

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

Case No. 17067/16

In the matter between:

SOCIAL JUSTICE COALITION

First Applicant

THOBEKA EUNICE BOBOTYANA

Second Applicant

LINDELA BEBI

Third Applicant

NOSIPHELELE MSESWE

Fourth Applicant

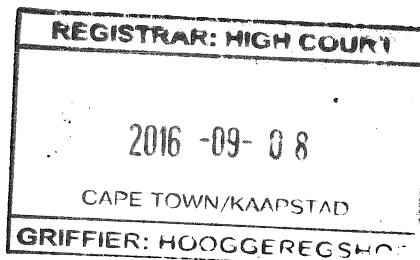
NOBATHEMBU SEPLANI

Fifth Applicant

NOLIZWE MANELI

Sixth Applicant

and



CITY OF CAPE TOWN

Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT the Applicants intend to make application to this Honourable Court on a date to be determined by the Registrar, for orders in the following terms:

1. It is declared that the City of Cape Town ("the City") has failed to take reasonable measures to fulfil the right of access to sanitation accorded to the Second to Sixth Applicants and the residents of CT Section and Enkanini informal settlements in Khayelitsha, Cape Town.

2. It is declared that the City is in breach of its obligations in respect of the provision of sanitation services to the Second to Sixth Applicants and the residents of CT Section and Enkanini in terms of sections 10, 12, 14, 24, and 27(1)(b) of the Constitution, and sections 73(1) and 73(2) of the Local Government: Municipal System Act 32 of 2000, in that:

- 2.1. The sanitation services which are provided to the people concerned (“the sanitation services”) result in a breach of their right to dignity, their right to freedom and security of the person, their right to privacy, their right to an environment that is not harmful to their health or well-being, and their right to sufficient water;
- 2.2. The City has not given priority to the basic needs of the people concerned in respect of sanitation services;
- 2.3. The City has not ensured that all of the people concerned have effective access to at least the minimum level of sanitation services;
- 2.4. The sanitation services which are provided to the persons concerned are not equitable nor accessible;
- 2.5. The sanitation services are not provided in a manner that is conducive to the prudent, economic efficient and effective use of available resources;
- 2.6. The sanitation services are not provided in a manner that is conducive to the improvement of standards of quality over time;

- 2.7. The sanitation services are not financially sustainable;
 - 2.8. The sanitation services are not environmentally sustainable; and
 - 2.9. The sanitation services are not regularly reviewed with a view to upgrading, extension and improvement.
3. It is declared that the City is in breach of its constitutional and statutory duties through not having taken reasonable steps to plan and implement the provision of permanent sanitation facilities to the residents of Enkanini and CT Section where this is reasonably practicable.
 4. The City is in breach of its constitutional and statutory duties through not having taken reasonable steps to identify the areas of informal settlements in Khayelitsha where it is reasonably practicable to provide permanent sanitation facilities, and to plan and implement the provision of such services.
 5. The City is ordered, within three months of the date of this order:
 - 5.1. to prepare and make available to the Applicants and the residents of Enkanini and CT Section, a plan for the provision of permanent sanitation facilities in those areas of Enkanini and CT Section where this is reasonably practicable, indicating what steps will be taken, where they will be taken, and when they will be taken;
 - 5.2. to take reasonable measures to implement that plan; and

5.3. to file a report under oath, with this Court, addressing the matters referred to in paragraph 5.1 above.

6. The City is ordered, within twelve months of the date of this order, to deliver a report under oath to this Court:

6.1. stating what steps it intends to take towards eradicating the use of chemical, container and portable flush toilets as the means of providing sanitation services to informal settlements in Cape Town, and when and where it will take such steps; and

6.2. to the extent that it contends that it is not reasonably practicable to take such steps in particular areas of informal settlement in Khayelitsha, identifying the areas concerned, stating the reasons why it is not reasonably profitable to provide permanent sanitation services in each such area, and stating what steps, if any, the City will take to address the reasons why it is not reasonably practicable to take such steps in each such area.

7. The Applicants may deliver their commentary under oath

7.1. on the report referred to in paragraph 5, within one month of the delivery thereof.

7.2. on the report referred to in paragraph 6, within three months of the delivery thereof.

8. The City may deliver its reply under oath to the Applicants' commentary in terms of paragraphs 7.1 and 7.2, within one month of the delivery thereof.
9. The Applicants are granted leave to approach this Court on these papers, supplemented as the circumstances may require, for further relief.
10. Directing the First Respondent to pay the Applicants' costs.
11. Granting the applicants further and/or alternative relief.

