**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No. **8631/2020**

In the matter between:

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION** First Applicant

**HOUSING ASSEMBLY** Second Applicant

**BULELANI QOLANI** Third Applicant

and

**THE CITY OF CAPE TOWN** First Respondent

**THE MINISTER OF HUMAN SETTLEMENTS** Second Respondent

**THE MINISTER OF CO-OPERATIVE GOVERNANCE**

**AND TRADITIONAL AFFAIRS** Third Respondent

**NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE** Fourth Respondent

**FIRST RESPONDENT’S PRELIMINARY ANSWERING AFFIDAVIT**

**URGENT INTERDICTORY RELIEF (PART A)**

I, the undersigned,

**RIANA PRETORIUS**

do hereby make oath and say that:

1. I am the Director: Informal Settlements and Backyarders in the Department of Human Settlements at the City of Cape Town, the first respondent (the City). I am duly authorised to depose to this affidavit on behalf of the City.
2. The facts deposed to herein are within my personal knowledge and belief, unless the contrary appears from the context, and are true and correct. Where I make legal submissions, this is done on the advice of the City’s legal representatives which I believe to be true and correct.

**INTRODUCTION**

1. The applicant instituted this application on 8 July 2020 on an extremely urgent basis. The founding papers, which comprise three affidavits and multiple annexures and run to some 167 pages, were served electronically on the City’s attorneys at approximately 16h30 on 8 July 2020. A hard copy was served on the offices of the City’s legal representatives offices on 8 July 2020 and e-mailed to the City’s attorney at 15h17.
2. The applicants, in addition, set an unreasonable self-imposed deadline for the delivery of answering affidavits by Friday 10 July 2020, effectively one day after the papers were served on the City. This in circumstances where the events giving rise to the applicants’ complaints took place over the period 20 February 2020 to 1 July 2020.
3. While the City does not dispute that the matter requires to be dealt with out of the normal course, the degree of urgency with which the applicants have approached this Court for interim relief is unwarranted in the circumstances.
4. Given the far-reaching interim relief sought, as well as the fact that the applicants reference a number of factual issues in support of the interim relief, dating back many months, which require full investigation and consideration before they can be addressed at all in this affidavit, it is not reasonably possible for the City to deliver a comprehensive answering affidavit in respect of the interim relief in accordance with the applicants’ self-imposed deadline. Insofar as the Court may deem it necessary for the City to apply for condonation in these circumstances, the City seeks such condonation for filing the affidavit on 13 July 2020.
5. Consequently, this affidavit sets out the main bases for the City’s opposition to the interim relief sought and deals (necessarily incompletely) with the main factual allegations insofar as it has been possible to ascertain the relevant information given the time available to the City.
6. The City reserves the right to deliver a comprehensive answering affidavit in respect of the interim relief sought as soon as reasonably practical.
7. The City suggests that in light of the far-reaching restrictions on existing legal remedies and the long-term detrimental consequences for all local authorities as well as public and private landowners arising from the interim relief sought, the most appropriate route would be for the parties to agree to a timetable that allows all the parties sufficient time to prepare proper affidavits and heads of argument in order to place this Court in a position where it is able to fully consider the lawfulness and implications of the interim relief.
8. The relief in Part B of the Notice of Motion will be addressed in due course and in accordance with Rule 53(4) to the extent that it may be applicable in this matter.
9. The remainder of this affidavit deals with the following –
	1. First, I set out the City’s position on evictions and unlawful land occupations.
	2. Second, I explain the deleterious consequences of unchecked unlawful land occupations.
	3. Third, I set out why each of the orders sought in paragraph 2 of Part A of the Notice of Motion ought to not be granted.
	4. Finally, I respond to those allegations in the founding papers dealing with interim relief and which the City is able to respond to, given the limited time available to it.

