

SOUTH AFRICA / JUDGMENT

**Masike and Others v Red Ant Security
Relocation and Eviction Services Proprietary
Limited and Another (04238/2023) [2023]
ZAGPJHC 1460 (18 December 2023)
[2023] ZAGPJHC 1460**

COURT

South Gauteng High Court, Johannesburg

BEFORE

Robin Pearce

CASE / FILE NUMBER

04238/2023

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Case No: 04238/2023

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

18 December 2023

Robin Pearce AJ

In the matter between

CHAKENYANE JONAS MASIKE 1st Applicant EVICTEES OF THE FARM QUAGGASFONTEIN ALIAS
LAPDOORNS 548 SEBOKENG, GAUTENG 2nd to 19th Applicants And RED ANT SECURITY
RELOCATION AND EVICTION SERVICES PROPRIETARY LIMITED 1st Respondent EMFULENI
LOCAL MUNICIPALITY 2nd Respondent

REASONS FOR ORDER DATED 01 DECEMBER 2023

PEARSE AJ:

THE ORDER

1. On Friday 01 December 2023, having heard counsel for the parties on Thursday 30 November 2023, I granted an order in the following terms:
 - 1.1. The applicants' non-compliance with the rules of this court is condoned in terms of rule 6(12)(a).
 - 1.2. It is declared that the applicants' eviction from the property situate at or in the area of the Farm Quaggasfontein Alias Lapdoorns 548 Registration Division IQ in or near Sebokeng in Gauteng ("the property") on 11 October 2023 ("the eviction") was unlawful.
 - 1.3. The first respondent is directed to:
 - 1.3.1. cooperate fully and frankly with the conduct of the second respondent's investigation directed in terms of paragraph 1.4.1 below;
 - 1.3.2. deliver a copy of this order to the owner of the property and to any other natural or juristic person who or that contracted or otherwise instructed the first respondent to conduct the eviction ("the mandator");
 - 1.3.3. caution the mandator against taking or failing to take any step(s) intended or having the effect of preventing, obstructing, delaying and/or otherwise frustrating the immediate and effective execution of this order; and
 - 1.3.4. take immediate and effective steps, from the date of this order until the date of its final execution, to reverse the effects of the eviction, including by:
 - 1.3.4.1. relocating the applicants to the property;
 - 1.3.4.2. restoring or replacing their destroyed and/or dispossessed building materials;
 - 1.3.4.3. reconstructing their dwellings; and
 - 1.3.4.4. restoring or replacing their destroyed and/or dispossessed possessions.
 - 1.4. The second respondent is directed to:
 - 1.4.1. take immediate and effective steps to investigate the facts and circumstances relating to the eviction;
 - 1.4.2. report any apparent breach of any law for further investigation and, where deemed appropriate, prosecution by the relevant authorities;
 - 1.4.3. assign an executive(s) or other suitable employee(s) to be present at and to monitor all material stages of the relocation of the applicants to the property, the restoration or replacement of their destroyed and/or dispossessed building materials, the reconstruction of their dwellings and the restoration or replacement of their destroyed and/or dispossessed possessions directed in terms of paragraph 1.3.4 above;

1.4.4. take immediate and effective steps, within its means, from the date of this order until the date of its final execution, to facilitate the discharge by the first respondent of its obligations under paragraph 1.3 above;

1.4.5. take immediate and effective steps, within its means, from the date of this order until the date of its final execution, to ensure that the applicants have access to decent and dignified temporary accommodation and living conditions; and

1.4.6. inform this court as soon as practicable, by uploading a report to the Caselines record of this matter, of its discharge or otherwise of the obligations imposed in terms of paragraphs 1.4.1 to 1.4.5 above, which report shall include an affidavit deposed to by each executive or employee contemplated in paragraph 1.4.3 above.

