IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO. 39602/2015

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

29-08-2023 — DATE

PD. PHAHLANE — SIGNATURE

In the application of:

THUPETJI ALEXANDER THUBAKGALE	**First Applicant**
EKURHULENI CONCERNED RESIDENTS ASSOCIATION	**Second Applicant**
THE RESIDENTS OF THE WINNIE MANDELA INFORMAL SETTLEMENT	**Third to One Hundred and Thirty-Fourth Applicants**

And

EKURHULENI METROPOLITAN MUNICIPALITY	**First Respondent**
THE EXECUTIVE MAYOR, EKURHULENI MUNICIPALITY	**Second Respondent**
THE CITY MANAGER, EKURHULENI MUNICIPALITY	**Third Respondent**
HEAD OF DEPARTMENT: HUMAN SETTLEMENTS	**Fourth Respondent**

MEC FOR HUMAN SETTLEMENTS, GAUTENG PROVINCE **Fifth Respondent**

MINISTER OF HUMAN SETTLEMENTS **Sixth Respondent**

and

SECTION27 **First Applicant for leave to intervene as Amicus Curiae**

ESCR-Net **Second Applicant for leave to intervene as Amicus Curiae**

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by her secretary. The date of this judgment is deemed to be 28 August 2023.

JUDGMENT

PHAHLANE, J (with N. NDLOKOVANE AJ concurring and KUNY J descending)

[1] The delivery of the judgment in this application was delayed for a considerable period due to unfortunate incidents that impacted upon the preparation and delivery of the judgment. Those have been resolved one way or the other. For the delay, apologies are owed to the parties. The delay was not intended, but unfortunate.

[2] This is a contempt application in which the applicants seek an order declaring the first respondent ("the municipality") to be in contempt of court, together with amongst others, a mandatory structural relief that will see the applicants being provided with houses at Esselen Park. In the alternative, the applicants seek an order granting them leave to apply for constitutional damages in the event the court order is not obeyed within a year and to pursue further relief that will coerce the municipality to provide them with houses. The primary relief sought by the applicants is couched in the following terms:

1. *"The first respondent ("the Municipality") is declared to be in contempt of paragraph 1 of this court's order in Thubakgale v Ekurhuleni Metropolitan Municipality* 2018 (6) SA 584 (GP) (*15 December 2017)*

2. *The Municipality is directed to pay a fine in the sum of R1 330 000 (one million three hundred and thirty thousand rands) to the Registrar of this court within one month of the date of this order.*
3. *The Municipality is directed to provide each of the first and third to one hundred and thirty-fourth applicants with land and a house at Esselen Park, Tembisa, by no later than 31 December 2022, and to register those houses and that land in the applicant's names by no later than 31 December 2023.*
4. *The second, third and fourth respondents are directed to take all the administrative and other steps necessary to ensure that each of the first and third to one hundred and thirty-fourth applicants are provided with a house at Esselen Park, Tembisa, by no later than 31 December 2022.*
5. *The municipality is ordered to report back to this court and to the applicant's attorneys in writing every three months after the date of this order on the progress made in settling the applicants permanently in Esselen Park, Tembisa. The municipality's report must include responses to any concerns submitted to them by the applicants in written form.*
6. *In the event that they are not provided with the houses at Esselen Park, Tembisa by 31 December 2022, the applicants are granted leave to re-enroll this matter before the presiding judge or judges, and to seek such further orders that may then be appropriate including, but not limited to an order for such constitutional damages that this court may then assess as payable, and an order holding the second, third and fourth respondents in contempt of their obligations to take all the administrative and other steps necessary to ensure that each of the first and third to one hundred and thirty-fourth applicants with a house at Esselen Park, Tembisa by no later than 31 December 2022.*
7. *The respondents are directed to pay the applicants costs including the costs of two counsel".*

[3] Along with this application is the application brought by two organisations, SECTION 27 and ESCR-Net to be admitted in the main application as the first and second *amicus curiae* respectively in terms of Rule 16A of the Uniform Rules of Court. Section 27 and ESCR-Net further seek condonation for the late filing of their respective applications, and to be granted leave to

submit written and oral arguments in the main application. Neither application was opposed[1], and accordingly, the application was granted.

[4] This matter has a chequered history. The applicants initially launched proceedings to compel the Municipality to take the necessary steps to upgrade the housing conditions of the applicants within the Winnie Mandela Settlement, alternatively, to provide the applicants with houses at Tembisa Extension 25 by no later than 31 October 2018. Teffo J, presided over the matter and granted the order dated 15 December 2017, directing the Municipality to *inter alia* provide houses to the applicants by no later than 31 December 2018. That order shall be referred to as "the court order". The second round of litigation occurred when the Municipality launched an appeal with the Supreme Court of Appeal ("the SCA") and succeeded in having the "court order" modified by extending the deadline of 31 December 2018 for the provision of houses to 30 June 2019.

4.1 It is common cause that on 28 June 2019, less than one court day before the deadline for providing the applicants with houses as modified by the SCA, the Municipality brought yet another application, but this time around, it was to vary the order, extending the deadline by a further year, to 1 July 2020, and for an order declaring that flats, rather than houses, be provided in compliance with "the court order". On the other hand, the applicants brought a counter-application for constitutional damages as compensation for not having been provided with houses in terms of the deadline of 30 June 2019 set by the SCA. Basson J dismissed both applications. A further litigation took place at the Constitutional court on 18 February 2021 when the applicants, in an attempt to vindicate their rights, brought an appeal against the refusal to grant constitutional damages. That appeal was dismissed.

[5] The current application is the fifth round of litigation. It is not in dispute that as at the time of hearing this application, the Municipality had still not complied with the "court order" as amended by the SCA. It is this court order which the applicants seek to enforce in this application.

[1] Consent was given by the applicants and the respondents. See: CaseLines at 008-57; First Respondent's Explanatory Affidavit at 008-74, para 5; and 101-30 to 010-32.

[6] While the applicants contends that the Municipality's non-compliance with the court order is wilful and *mala fide* and therefore an order for constitutional damages remain appropriate, the Municipality concedes that it has had notice of the court order and has not complied with the court order but holds a view that the delay in not complying with the court order is not wilful or in bad faith. It is the Municipality's contention that granting the relief sought for contempt of court or constitutional damages does not constitute an appropriate relief in this case.

