understands the contents of this affidavit which was sworn to and signed before me at DURBAN this 7th day of NOVEMBER 2006 in compliance with the regulations contained in Government Notice R.1258 dated 21 July 1972, as amended.

COMMISSIONER OF OATHS

Name, Address

Capacity & Area