1.5. Any residual issues arising in the application are postponed sine die.

1.6. The first and second respondents are ordered to pay the costs of this application, jointly and severally, the one paying the other to be absolved.[1]

2. On Wednesday 13 December 2023 I was notified that the first respondent had requested reasons for the order – presumably in terms of rule 49(1)(a) to (c) of the Superior Courts Act 10 of 2013 – by letter of Monday 11 December 2023. These are my reasons for the order.

THE APPLICATION

3. This urgent application was initiated by notice of motion issued on 23 November 2023. Besides seeking condonation for non-compliance with rule 6(12)(a) and the costs of two counsel where so employed, the applicants seek substantive relief in the following terms:

“2. The eviction and demolition by, alternatively conduct of the First to Third Respondent and/or representatives of the Respondents is declared unlawful and unconstitutional.

3. The Respondents are to construct emergency temporary accommodation for the occupiers and their dependants on the property the occupiers were relocated to, within 72 hours of granting this order.

4. Alternative to prayer 3 above, the Third and Fourth Respondents must provide the occupiers and their dependants with temporary emergency accommodation in a location as near as feasibly possible to where they were evicted from, on or before 15 December 2023, provided that they are still resident at the current accommodation and have not voluntarily vacated it.

5. Should the Respondents not be able to restore possession as per (3) and/or (4), then the Respondents must pay R5000 per shack to the Applicants within 72 hours of granting this order to enable them to do so themselves. The attorneys of the Applicant are to facilitate such a process.

6. In the alternative to the above prayers, the Respondents [are] to restore the status quo ante of the Applicants, which includes constructing emergency temporary accommodation for the Applicants

whose shelters had been demolished at the time of the hearing of this matter and who still require them, within 72 hours of granting this order.”

4. The founding affidavit was deposed to by the first applicant and thereafter supported by confirmatory affidavits in the names of other applicants.[2] The essence of the case made out by the applicants is as follows:

4.1. Paragraphs 10 to 13 of the founding affidavit contain an introduction and overview of the application in the following terms:

“The applicants in these proceedings were evicted without a court order in the area of Farm Quaggasfontein Alias Lapdoorns 548 Registration

Division IQ in the province. This eviction was accompanied by demolition of the applicants’ properties including but not

limited to our shacks.

I mention from the onset that this group of applicants or evictees is constituted by unemployed female headed households, more than 10 minor children including those who are school-going and those who are not. Important is also the fact that most members of the applicants are not employed, and even those who are working, they barely make ends meet.

Currently, the applicants together with the minor children are in an open field without any form of a structure where they could do basic things like bathing, eating and sleeping. The urgent relief sought by the applicant(s) in terms of the notice of motion is particularly aimed at putting to a halt the effects of the unlawful conduct of the first and second respondent[s] of evicting the applicants without due processes of the law and restore the status quo.

At an opportune time and on the strength of the facts that the applicants would have put forward, the applicants request that their

occupation on the aforementioned land be restored and their demolished properties be recovered from the first and second respondent[s]. In the alternative, the applicants submit that, if the restoration of land, structures and other properties demolished by the first and second respondent[s] is not possible, alternative accommodation be provided for.”

4.2. In 2017 a community comprising the applicants settled on a portion of the property.

4.3. In 2021 a third party launched eviction proceedings against the applicants which culminated in an eviction order, the demolition of the applicants’ structures and their eviction from that portion of the property without the provision of alternative accommodation.

4.4. On 23 May 2022 the applicants relocated to and settled on “an unidentified vacant land distinct and not far from the property from which we were evicted and nearby a railway line.” The applicants remained in peaceful and undisturbed possession of that portion of the property until the eviction on 11 October 2023.

4.5. During the almost 18 months of occupation of that land, the applicants received no communication by the second respondent expressing any “disquiet with our possession and occupation on that portion of land.”

4.6. On 11 October 2023 “the Municipality in cahoots with the first respondent evicted the applicants without a valid court order permitting them to evict us. At a risk of being repetitive, this operation resulted in the demolition of our shacks and structures on the aforesaid piece of land.” Neither of the respondents had secured a court order authorising the eviction despite the fact that many members of the community are impoverished women and children, which conduct on the part of the respondents “is unlawful and inconsistent with the prescripts as set out in [the] Prevention of Illegal Evictions Act and other legal instruments”.