[7] In this application, it is not necessary to traverse all the alleged disputes of facts, but for those that relate to the grounds of this application. There is no doubt that the jurisdictional requirements necessary to hold a party in contempt of court have been met[2] because **(1)** the court order was granted against the Municipality; **(2)** as stated above, the Municipality concedes and acknowledges that it has had notice of the court order; and **(3)** the Municipality conceded that it has not complied with the court order.

[8] Having regard to the above, the issues for determination are:

8.1 whether the municipality has discharged the onus to demonstrate that the admitted non-compliance is not willful and *mala fide,* and therefore not in contempt of the court order.

8.2 whether constitutional damages can be awarded as an effective remedy for violation of socio-economic rights if the municipality is found to be in contempt.

[9] The municipality's submissions can briefly be summarised as follows:

9.1 The elements of contempt, and in particular, the requirements of willfulness and *mala fide* have not been proven.

9.2 It cannot be said that the municipality is in willful and *mala fide* breach of the court order when it has taken reasonable steps to accommodate the applicants. In this regard, the municipality stated that it has on an ongoing basis, made numerous attempts to comply

[2] Le Hanie and Others v Glasson and Others (214/2021) [2022] ZASCA 59 (22 April 2022); Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others [2021] ZACC 18; 2021 (5) SA 327 (CC) para 37); Fakie NO v CCII Systems (Pty) Ltd 2006 (4) SA 326 (SCA).

with the court order but have had difficulties as a result of the complications which arose in the implementation process of the construction project.

9.3 The municipality is facing severe constraints which can be categorized as "lack of funding and unforeseen delays". In this regard, it is stated that the municipality cannot be in breach of the court order because it operates within the limitations of the budget it obtains from the Provincial Treasury. Accordingly, the municipality cannot be in contempt of the court order when the National Treasury de-escalates funding and prioritizes its budget towards health and away from housing.

[10] The submissions made on behalf of the applicants are as follows:

10.1 As at the date of hearing this application, the municipality has not stated when it will provide houses to the applicants, and neither was this aspect addressed in its answering affidavit.

10.2 The municipality never accepted that its obligation under the court order was separate and distinct from its general constitutional obligations to provide housing to the thousands of people in its area of jurisdiction because it has indicated that it might comply with the court order in 2024 - and only if the Provincial Department of Housing allocates a budget necessary to complete that project - and only if there are no other delays in its implementation.

10.3 The municipality's willful and bad faith indifference to its obligations under the court order is evidenced by its conduct throughout the litigation process in that:

a) Having deprived the applicants access and possession of their houses to which they are entitled to in terms of successful subsidy applications, it has eventually conceded that it was responsible for preventing the applicants from gaining access to state subsidized housing.

b) It opposed an application for a High Court order directing the respondents to correct the breach they have committed in denying the applicants the right to have access to adequate housing, and thereafter launching an unsuccessful appeal against that order. In this regard, the municipality brought a frivolous application to vary its obligations under that order.

c) It misled the constitutional court by creating the impression that it was willing to provide houses for the applicants at Palm Ridge, only to withdraw that offer when it was taken up, and before the constitutional court delivered its judgment. In this regard, it was submitted that the municipality allowed the constitutional court to come with a decision on the erroneous basis that houses at Palm Ridge had already been offered but were rejected.

d) It has finally admitted that over 20 years after it initially deprived the applicants access to adequate housing, it remains in clear and continuing breach of the court order meant to correct that deprivation, and that it will only provide houses required by the court order in a few years to come.

10.4 It was submitted on behalf of the applicants that the above-mentioned aspects are indicative of the municipality's lack of intention of ever complying with the court order, and thus constituting a conduct of wilfulness and *mala fide,* and is accordingly in contempt of a court order.

[11] It is to be gleaned from the papers that the municipality has not put in place any measures to facilitate the delivery of the houses to the applicants. This is so because it has in its answering affidavit, stated that it might be able to comply with the court order by **30 June 2024**[3]. Having said that, it is the municipality's contention that the fulfilment of its obligation to provide houses to the applicants is dependent on the Provincial Department of Housing which must allocate the funds necessary for it to complete that project, and that this can only be done if there are no other delays in its implementation. That is, in the "absence of budget limitations and unforeseen delays". On the other hand, it identifies what it refers to as the alternative solutions provided to the applicants, but then mentions what appears to have been problems preventing it to provide those alternatives.

[3] At para 51.

[12] Relying on the Constitutional Court decision in ***City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties[4],*** Mr. Wilson appearing for the applicants argued that failure by the municipality to plan and budget from its own resources and placing reliance on another organ of State for funds -- to which the court order does not apply, while at the same time placing the applicants in the same category with thousands of other people which the municipality says it has obligations towards, was willful. The basis for this argument is that the court order which must, and should have been complied with, entitles the applicants to be treated differently because they had already been granted housing subsidies to the houses they have been prevented from occupying, because those houses were given to non-beneficiaries, to the detriment of the applicants.

[13] He further argued that when the municipality offered to house the applicants at Palm Ridge and subsequently withdrew the offer, that was an indication that the offer was made *mala fide* because there was never really an offer because the municipality must have known in July 2019 that accommodation at Palm Ridge was hollow.

[14] Having considered the circumstances surrounding the municipality's failure to deliver houses to the applicants, it seems to me that what the municipality referred to as difficulties and complications preventing it from complying with the court order, are simply just excuses, hence they were rejected and dismissed by Teffo J and Basson J, when the matter came before them. Before this court, the municipality raised yet another aspect, and that being "***the need to join the Provincial and National Departments of Finance***" and submitted that it would be appropriate for the court to *mero motu* join these departments, to enable the court to fully understand the reasons why these departments have declined to provide the required funding to the municipality to accelerate the applicant's housing at Esselen park.

[15] In my view, this seems to be just another "delaying tactic" by the municipality not to promptly comply with the court order because had that been the case, the municipality would have made

[4] 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) (1 December 2011) at para 74: it is not good enough for the City to state that it has not budgeted for something, if it should indeed have planned and budgeted for it in the fulfilment of its obligations.

this suggestion from the onset - considering that it had given an undertaking to the SCA that it will provide houses to the applicants by June 2019 and does not foresee any delays in delivering those houses. It is also my considered view that the municipality is determined to drag its feet by raising new issues every time the matter goes before court and is not prepared to comply with the court order.