TAKE NOTICE THAT the affidavits of the **APPLICANTS, CONRAD BABERTION** and **CHRISTOPHER JAY KRUUSE** are used in support of the relief sought.

TAKE FURTHER NOTICE THAT the Applicants have appointed the **NDIFUNA UKWAZI LAW CENTRE**, Office 302, 47 On Strand, Strand Street, Cape Town, as the address at which they will accept notice and service of all process in these proceedings.

TAKE FURTHER NOTICE THAT if you intend opposing this application you are required to notify the applicants' attorney in writing on or before _____ and further that you are required to appoint in such notification an address referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

DATED AT CAPE TOWN ON THIS THE

8th

DAY OF SEPTEMBER

2016.

NDIFUNA UKWAZI LAW CENTRE
PER:



MANDISA SHANDU
Applicants' Attorneys
Office 302
47 On Strand
Stand Street
CAPE TOWN

TO: THE REGISTRAR
Western Cape Division, Cape Town
Keerom Street
CAPE TOWN

AND TO: CITY OF CAPE TOWN
Respondent
Civic Centre
12 Hertzog Boulevard
CAPE TOWN

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

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In the matter between:

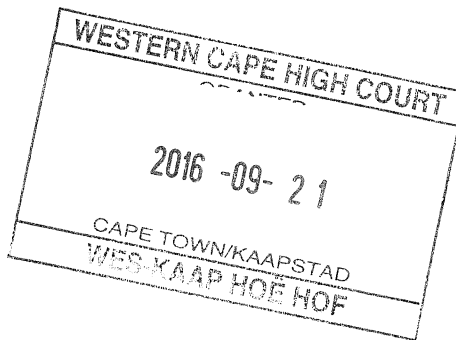
SOCIAL JUSTICE COALITION
THOBEKA EUNICE BOBOTYANA
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NOSIPHELELE MSESIWE
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NOLIZWE MANELI

First Applicant
Second Applicant
Third Applicant
Fourth Applicant
Fifth Applicant
Sixth Applicant

and

CITY OF CAPE TOWN

Respondent



NOTICE IN TERMS OF RULE 16A

BE PLEASE TO TAKE NOTICE THAT the Applicants in the above application raise a constitutional issue.

The Applicants contend that the City of Cape Town is in breach of its constitutional and statutory obligations in terms of sections 10, 12, 14, 24, and 27(1)(b) of the Constitution, sections 73(1) and 73(2) of the Local Government: Municipal System Act 32 of 2000 and the Water Services Act, 108 of 1997. In summary, the constitutional issues raised are:

1. Whether the City is in breach of its constitutional and statutory duties through not having taken reasonable steps to plan and implement the provision of permanent sanitation facilities to the residents of Enkanini and CT Section in Khayelitsha where this is reasonably practicable; and
2. Whether the City is in breach of its constitutional and statutory duties through not having taken reasonable steps to identify the areas of informal settlements in Khayelitsha where it is reasonably practicable to provide permanent sanitation facilities, and to plan and implement the provision of such services.

TAKE NOTICE FURTHER that any party interested in the aforementioned constitutional issues may, with the written consent of all parties to the proceedings, given by no later than 20 (twenty) days after the posting of this notice, be admitted as *amicus curiae*, upon such terms and conditions as may be agreed upon in writing by the parties.

TO THE REGISTRAR: KINDLY place this notice on a board designated for the purpose recorded in Rule16A(1)(c), and place your date stamp upon the notice to indicate the date upon which it is placed on the notice board in accordance with Rule16(1)(d).

DATED AT CAPE TOWN ON THIS THE 20th DAY OF SEPTEMBER 2016.

**NDIFUNA UKWAZI LAW CENTRE
PER:**



MANDISA SHANDU
Applicants' Attorneys
Office 302
47 On Strand
Stand Street
CAPE TOWN

TO: THE REGISTRAR
Western Cape Division, Cape Town
Keerom Street
CAPE TOWN

COPY TO: RILEY INCOPORATED
Respondent's Attorney
212 Rosemead Avenue
WYNBERG
(Ref: JFR/MAT12480/wd)

Care of: **ROBERT CHARLES**
33 Wale Street Chambers
3rd Floor
Church Street
CAPE TOWN

ROBERT CHARLES
ATTORNEYS AND CONVEYANCERS

2016 -09- 21

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33 CHURCH STREET, CAPE TOWN, 8001