4.7. During the eviction by the respondents, several of the applicants lost possessions, including “building materials, clothing, household furniture, and other essential personal and household items.”

4.8. Having been forcibly removed from the property, the applicants were not afforded alternative accommodation by the respondents.

4.9. Paragraphs 30 and 31 of the founding affidavit submit that:

“The Municipality and [the] first respondent’s conduct is clearly in breach of the constitutional right not to be evicted without a court order and not to have property arbitrarily deprived, along with the right to housing, privacy and dignity. It is submitted [that] the respondents’ conduct violated these rights, and such conduct should not be countenanced. The community remains in destitute [circumstances] and without homes.

Additionally, ..., I am advised that we [are] entitled to restoration [of the] status quo ante because at the time of eviction, we were in peace and undisturbed possession and we did not consent to be dispossessed.”

4.10. Although the first respondent had undertaken:

“to relocate the applicants to a ‘safer’ location that has basic necessities and shelter (emergency accommodation) ... the first respondent failed to provide said emergency accommodation and simply deserted the applicants by leaving them at a vacant land known as Boiketlong, Gauteng Province, near a Total filling station and under Eskom power lines. The applicants were without shelter and slept in the open.”

4.11. It was only on 14 October 2023 that the first respondent returned to relocate the applicants to an informal settlement known as Rus-Ster-Vaal or “Ramaphosa Section”, which intention “was in vain as the area was a vacant land without shelter for the applicants.” The applicants remain without accommodation or shelter and thus they, including minor children, “are exposed to illness and harsh weather conditions from sleeping in an open field, living without proper shelter, toilets, and clean water sources.”

4.12. These assertions of squalid and undignified living conditions were thereafter particularised with reference to the personal circumstances of the lives and livelihoods of each of the applicants and their families.

4.13. The applicants have clear constitutional rights not to be arbitrarily deprived of their property or to be removed from the property in the absence of any due process of law.

4.14. Absent the relief sought in this application, the applicants have sustained injury and reasonable apprehend further irreparable harm described in the following terms in paragraphs 48 and 49 of the founding affidavit:

“As things stand, school-going minor children are homeless [and] are without a place called [home] due to the eviction and demolition.

We’re currently staying in an open veld, this encroaches on our human dignity, right to privacy, right to housing and right not to be arbitrarily dispossessed on ones’ property. These rights are suffering in the injury owing to the conduct of the municipality and [the] first respondent.

The form of injury that is inflicted is an irreparable one in that [it] goes [to] the heart of human dignity. But also, this eviction and demolition of the property have an overlapping effect such as a right to education on the minor children and other interrelated rights.”

4.15. The applicants have endeavoured to resolve the matter without resort to litigation but “it is only through the intervention of this Court that the unlawful conduct of the municipality could be put to a halt.”

4.16. The urgency of the application is addressed with reference to efforts on the part of the applicants to raise funding to secure legal advice and assistance in preparing and initiating the application. The applicants approached their attorneys within a week of the eviction. An initial application was launched on 02 November 2023 but withdrawn on receipt of an answering affidavit of the second respondent that denied having caused or authorised any party to carry out the eviction. Enquiries were conducted by the attorneys, which culminated in consultations on 10 and 12 November 2023 with members of the community who comprise the applicants. Although it could not be established which property owner or other person had instructed the first respondent to carry out the eviction,

the enquiries appear to have revealed the identity of the first respondent to the applicants. When they were unable to raise funding

necessary to initiate this application, the attorneys resolved to handle the matter on a pro bono basis and a further consultation was held on 15 November 2023. Enquiries were directed at sheriffs located in and around the area

during the period 17 to 22 November 2023, whereafter, when the second respondent confirmed that it was unable to provide suitable

alternative accommodation to the community, this application was launched without delay.