[16] Accordingly, I am inclined to agree with the applicants' submission that the municipality had not, at the time of hearing this application, shown what it had done to obey the court order. Nothing has been placed before the court to show that the municipality would ever comply with the court order. Instead, the municipality had in its latest report (filed ten days before the date of the hearing of this matter) indicated that it might (not will) be able to provide housing at Esselen Park by 30 June 2023. This prompted the applicants to accordingly amend the prayer in paragraph 4 of the notice of motion. Be that as it may, I am of the view that the municipality had displayed itself to be a recalcitrant party throughout the proceedings because every undertaking it has made, has not been fulfilled, and had conducted itself in a manner that disregarded and violated the applicants' constitutional rights to housing. Despite 4 budget cycles having passed since the applicants were granted housing subsidies, the budget cycles came and passed for the municipality to consider plans which gives effect to the court order, the municipality still failed to comply with the court order.

[17] The principle as laid down in the leading case on civil contempt in ***Fakie NO v CCII Systems***[5]***,*** is that, where civil remedy is sought, once the knowledge of the order has been proven, as it is the case in the present matter, wilfulness and *mala fide* are presumed. Returning to the issues in this application, what cannot be avoided is the fact that there has been non-compliance with the court order. As stated above, one of the requirements for a contempt of court is that the non-compliance or refusal to obey a court order must be both wilful and *mala fide*. Having regard to the above-mentioned, I am of the view that the municipality has willfully, and *mala fide* breached the court order. Put differently, the municipality has failed to discharge the onus to demonstrate that the admitted non-compliance with the court order was not willful and *mala fide.*

[5] [2006] ZASCA 52.

[18] With regards to the second issue for determination, the applicants contended that, by failing to obey the court order, the municipality infringed and continues to infringe and violate their constitutional right to have access to adequate housing[6]. It was argued that a violation of socio-economic rights can be prevented and vindicated by awarding constitutional damages as an appropriate relief and effective remedy, because there is no other remedy available to the applicants.

[19] It was further argued on behalf of the applicants that this court cannot divorce itself from its obligation, to make an order that is "just and equitable"[7] under the circumstances where there has been a breach or infringement of socio-economic rights. Of course, the obligation is derived from the constitution which commands that where a human right or a constitutional issue arises and there has been a constitutional violation, the court must provide an appropriate relief for such a violation. The key or correct approach to determining whether constitutional damages would be the "appropriate relief" -- lies in the provisions of section 38 of the constitution which refers to an appropriate relief where a right in the Bill of Rights has been infringed[8].

[20] The municipality submitted that constitutional damages do not constitute an effective or appropriate relief in respect of socio-economic rights. It had initially stated that it would be relying on the judgment penned by Jafta J, in ***Thubakgale v Ekurhuleni Metropolitan Municipality***[9] to the effect that constitutional damages cannot be granted for socio-economic rights but has since moved away from this position as it is clear from the heads of arguments.

[21] Reflecting on the three judgments penned by the constitutional court, Mr. Wilson submitted that – when one considers the circumstances of the applicants and the fact that there has not only been a violation of their right to have access to adequate housing, but also a breach of two court orders designed to protect and promote that right, constitutional damages are in principle, the only appropriate relief where there is a breach of a socio-economic right. He further submitted

---

[6] Section 26 of the Constitution (Act 108 of 1996)

[7] section 172 of the Constitution.

[8] Section 38 states, in relevant part, that anyone "has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights."

[9] [2021] ZACC 45 (7 December 2021).

that constitutional damages should be granted to vindicate socio-economic rights in circumstances where doing so is the only effective remedy or the most appropriate remedy.

[22] On the same token, Mr. Ngcukaitobi submitted that the pronouncement by Jafta J, that constitutional damages cannot be granted for socio-economic rights -- is not consistent with the jurisprudence of the constitutional court or its obligation to grant an appropriate, just, and equitable remedy. He further submitted that paragraph 121 of the judgment constitutes a misdirection when regard is had to the constitutional command placed in courts adjudicating human rights violations, and the vindication of socio-economic rights violation.

22.1 SECTION 27 submitted in its heads of arguments that although Madlanga J, was not convinced that the applicants had met the stringent test for the award of constitutional damages, he was however of the opinion that "the appropriateness of constitutional damages whenever socio-economic rights are at issue, lies in the provisions of section 38 of the constitution with regards to what an "appropriate relief" is, in the given circumstances, and that "constitutional damages must be the most appropriate remedy available to vindicate constitutional rights".

22.2 It was further submitted that from the reading of the judgment, six judges in the Constitutional Court (who wrote and concurred in Majiedt J and Madlanga J's opinions) were of the view that constitutional damages can be granted to vindicate socio-economic rights in circumstances where doing so is the only effective remedy or the most appropriate remedy, - thus making this the majority opinion of the Constitutional Court in so far as it relates to the question whether constitutional damages may be granted to remedy socio-economic rights.

22.3 As indicated above, when the constitutional court delivered its judgment, it was not privy to some developments and interactions between the parties, which included the fact that the offer at Palm Ridge was no longer available to the applicants, which would have persuaded it to rule differently. Having regard to the cumulative circumstances surrounding the applicants, and the submissions made, I am of the view that nothing precludes this court from awarding constitutional damages to the applicants as an

effective remedy, and ultimately the appropriate relief within the meaning of section 38 of the constitution.

[23] The municipality correctly stated that a determination of what an appropriate relief should be, depends on the circumstances of a specific case. The court was referred to a few authorities[10], in respect of which constitutional damages were considered "appropriate relief" available to remediate constitutional violations. In this regard, the court's obligation to remedy arises with the right itself in respect of which an intended remedy must ensure the realization of that right or the fulfillment of that right where there has been a breach or infringement.