5. The notice of motion stipulated that any notice of intention to oppose the application was to be delivered by 20:00 on 24 November 2023 and any answering affidavit was to be delivered by 14:00 on 27 November 2023, in which event any replying affidavit would be delivered by 23:00 on the same day.
6. Although it is unclear from the record when and by what means the founding papers were served on the respondents, notices of intention to oppose the application were delivered by them on 24 and 25 November 2023.

THE ANSWERING AFFIDAVITS

7. The first respondent delivered its answering affidavit, deposed to by its CEO, Fuzile Balintulo, on 27 November 2023. Its answer to the case made out by the applicants is along the following lines:

7.1. The contents of the founding affidavit are “a concoction of half-truths, falsehoods, inuendo and argumentation”. Although the first respondent does not oppose the merits of the application, it “raises only three technical points in limine [traversed in paragraphs 7.2 to 7.4 below] apart from which it intends to abide with the Order of this Honourable Court.”

7.2. The application “lacks the hallmarks of urgency, alternatively that if urgency is indeed established, which is denied, that it is contrived and the

application should be struck from the Court’s urgent roll with costs”. The application was launched and conducted on an extremely urgent basis notwithstanding that, on the applicant’s own version, “he became aware, ostensibly for the first time, of the unlawfulness of the eviction as long ago as 11 October 2023.” The period between that date and the launch of this application is not fully explained in the founding affidavit. Indeed, “it is pertinent clear that the Applicants instructed their legal preventitives more than a month ago and they sat on their laurels

until now.” In the context of this case, “the Applicants’ attitude reflects an arrogant abuse of the processes of this Honourable Court and lacks grounds for justification.” In addition, the applicants do not tell this court “why they will not be in a position to attain substantial redress in the future.” In the result:

“the avowed urgency is contrived and this is because the Applicants sat on their laurels and waited for the last minute to launch this application while giving the Respondent insufficient time to answer to their case. It is not explained by the Respondent’s

opposition to the application was called for on the basis of extreme urgency when there is no proverbial ‘blood on the wall’.”

7.3. The founding papers fail to make out a case for the admission by this court of the hearsay evidence presented by the applicants. In the submission of the first respondent, the founding affidavit is replete with hearsay allegations the probative value of which depends on the knowledge of individuals whose confirmatory affidavits are not before this court. Nor is it explained why it has not been possible since 11 October 2023 for the applicants to procure such affidavits. Since the applicants do not make out a case for this court’s reception of the evidence, even in circumstances where the applicants are “the proverbial ‘man of straw’” represented by pro bono attorneys, the evidence should be excluded from this court’s consideration of the application.

7.4. The founding papers make out no case for substantive relief against the first respondent hence the prayer for costs against both the respondents is unfounded and should be dismissed vis-à-vis the first respondent.

8. On the same day (27 November 2023) an answering affidavit was delivered by the second respondent. It is deposed to by April Ntube, the Municipal Manager of the second respondent. The essential features of the answer to the case made out in the founding papers are as follows:

8.1. The second respondent did not authorise or request any official or third party such as a security company to conduct the eviction. Indeed, until receipt of this application, the second respondent was not even aware that the applicants were occupying vacant land near the railway line forming part of the property. That land is believed to be privately owned by a person whose identity is unknown to the second respondent and who is not cited as a respondent in the application.

8.2. Whilst the second respondent acknowledges that it bears constitutional duties to provide at least temporary accommodation to the applicants, “it does not at the current moment, have any premises that are suitable for the accommodation of the Applicants.” The second respondent admits that the eviction infringed the constitutional rights of the applicants but has no knowledge of at whose behest it was carried out. Paragraphs 45 to 48 and 75 to 80 of the answering affidavit elaborate on this stance in the following terms:

“It is specifically pleaded that, in order for the Second Respondent to provide alternative accommodation, the Second Respondent will refer the matter to the Department of Social Development and Human Settlement to check the circumstances of the occupiers and provide us with the report. We then rely on that report to determine whether there is accommodation that is suitable to accommodate the occupiers.

The Second Respondent is currently not in a position to provide alternative accommodation overnight.

It is unfortunately [the case] that South Africa is experiencing a housing crisis, with its harsh consequences being felt the most by those who are indigent and financially marginalized.

Equally, the Municipality lacks the resources to cater for all the homeless individuals at this current moment.

...

The Applicant's facts are misconstrued in that, the Applicants are misled to think that their eviction and the demolition of their shacks is at the behest of the Second Respondent.

The Second Respondent has no knowledge of the vacant land occupied by the Applicants and cannot therefore execute any eviction or demolition.

In respect of alternative temporary accommodation, the Second Respondent is not in a position to offer any at the current moment.

The inescapable fact is that the Second Respondent has very limited resources which are exceeded by its responsibilities.

Even if the Court wants to order that the Second Respondent must provide temporary emergency accommodation, it would not be practically possible.

Also, even if the Court was to order that the Second Respondent must compensate the Applicants, it would not be financially feasible for the Municipality that does not have appealing revenue."

THE REPLYING AFFIDAVITS

9. The first applicant deposed to a replying affidavit in respect of the first respondent on 28 November 2023. The affidavit makes the following points in rebuttal of the first respondent's technical defences to the relief sought in the application:

9.1. The submission that this application is not urgent is unfounded and meritless for reasons including that the matter "raised multiple constitutional issues of importance as advanced in the founding affidavit. The rights of minor children, rights to dignity, and education are not confronted by the First Respondents answering affidavit." The facts and circumstances described in the founding papers cry out for urgent resolution in that:

"Our situation has since worsened, with no place to stay, our children unable to attend school, we rely on Samaritans for food and place to bath, which assistance we don't readily receive. children's schooling is negatively impacted by the situation, the situation has traumatised the children and the families have been reduced to being dependent on the goodwill of members of the community for such basic necessities as taking baths and washing clothes. A most demeaning situation.

I submit that the High Court is the upper guardian of minor children, and is constitutionally enjoined to act urgently, without any delay when the interests or rights of a minor child is infringed or threatened. Our children's rights would certainly be severely impacted should we wait to secure a date on any opposed motion [roll] in the High Court."

9.2. As foreshadowed in the founding affidavit, securing confirmatory affidavits in the names of dispersed members of a community comprising the applicants was a difficult task given that:

“... we have been scattered since the eviction and demolition. This thus makes it difficult for us to gather and work towards deposing to our confirmatory affidavits. In addition, we have been out of funds to do even the slightest task such as printing out the affidavits or travelling to our attorney’s office to depose [to] same. I wish to state that we do not have computer cellular devices where we reside. The applicants’ do not even have electricity to charge any electronic device they may have. We have thus resolved that we are to depose to such confirmatory affidavits in the early morning of 28 November 2023 at the office of our attorneys as we would have saved enough to allow us to collectively travel for our hearing at court.”

9.3. The first respondent participated in the eviction and the notice of motion makes it clear that relief is sought against both respondents. It is therefore incorrect of the first respondent to assert that no substantive relief is sought against it.

9.4. The first respondent has elected to remain silent regarding the identity of the person who instructed and/or authorised it to carry out the eviction.

10. There is also a replying affidavit vis-à-vis the second respondent deposed to on the same day (28 November 2023). It addresses the following salient points in paragraphs 8 to 13:

“The relief sought against the Second Respondent relies on their constitutional obligation to provide alternative accommodation for

people in our position. Based on the jurisprudence of our courts it’s further immaterial who the evictee is in order for the municipality to provide alternative accommodation.

... The Second Respondent cannot abdicate their responsibility to the provincial sphere of government to fund the provision of alternative accommodation.

The Second Respondent is obliged to place before this court the material [facts] regarding its emergency funds for the provision of alternative accommodation, its resources and the plans or policy in place to realize its obligation in terms of section 26 of the Constitution.