[24] On behalf of the applicants, refence to the decision of ***Hoffmann and Fose***, were made and it was argued that since constitutional damages have already been found by the courts to constitute an appropriate remedy, these courts recognized that constitutional damages were not excluded from the framework of an appropriate remedy, so long as they protect and enforce rights. It was submitted that the remedy must strike at the source of the harm, causing a constitutional infringement and that in determining the appropriate relief, regard must be had to the two overarching considerations which relates to the question whether (1) there exists an alternative remedy that would vindicate the infringement of the right alleged by the claimant and (2) whether the alternative remedy is effective or appropriate in the circumstances, as well as the ancillary factors such as considering whether the infringement of the constitutional rights was systemic; repetitive; and particularly egregious; and whether the award will significantly deter the type of constitutional abuses alleged.[11]

[25] The principles applied in ***Residents of Industry House*** find relevance to the circumstances of this case. I am therefore inclined to agree with the applicant's submissions that this case is remarkably systemic, because it is common cause that the applicants have been homeless for over two decades, even though they were rightfully allocated housing subsidies. It is also evident that there has been repetitive infringements which saw the court orders of Teffo J; the SCA; and

[10] Hoffmann v South African Airways 2001 (1) SA 1 (CC); Fose, v Minister of Safety and Security 1997 (3) SA 786 (CC); Residents of Industry House, 5 Davies Street, New Doornfontein, Johannesburg and Others v Minister of Police and Others [2021] ZACC 37; Ngomane and Others v City of Johannesburg Metropolitan Municipality and Another 2020 (1) SA 52 (SCA).

[11] Residents of Industry House, 5 Davies Street, New Doornfontein, Johannesburg and Others v Minister of Police and Others [2021] ZACC 37 at para 103.

Basson J, not being adhered to by the municipality. In the ultimate, it was argued on behalf of the applicants, and correctly so, that the municipality has been egregious because the applicants have been forced to repeatedly come to court in an attempt to vindicate their rights to no avail.

25.1 It was submitted that granting the relief sought by the applicants would have a deterrent effect on constitutional abuses and serve as a repulsion for the municipality, to avoid having to pay constitutional damage at a future stage.

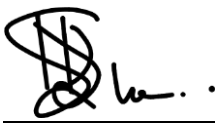
[26] Having considered the circumstances of this case and the submissions made by all parties, I am of the view that the applicants are entitled to the primary relief sought in the notice of motion. Since the date of 30 June 2023 has lapsed, the date will accordingly be amended to reflect 15 December 2023.

[27] In the circumstances, the following order is made:

1. Condonation is granted for the late filing of the application by SECTION 27 and ESCR-Net.
2. SECTION 27 and ESCR-Net are admitted as *amicus curiae* in the main application.
3. Leave is granted to SECTION 27 and ESCR-Net to file heads of argument and make oral submissions at the hearing of this matter.
4. The first respondent ("the Municipality") is declared to be in contempt of paragraph 1 of this court's order in Thubakgale v Ekurhuleni Metropolitan Municipality 2018 (6) SA 584 (GP) (15 December 2017).
5. The Municipality is directed to pay a fine in the sum of R1 330 000 (one million three hundred and thirty thousand rands) to the Registrar of this court within one month of the date of this order.
6. The Municipality is directed to provide each of the first and third to one hundred and thirty-fourth applicants with land and a house at Esselen Park, Tembisa, by no later than 15 December 2023 and to register those houses and that land in the applicant's names by no later than 30 April 2024.
7. The second, third and fourth respondents are directed to take all the administrative and other steps necessary to ensure that each of the first and third to one hundred

and thirty-fourth applicants are provided with a house at Esselen Park, Tembisa, by no later than 15 December 2023.

8. The municipality is ordered to report back to this court and to the applicant's attorneys in writing every three months after the date of this order on the progress made in settling the applicants permanently in Esselen Park, Tembisa. The municipality's report must include responses to any concerns submitted to them by the applicants in written form.
9. In the event that they are not provided with the houses at Esselen Park, Tembisa by 15 December 2023 the applicants are granted leave to re-enroll this matter before the presiding judge or judges, and to seek such further orders that may then be appropriate including, but not limited to an order for such constitutional damages that this court may then assess as payable, and an order holding the second, third and fourth respondent in contempt of their obligations to take all the administrative and other steps necessary to ensure that each of the first and third to one hundred and thirty-fourth applicants with a house at Esselen Park, Tembisa by no later than 15 December 2023.
10. The respondents are directed to pay the applicant's costs including the costs of two counsel.



PD.PHAHLANE
JUDGE OF THE HIGH COURT

I concur

N. NDLOKOVANE
ACTING JUDGE OF THE HIGH COURT

KUNY J

[28] This is an application, by way of contempt proceedings, to enforce a judgment and order granted by Teffo J on 15 December 2017.[12] I have had the benefit of reading the judgment of my colleague, Phahlane J, in this matter. I respectfully differ with her approach and the relief that she determined should be granted. In my view, the complexity of the issues in this matter calls for a different approach to issues of compliance and enforcement.

[29] I do not agree that the requirements for a contempt order have been met. Furthermore, if the first respondent were to be held in contempt, I do not agree that it should be ordered to pay a fine. Finally, I do not agree that the first respondent should be ordered to provide the applicants with houses at Esselen Park.

[30] The order of Teffo J provided as follows:

> 1. The first respondent is ordered to -
>
> 1.1 provide each of the first and the third to 134th (the residents) with a house at Tembisa Extension 25, or at another agreed location, on or before 31 December 2018;[13]
>
> 1.2 register the residents as the title holders of their respective erven by 31 December 2019;[14]
>
> 1.3 deliver written reports to the residents, through their attorneys, and to the registrar and the court, not more than three months from the date of this order, and at three months intervals thereafter, setting out the time line for completion of, and the progress which has been made in providing, the houses referred to in para 1.1 above.
>
> 2. The second, third and fourth respondents are ordered to take all the necessary administrative and other steps necessary to ensure that the first respondent complies with the order in para 1 above.

---

12 Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others 2018 (6) SA 584 (GP)

13 This date was extended by the Supreme Court of Appeal to 30 June 2019

14 This date was extended by the Supreme Court of Appeal to 30 June 2020

3. The respondents will establish a Steering Committee which will meet quarterly to oversee the process of construction. The Steering Committee will include -

3.1 three representatives from the residents, to be chosen from the residents, by the residents themselves;

3.2 a representative from the second applicant;

3.3 representatives from the first, fifth and sixth respondents, one of whom shall have direct responsibility for the construction of the houses to be provided to the residents.