Against this backdrop, the Second Respondent simply elected to confine themselves to the fact that they did not participate in the eviction and that they cannot provide alternative accommodation overnight due to budgetary constraints.

The latter explanation or defence is inadequate given that it goes against and encroaches the constitutional obligations in that the Respondent fails to detail the current fiscus, the plan it has for emergency situations like this one and the steps it will take to address the issue at hand. ...

The Second Respondent chose the position to not discharge its constitutional obligations despite various engagements. It is prepared to not abide and/or not discharge any order that the court may grant in relation to provide temporary emergency accommodation.”

THE REASONS

11. The urgency with which the application was initiated and conducted is not challenged by the second respondent. By contrast, the first respondent is critical of what it considers to be undue delay on the part of the applicants and unsympathetic towards their plight during the period within which relief in the ordinary course could, in its submission, have been secured.
12. I am unpersuaded that this court should expect greater expedition on the part of members of a community whose lives and livelihoods were fundamentally disrupted by the eviction and who are without means to engage in litigation. In my assessment, the applicants identified and instructed attorneys as soon as circumstances permitted and the attorneys conducted enquiries and prepared application papers without evident delay.
13. Nor were the respondents unduly prejudiced by the tight time periods within which they were required to present their answers to the application, as evidenced by the fact that each respondent was able to instruct legal representatives, deliver answering affidavits and be represented by counsel at the hearing of the application.
14. In any event, I do not consider that the applicants could fairly be said to be able to secure substantive redress in due course while enduring the hardships and indignities of homelessness in the ensuing months. Constitutional rights are at stake and should be vindicated without delay. There is therefore no merit to the first respondent's first point in limine. Hence the order recorded in paragraph 1.1 above.
15. The first respondent's second point in limine – that the founding affidavit was replete with hearsay evidence relating to but not confirmed by applicants other than the first applicant – was met by the delivery, before the hearing of the application, of confirmatory affidavits in the names of some 10 other applicants and was not pressed by counsel for the first respondent at the hearing.
16. Although the relief sought in the notice of motion was set out in somewhat confusing terms – with reference to third and fourth respondents that were not cited in the application – it is discernible from prayers 2, 3, 5 and 6 that substantive relief was sought against both the first and the second respondents. The same is evident from the factual version of events set out in the founding affidavit – paraphrased in paragraph 4 above – and not pertinently disputed in the answering affidavit of the first respondent. In fact, Mr Balintulo notes in paragraphs 45 and 46 of the answering affidavit that he understands “the respondents” to include the first respondent. In the circumstances, it could not reasonably have concluded that substantive relief was sought only against the second respondent. In effect, the first respondent elected not to challenge the factual foundation for the order recorded in

paragraph 1.3 above. It follows that the first respondent's third point in limine – that it should not be mulcted with a costs order since it was not exposed to any substantive relief – is without merit and should fail.

17. It is not contested on the papers or in the parties' submissions that the eviction of 11 October 2023 was carried out in the absence of any court order and thus in unlawful – indeed unconstitutional – circumstances. Hence the order recorded in paragraph 1.2 above.
18. I should preface my reasons for the consequential relief granted in respect of the eviction by recording that, at the hearing of this application, I had the benefit of debating with counsel for each of the parties a proposed order along the lines set out in paragraphs 1.3 and 1.4 above. Their submissions were of considerable assistance to the court in the formulation of the order. I record my gratitude to counsel for the constructive manner in which the matter was argued.
19. A core element of the order vis-à-vis the first respondent is recorded in paragraph 1.3.4 above. It will be recalled that the papers contain no pertinent denial by the first respondent that it participated in the demolition of homes and forcible relocation of families, including women and children, in the absence of any court order. Although this is not said in so many words, the first respondent's position appears to be that it acted on the instructions of an unidentified mandator. Whatever may have been the contractual or other basis for its actions, the first respondent's employees or agents are the persons who carried out the unlawful eviction, destroying and/or dispossessing building materials and other possessions of the applicants while destroying their homes and relocating their families. It is appropriate that the first respondent be ordered to reverse its conduct and restore the status quo ante. Hence the order recorded in paragraph 1.3.4 above.
20. The ancillary relief recorded in paragraphs 1.3.1 to 1.3.3 above requires little explanation. The first respondent opted not to disclose the identity of the mandator or the facts or circumstances in which it carried out the eviction. It is appropriate that it should be directed to cooperate with the second respondent's