4. In the event that the respondents fail to comply with their obligations in terms of paras 1 - 3 above, the applicants may supplement their papers and enrol this application on 10 days' notice for further appropriate relief.

5. The first respondent is directed to pay the applicants' costs, including the costs of two counsel.

[31] The order was amended by the Supreme Court of Appeal on 31 May 2019, only in relation to the extension of the dates for the provisions of houses and registration of the title to such houses into the applicants' names.

[32] Further:

a) On 31 January 2019 the applicants applied to this court to declare the first respondent in contempt of the reporting requirements of the Teffo J order (paragraphs 1.3 and 3).[15] The applicants also sought an order that each of the respondents be sentenced to a fine of R10 000 per day for every day that paragraphs 1.3 and 3 of the Teffo J order remains unfulfilled.[16]

---

15 Caselines 004-01

16 It is not clear what the fate of this application was. It does not appear to have been argued and there is no evidence of any outcome in the matter

b) On 28 June 2019 the respondents applied to this court to extend, by another year, the periods already extended by the Supreme Court of Appeal.[17] They also sought an order declaring that the applicants be provided with walk-up houses in place of free-standing houses, to be constructed at Tembisa 25.

c) In response, on 25 July 2019, the applicants counter-applied to declare the first respondent liable to pay them constitutional damages for the respondent's failure to implement the Teffo J order. This comprised an order that the first respondent be directed to pay each applicant R5 000 for every month, from 1 July 2019, to the date on which that applicant was given occupation of the land and the house required by the Teffo J order.

[33] Basson J dismissed both the respondents' application and the applicant's counter application.[18] Her reasons for refusing to award constitutional damages, as summarised by the Constitutional Court (in the appeal that followed[19]), were as follows:

a) Contempt of court proceedings may yield a more appropriate remedy where the municipality has delayed the execution of a court order and failed to comply with it.

b) An award for constitutional damages would have a punishing effect on the municipality for not complying with a court order.

c) The amount claimed (R5000) was arbitrary and unsupported by any evidence as to the actual loss suffered by each applicant.

---

17 Caselines 005-01

18 Ekurhuleni Metropolitan Municipality v Thubakgale [2020] ZAGPPHC 373 (13 July 2020) (Judgment of Basson J)

19 See Thubakgale and Others v Ekurhuleni Metropolitan Municipality and Others [2021] ZACC 45 paragraph [25] ("*Tubakgale* Constitutional Court")

[34] The applicants appealed Basson J's dismissal of their claim for constitutional damages to the Constitutional Court. On 7 December 2021 Jafta J (Mogoeng CJ and Tshiqui J concurring), granted the applicants leave to appeal, but dismissed their claim for constitutional damages.

[35] In a separate judgment, Madlanga J (Mhlantla J concurring) stated that whilst he agreed with the outcome reached by Jafta J, as a general proposition, he could not completely discount the possibility that constitutional damages might be appropriate in matters involving socio-economic rights.

[36] Madjiet J (Khampepe J, Theron J and Tlaletsi AJ concurring) upheld the appeal and directed the first respondent to pay the amount of R10 000 to each applicant as constitutional damages.

[37] The judgment of Jafta J constitutes the majority judgment in relation to the applicants' claim for constitutional damages. He held as follows:

> [180] Another obstacle standing in the way of granting constitutional damages is that the applicants successfully obtained a remedy in the litigation that was resolved by Teffo J. Once that order was confirmed by the Supreme Court of Appeal and there was no further appeal to this Court, the dispute between the applicants and the respondents was finally settled by judicial decree. What was then open to the applicants was to execute the order in their favour. Much as it was impermissible for the respondents to reopen that litigation for the purposes of altering a final order granted by Teffo J, it was not competent for the applicants to reopen the same matter and seek a new remedy while keeping in hand the order granted by Teffo J.

and further:

> [186] Since the order granted by Teffo J was *ad factum praestandum* (performance of a particular act), it cannot be enforced as if it is an order sounding in money. In other words, that order cannot be enforced by attachment of goods and their sale, in a sale in execution. The order requires delivery of houses to the applicants and the only way of enforcing it is through contempt of court proceedings. It was not open to the applicants to seek to enforce that order by asking for constitutional damages.

[38] The order that Phahlane J proposes to grant in this matter now directs the first respondent to provide to the Applicants land and houses situated at Esselen Park. This is in contrast to the Teffo J order that directed that houses be provided to the applicants at Tembisa Extension 25, or at another agreed location.

[39] In the application before Basson J the court was similarly faced with an attempt to amend the Teffo J order. There, the respondents sought a declaration that the applicants be provided with walk-up houses rather than the free-standing houses provided for in the Teffo J order.

[40] Basson J dealt extensively with the principles and considerations that apply where a variation of an order or judgment is sought. The learned judge concluded that to the extent that the court has the power to vary its judgment, either in terms of section 172(1)(b) of the Constitution or the common law, it will exercise such power sparingly. Basson J found there was no basis for a variation of the Teffo J order. Her approach was endorsed by the Constitutional Court.[20] Basson J also noted that the applicants had contended the High Court did not have the jurisdiction to vary the order of Teffo J, once the rights became vested.[21] They now, contrary to such previous assertion, seek a variation in this application that houses be provided in Esselen Park rather than Tembisa 25.

[41] In my view, neither a factual basis nor a legal basis has been set out in the applicants' founding affidavit for the variation of the Teffo J order that the land and houses originally to be provided at Tembisa Extension 25, now be provided at Esselen Park. A variation of the Teffo J order of this kind would require a substantive application. None has been brought. Ironically, in the affidavit filed in support of the application to the Constitutional Court, the applicants stated that they did not agree to the proposal that they be housed as Esselen Park because no credible enforcement proposal had been agreed to.

[42] The order sought that housing now be provided as Esselen Park, impacts directly on the issue of contempt and whether the respondents' conduct can be said to be deliberate, wilful and *mala fide*. In my view, a case has not been made out for the substitution of Tembisa 25 with

---

20 *Thubakgale*, Constitutional Court (supra), at paragraph [180]

21 Ekurhuleni Metropolitan Municipality v Thubakgale [2020] ZAGPPHC 373, per Basson J, paragraph 58

Esselen Park. Accordingly, on this basis alone, I would decline to grant an order holding the respondents in contempt.

REQUIREMENTS FOR CONTEMPT

[43] The circumstances in which a litigant can be held in contempt of a court order are well established in our law. In *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA), Cameron JA (as he then was) summarised the position as follows:

(a) The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders, and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.

(b) The respondent in such proceedings is not an 'accused person', but is entitled to analogous protections as are appropriate to motion proceedings.

(c) In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and wilfulness and mala fides) beyond reasonable doubt.

(d) But, once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and mala fides: Should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and mala fide, contempt will have been established beyond reasonable doubt.

(e) A declarator and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities.

[44] In *Fakie NO,* dealing with the test for whether a breach was deliberate and mala fide, Cameron JA held as follows:

[9] ..... A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case, good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be *bona fide* (though unreasonableness could evidence lack of good faith).

[10] These requirements - that the refusal to obey should be both wilful and mala fide, and that unreasonable non-compliance, provided it is bona fide, does

> not constitute contempt - accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the court's dignity, repute or authority that this evinces. Honest belief that non-compliance is justified or proper is incompatible with that intent. [footnotes omitted]

[45] In a separated judgment that concurred with the relief granted by Cameron JA, Heher JA distinguished between contempt orders that are coercive and those that are punitive. He defined coercive orders as follows:

> 1 The sentence may be avoided by the respondent after its imposition by appropriate compliance with the terms of the original (breached) order *ad factum praestandum* together with any other terms of the committal order which call for compliance. Such avoidance may require purging a default, an apology or an undertaking to desist from future offensive conduct.
>
> 2 Such an order is made for the benefit of the applicant in order to bring about compliance with the breached order previously made in his favour.
>
> 3 Such an order bears no relationship to the respondent's degree of fault in breaching the original order or to the contumacy of the respondent thereafter or to the amount involved in the dispute between the parties.
>
> 4 Such an order is made primarily to ensure the effectiveness of the original order and only incidentally vindicates the authority of the court.[22]

[46] Heher JA defined punitive orders as follows:

> 1. The sentence may not be avoided by any action of the respondent after its imposition.
>
> 2. The sentence is related both to the seriousness of the default and the contumacy of the respondent.
>
> 3. The order is influenced by the need to assert the authority and dignity of the court and as an example for others.
>
> 4. The applicant gains nothing from the carrying out of the sentence.[23]

---

22 Fakie No v CCII Systems (supra) paragraph [74]

23 Fakie No v CCII Systems (supra) paragraph [75]

[47] Having regard to paragraph 1 and 4 of the above definition, the imposition of the fine proposed by the applicants is punitive in nature and not coercive, as they argued.

RESPONDENTS' EXPLANATION FOR NON-COMPLIANCE

[48] The first respondent readily concedes that the self-imposed deadlines for the provision of housing to the applicants were unrealistic and could not be met. In its defence, it advances a number of reasons why it has not been able to comply with the Teffo J order. The respondents allege that various factors have caused delays in the construction of houses at Tembisa 25, cited *inter alia* as:

a) Large scale vandalism. It is alleged that in May and December 2021 the site was extensively vandalised by persons armed with assault rifles and trucks. Losses in an amount of some R28 million are said to have occurred.

b) Delays caused by Covid-19 in the supply of materials, shutdowns due to infections and the inability to conduct NHBRC inspections.

c) Lack of funding from Gauteng Department of Treasury, including the provision of funds to remedy the damage caused by vandalism.

[49] The respondents further allege that at the time the matter came before Teffo J, the first respondent intended to build free-standing houses at Tembisa 25. However, due to dolomitic conditions on site and economic considerations associated with this problem, it was decided that four storey walk-up units should be constructed. This type of accommodation did not comply with the Teffo J order that required that free-standing houses be given, and this alternative was rejected by the applicants.

[50] Discussions between the first respondent and the applicants yielded proposals about the provision of housing at Palm Ridge, Clayville and Esselen Park. The respondents state that it would be possible to provide free-standing houses to the applicants at Esselen Park. This housing development was initially demarcated for the construction of apartment blocks. Because of the Teffo J order, plans were changed to provide for the construction of 133 free-standing houses to be given to the applicants. However, the progress of this project has

been inhibited by budgetary constraints. The first respondent states that the housing project at Tembisa 25 is the applicants' quickest route to obtaining housing. It has prioritised the applicants as a special class of residents because of the court's injunction.

[51] On 26 July 2022 the fourth respondent filed a supplementary affidavit, seeking to place before the court new facts relating to events that occurred after the answering affidavit was filed (on 11 February 2022). Progress reports were annexed in respect of Tembisa X27[24] and Esselen Park. The following is reported in respect of Tembisa X27:

> The project has adopted an approach to segment the project output, with the initial output focus on the first 140 units that are being accelerated to aid the allocation of the 133 ECRA (Ekurhuleni Concern Residents Association) recipients as mandated by the court order. These units are currently being demarcated and cordoned off so that uninterrupted works can continue to expedite and complete the remaining works and subsequently fast track allocations of the housing units as prescribed for the 133 beneficiaries. The target date to place the beneficiaries is prior December 2022, this will be after all approvals have been authorized for housing requirements.

and further:

> The Tembisa Extension 27 housing units allocation is mainly an interim placement of the 133 ECRA beneficiaries as the permanent placement for the incumbents is currently progressing and prioritized at the Esselen Park Mega project in a form of Breaking New Ground (BNG) housing units that are prioritized and in progress for funding for top structure development envisaged to be ignited in the 2022/23 financial year.

[52] The Esselen Park project report[25] indicates that progress has been made with the installation of water and sewer services to priority areas. It states that subject to the availability of funds, by June 2023 the municipality would be in a position to complete 133 houses in a BNG development area highlighted on the site development plan. The report continues:

> The City of Ekurhuleni, Human Settlements Department continues to prioritise and ensures expedience to fast track the development of the BNG

---

24 Elsewhere in the papers it is indicated that Tembisa Ext 25 was previous referred to as Tembisa Ext 27 and it is understood that these are one and the same projects.

25 The report is dated 6 June 2022, see Caselines 007-316

> housing program that will resolve the housing of the 133 ECRA (Ekurhuleni Concern Residents Association) incumbents, and further incubate the development of engineering services and simultaneously to ensure that roads and storm water are implemented to a better housing experience for the beneficiaries of the development of the Birchleigh North Extension 4: Esselen Park Project.