investigation of the facts and circumstances relating to the eviction. Equally, given that the mandator is known only to the first

respondent, it is apposite that the second respondent be directed to furnish that person with a copy of the order and to caution it against taking or failing to take any step(s) intended or having the effect of preventing, obstructing, delaying and/or otherwise

frustrating the immediate and effective execution of the order.

21. The second respondent acknowledged its constitutional duties vis-à-vis the applicants but averred – without substantiation – that, at this time, it lacks land or funding to provide even temporary accommodation to them. At the hearing of the application, counsel for the second respondent submitted that the urgent

circumstances in which his client had been brought before court were such as not to afford it an opportunity to detail or document its current lack of suitable resources. The contention by the second respondent that, even if ordered by this court to comply with its acknowledged constitutional duties, the municipality would immediately be in default of doing so is a lamentable reflection on the deplorable state of many of this country's local government institutions. Nor do the second respondent's caveated

assertions of inadequate resources at this time provide a sufficient explanation of its straitened financial circumstances in the face of an unlawful eviction. Be that as it may, I am mindful that a court should guard against granting an order that constitutes no more than a brutum fulmen. Hence the qualified order recorded in paragraph 1.4.5 above.

22. The residual orders recorded in paragraphs 1.4.1 to 1.4.4 and 1.4.6 above impose obligations of investigation, facilitation, monitoring and reporting that are consistent with the second respondent's constitutional duties and within its financial and other means. The discharge of these obligations is also necessary for the applicants and this court to be apprised of the steps taken by the first respondent to reverse the effects of the eviction.
23. Certain other issues are addressed in the papers, including relief to the effect that the applicants be compensated for belongings that were destroyed and/or misappropriated in the eviction. Although lists and estimated values of such items form part of the founding papers, not all are confirmed by their owners or possessors and, in any event, I am not convinced that damages may be established in motion proceedings – especially urgent ones – in the absence of expert or other pertinent evidence. Insofar as disputes remain after the execution of the order, they may be capable of resolution in further proceedings. Hence the order recorded in paragraph 1.5 above.
24. There is no reason why the costs of this application should not be borne, on a joint and several basis, by the respondents. The applicants have succeeded in securing relief in this application and are entitled to a measure of indemnification by the party responsible for the eviction as well as the municipality tasked with but financially and/or administratively incapable of meeting

their housing needs.

PEARSE AJ

These reasons, which are unsigned due to the circumstances in which they are prepared and delivered, are handed down electronically by uploading them to the file of this matter on Caselines. They will also be emailed to the parties or their legal representatives. The date of delivery of these reasons is deemed to be 18 December 2023.

Counsel for Applicants: Advocate Mavhungu Instructed By: Sithi and Thabela Attorneys Counsel for 1st Respondent: Advocate Mokhehi Instructed By: Pranav Jaggan Attorneys Counsel for 2nd Respondent: Advocate Baloyi Instructed By: Leepile Attorneys Date of Hearing: 30 November 2023 Date of Order: 01 December 2023 Date of Request for Reasons: 11 December 2023 Date of Reasons: 18 December 2023

- [1] The order appears in folder 001 of the Caselines record.
- [2] Folder 009 of the Caselines record contains 10 confirmatory affidavits deposited to by applicants.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPJHC/2023/1460.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/masike-and-others-v-red-unknown-topic-agpjhc-2023>

Prepared on 12 October 2026 · Esheria