[53] The applicants and *amici* urge that without effective remedies for breaches of court orders granting citizens socio-economic rights, the rights entrenched in the Constitution cannot properly be upheld or enhanced. This is undoubtedly correct. However, each case must be judged on its own facts having regard to the nature and circumstances in which the rights are sought to be enforced.

[54] In *Meadow Glen Home Owners Association and Others v Tshwane City Metropolitan Municipality and Another* 2015 (2) SA 413 (SCA), the court held:

> [35] Both this court and the Constitutional Court have stressed the need for courts to be creative in framing remedies to address and resolve complex social problems, especially those that arise in the area of socioeconomic rights. It is necessary to add that when doing so in this type of situation courts must also consider how they are to deal with failures to implement orders; the inevitable struggle to find adequate resources; inadequate or incompetent staffing and other administrative issues; problems of implementation not foreseen by the parties' lawyers in formulating the order; and the myriad other issues that may arise with orders, the operation and implementation of which will occur over a substantial period of time in a fluid situation. Contempt of court is a blunt instrument to deal with these issues and courts should look to orders that secure ongoing oversight of the implementation of the order. There is considerable experience in the United States of America with orders of this nature arising from the decision in Brown v Board of Education and the federal court-supervised process of desegregating schools in that country. The Constitutional Court referred to it with approval in the TAC (No 2) case. Our courts may need to consider such institutions as the special master used in those cases to supervise the implementation of court orders. [footnotes omitted]

[55] The applicants appear to accept in their replying affidavit, as a possibility, that the failure on the part of the first respondent to provide the applicants with houses may be caused by

incompetence or a misconception as to how the Teffo J order should be complied with.[26] In my view, if this is accepted, the threshold for the test set out in *Fakie NO,* as to whether the breach is deliberate, wilful and mala fide, has not been reached.[27]

[56] Having regard to all the circumstances, I am persuaded that the respondents have discharged the evidential burden resting upon them of showing that the breach of the Teffo J order was not deliberate, wilful or *mala fide*.

[57] Insofar as the imposition of a fine is concerned, the respondents argue that there is no explanation as to how the fine of R1 330 000 is calculated. They further argue, correctly in my view, that a fine would only serve to penalise the municipality's already strained budget, to the detriment of all its residents and the applicants. The Constitutional Court rejected the applicants' claim that the first respondent be required to pay damages, finding that:

> Awarding damages in this matter would treat the applicants differently from those thousands and perhaps millions countrywide. It would be the taxpayer that gets punishment and not the officials responsible for non-compliance with the court order. By parity of reasoning, those damages would have no deterrent effect upon the relevant officials.[28]

[58] I agree that the imposition of a fine would be punitive in nature, and not coercive. I also agree that the amount proposed by the applicant is arbitrary. This criticism was accepted by Basson J (and endorsed by the Constitutional Court), in relation to the applicants' claim for constitutional damages of R10 000 for each resident.[29] In my view, the circumstances do not warrant the imposition of a fine and I would decline to follow the order of Phahlane J in this regard.

---

26 Replying affidavit, Caselines page 007-245, paragraphs 7.1, 8 and 10

27 See Fakie NO v CCII Systems (supra) at paragraph [9] and [10]

28 *Thubakgale*, Constitutional Court, para [192] and see Fose v Minister of Safety and Security [1997] ZACC 6; 1997 (3) SA 786 (CC) at para [67]

29 Thubakgale and Others v Ekurhuleni Metropolitan Municipality, Constitutional Court, (supra), paragraph [142]

ABSENCE OF CONFIRMATORY AFFIDAVITS BY APPLICANTS

[59] There appears to have been a complete absence of any confirmatory affidavits by any of the applicants. I was of the view, that the circumstances of the matter entitled the court to raise this issue *mero motu*.[30] The absence of confirmatory affidavits was put to the applicants' counsel at hearing and both parties were given an opportunity to respond. The following is relevant:

a) The applicants filed their original application on 29 May 2015, some seven and a half years prior to the hearing of this application for contempt. The applicants were all personally cited and they deposed to confirmatory affidavits in support of their application.

b) The second applicant was cited as a properly constituted association (with its own constitution) that acts in the interest of its members and had *locus standi* to approach this court under Section 38(a) and (e) of the Constitution. A resolution of the second applicant was attached authorising the first applicant to depose to the founding affidavit on its behalf.

c) The founding affidavits in the first contempt application (in January 2019), in the application to the Constitutional Court (August 2020) and in this contempt application (filed in December 2021), were all deposed to by the applicants' attorney, employed by SERI (Socio-Economic Rights Institute of South Africa). It does not appear that any of the applicants deposed to confirmatory affidavits in any of these applications.

d) The second applicant, via its committee members, neither provided a resolution nor deposed to an affidavit, either in the current proceedings, or in the previous contempt applications. There is no indication whether it has taken any steps to communicate or consult with its members.

---

30 See Southern Africa Enterprise Development Fund Inc v Industrial Credit Corporation Africa Ltd 2008 (6) SA 468 (W) at para [22]

e) SERI is a non-profit organisation that purports to act as the applicants' attorneys. It is not a party to any of the proceedings in the various courts in which the applicants' matters have been heard.

f) It is trite, that as the applicants' attorneys, SERI must be instructed and authorised to act on behalf of each individual applicant in each matter brought before court.

[60] An attorney may, in appropriate circumstances, depose to an affidavit on behalf of a client. This occurs, particularly in applications that are purely procedural in nature. In my view however, the authorisation and instructions the applicants gave in 2015 do not necessarily imply that SERI is thereby mandated and authorised in every proceeding that follows. An authorisation given by a litigant should also not be conflated with instructions given as to how a matter should be handled. Actual instructions may be required from the client during the course of the litigation.

[61] There is no indication that there have been any recent attempts to verify the identity of the applicants, or to ascertain whether they still reside in the area, or what their current attitude to alternative housing is, or indeed, whether they are still alive. Considering the age of some of the applicants and the length of time that has elapsed,[31] it would be very surprising if there have not been material changes in the applicants' circumstances since the original application was launched (now eight years ago),

[62] There are various methods that SERI could have employed to satisfy the requirement that it has been properly authorised and instructed, short of obtaining confirmatory affidavits each applicant (which I accept would be difficult). Alternatively, SERI could have relied on the second respondent to perform the function of ensuring that proper authorisation and instructions were obtained from the applicants after the initial application was finalised. I assume that the second applicant, as a formally constituted organisation, has the means to

---

[31] A list of beneficiaries (presumed to be the applicants) was compiled by the first respondent in July 2015 in respect of the matter, see Caselines page 002-165

send out notices, call meetings and communicate and keep in contact with its members via cellular telephone, electronic messaging, or even social media.

[63] I regard this issue a matter of considerable importance, particularly where the fulfillment of constitutional rights are at stake. In the absence of visible litigants who claim their socio-economic rights and are responsive to the issues that arise in the course of the proceedings, the litigation can become divorced from the litigants who brought the proceedings in the first place, and vica versa.

[64] SERI rejected the proposal that the applicants be accommodated in walk-up flats at Tembisa 25 on the basis that they did not comply with the Teffo J order.[32] This appears to be a principled position that was taken by SERI. I find it surprising, considering the difficulties encountered over the years, that none of the applicants are prepared to agree to be accommodated at Tembisa 25, either as an alternative, or pending the provision of free-standing housing. Basic services such as running water and water-borne sanitation should also be considered. I question, in the absence of any confirmatory affidavits, whether these issues have been properly canvassed with the applicants.

[65] The dictum of Madala J in *Soobramoney v Minister of Health, KwaZulu-Natal* 1998 (1) SA 765 (CC) is apposite:

> [43] However, the guarantees of the Constitution are not absolute but may be limited in one way or another. In some instances, the Constitution states in so many words that the State must take reasonable legislative and other measures, within its available resources `to achieve the progressive realisation of each of these rights'. In its language, the Constitution accepts that it cannot solve all of our society's woes overnight, but must go on trying to resolve these problems. One of the limiting factors to the attainment of the Constitution's guarantees is that of limited or scarce resources.....

[66] It is self-evident, where there is a scarcity of resources, (in this case housing) that houses designated and allocated to the applicants, are not available to be allocated to other residents in the area who are in need. This places an additional responsibility on litigants and their

---

[32] See annexure EKU 5 to the respondents' answering affidavit, Caselines page 007-208 at paragraph 9.1, page 007-211

representatives pursuing socioeconomic rights, to find practical ways of resolving problems with the provision and allocation of the resources in contention. The practicalities of enforcing orders in this regard were identified and discussed in the case of *Meadow Glen Home Owners Association and Others (supra).*

[67] The MEC for Human Settlements, Gauteng Province and the Minister of Human Settlements were cited in the application before Teffo J, respectively, as the fifth and sixth respondent. They were cited in the proceedings in the High Court before Basson J, as well as the proceedings in the Supreme Court of Appeal and the Constitutional Court. They were not cited as parties to this contempt application. On 6 June 2021 the Executive Mayor addressed a letter to the MEC Human Settlements and COGTA Gauteng Province. [33] The Mayor points out that the provision of housing is a competency that is shared across the three spheres of government, and there has to be support from both the provincial and national government to realise the implementation of the Teffo J order. One of the problems with the housing construction projects that the respondents allege is delaying the provision of housing to the applicants, is a lack of funding from the province and central government. In my view, these parties should have been property cited in this contempt application and the application should have been served on them.

CONCLUSION

[68] The fact that the order given by Teffo J has not been complied with is a cause of great concern. I am inevitably drawn to the conclusion that more could and should have been done to provide housing for the applicants. However, I cannot, in the circumstances of this case, conclude that the failure to comply with the order was willful, deliberate or mala fide. Therefore, I would not, at this stage, have given an order holding the respondents in contempt of the Teffo J order.

[69] Teffo J issued a supervisory order for the creation of a steering committee, consisting of applicants and members of the respondent, to oversee the construction of houses and for the

---

33 Caselines, page 007-320

delivery of reports by the respondents. However, there is no indication on the papers whether the proposed steering committee, if properly established, was engaged with the issues and assisted with the process.

[70] In my view, a new supervisory order is necessary. This could have been crafted from proposals received from both sides in regard an appropriate order to expedite the provision of housing to the applicants, put in place temporary measures to alleviate their plight and deal with any further problems that may arise.

[71] I am of the view, having regard to the delays in the compliance with the Teffo J order, that the applicants were justified in bringing this application and are entitled to their costs.

[72] In the circumstances, I consider the appropriate order to be the following:

1 SECTION 27 and ESCR-Net are admitted as *amici* in this application and are granted leave to file heads of argument and make submission in the matter.

2 The application is postponed *sine die*.

3 The parties are directed to make proposals to the court on the grant of a supervisory order for the express purposes of expediting compliance with the order of Teffo J under Case Number 39602/2015 granted on 15 December 2017.

4 The parties are directed to apply to the Deputy Judge President as soon as possible for the appointment of a case manager for the purpose inter alia of receiving the parties' proposals in respect of the supervisory order contemplated in paragraph 2 and of making an appropriate order in this regard.

5 The applicants are directed within 14 days hereof to serve all documents relating to the contempt proceedings filed on 20 December 2021 on the fifth and sixth respondent cited in this court in the proceedings under case number 39602/2015.

6 The respondents are ordered to pay the applicants' costs of this contempt application.

_____

JUDGE S KUNY

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Date of Hearing: 10 August 2022

Date of Judgment: 29 August 2023

Counsel for the Applicants:

Adv S Wilson

Adv I de Vos

Instructed by:

SERI LAW CLINIC

Email: nomzamo@seri-sa.org

Counsel for the Respondents:

Adv C Georgiades SC

Adv H Drake

Adv L Phasha

Instructed by:

DU PLESSIS DE HEUS VAN WYK

Email: liezel@ddv.co.za

Counsel for Section 27 (first amicus curiae):

Adv N Nyembe

Instructed by:

SECTION 27

c/o CENTRE FOR CHILD LAW

zeenat@section27.org.za

Stanley.malematja@up.ac.za

Counsel for ESCR-Net (second amicus curiae):

Adv E Broster

Adv D Goosen

Instructed by:

CLIFFE DEKKER HOFMEYR INC

Email: Gift.Xaba@cdhlegal.com

C/O Macintosh Cross & Farquharson