# THE CITY’S POSITION ON EVICTIONS AND UNLAWFUL LAND OCCUPATIONS

1. This application proceeds from the incorrect premise that the City evicts persons from their homes in the absence of Court orders.
2. The City accepts that s 26(3) of the Constitution of the Republic of South Africa 1996 (the Constitution) provides that no one may be evicted from their home or have their home demolished without an order of Court granted after considering all the relevant circumstances, and that the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE), gives effect to the rights arising from s 26(3) of the Constitution.
3. Once an unlawful occupier has established a home (in the sense contemplated by s 26(3) of the Constitution and PIE) on City owned land, the City may not and indeed does not effect an eviction in the absence of a Court order obtained in terms of the relevant legislation permitting evictions.
4. The City’s Anti-Land Invasion Unit (ALIU) was established to respond to the ongoing risk faced by the City of its land being unlawfully occupied and in some instances large scale orchestrated and violent land invasions, The ALIU is a specialised unit within the City’s law enforcement directorate consisting of specially trained officers mandated by the City’s Human Settlements Department to prevent unlawful occupation of City owned land. This is the primary function of the ALIU.
5. The ALIU monitors and patrols vacant City land on a 24-hour basis, taking steps to prevent the erection of structures on such land, alternatively to remove unoccupied structures from such land, and providing support to City housing officials during evictions, relocations and demolition of illegal structures. It also assists with the planning of services and emergency services during flood and fire disasters on City owned land.
6. The purpose of the ALIU is to ensure that City land is not illegally occupied thereby losing its ability to be developed for its intended use.
7. The ALIU does not remove, demolish or otherwise interfere with structures, even those illegally erected, where such structures are occupied and/or could reasonably be considered to constitute the home of any person.
8. ALIU officers are trained as to which structures may be lawfully demolished and when an eviction order is required. They face dismissal from their employment and/or serious disciplinary consequences if they demolish an occupied structure which constitutes a home. They are therefore under strict instructions to take all necessary steps to check structures before they are identified for the purposes of demolition or removal, to ensure that those structures are not occupied and as a general rule ALIU officers err on the side of caution in circumstances where there is doubt.
9. The ALIU only takes action to remove unlawfully erected structures when those structures are clearly unoccupied and/or vacant. Where there is a degree of doubt as to whether the structures are in fact occupied or not, they are not removed by the ALIU.
10. This has been and continues to be the City’s policy.
11. The factual premise on which the applicants pin their application for interim relief requires this Court to accept as a fact that the City engages in the unlawful removal of occupied structures in contravention of the law.
12. This is simply not the case and the evidence does not bear this out.

# THE DELETERIOUS CONSEQUENCES OF UNLAWFUL OCCUPATIONS

1. The Courts have consistently set their face against providing assistance to unlawful land occupiers for good reason. No person whether an individual or an organ of State may take the law into his or her own hands.
2. The Constitutional Court has expressed the following views on unlawful land occupations -
	1. Unlawful land occupations are inimical to the systemic provision of adequate housing on a planned basis.
	2. Unlawful land occupations are to be denounced and rejected as an appropriate way to enforce one’s constitutional right to adequate housing.
	3. Persons occupying land with at least a plausible belief that they have permission to be there can be looked at with far greater sympathy than those who deliberately occupy land unlawfully with a view to disrupting organised housing programmes and placing themselves at the front of the queue.
	4. The public interest requires that the legislative framework and general principles which govern the process of housing development should not be undermined and frustrated by the unlawful and arbitrary actions of a relatively small group of people who occupy land unlawfully.
3. It is clear that unlawful land occupations are inimical to the rule of law generally. In addition, such conduct leads to a multitude of deleterious consequences for private and public landowners.
4. The City has a duty to uphold the rule of law and together with other spheres of government to take measures to protect land from unlawful occupation. Further, the City is required in terms of s 7(2) of the Constitution to protect, promote and fulfil the rights in the Bill of Rights, including the right of access to adequate housing contained in ss 26(1) and 26(2) of the Constitution.
5. In order for the City to fulfil its constitutional housing obligations it must protect land falling within its jurisdiction which is earmarked for or which could be used to promote and fulfil the rights in ss 26(1) and 26(2) of the Constitution. The unlawful occupation of land poses a significant threat to the orderly planning and development of land by the City as well as the execution of the City’s housing programmes.
6. The City is therefore required to take reasonable and lawful steps to deal with unlawful land occupations, in particular steps aimed at preventing such occupation.
7. The information set out below seeks to place the City's recent actions to protect its land from unlawful behaviour in proper context, as it has been accused of unacceptable behaviour in the wake of the Covid-19 pandemic by the applicants and others.
8. The delivery of housing is not a function exclusively of local government. Both the national government and the provincial government bear concurrent legislative competence in respect of housing.
9. The legacy of apartheid continues to permeate every aspect of socio-economic development in South Africa. For this reason, housing cannot be considered in isolation from the many other socio-economic deliverables that the City must provide to increasingly large numbers of people. In delivering on these competing obligations, the City has a finite pool of resources that can be and is dedicated to housing.
10. There is a growing demand from people wanting to reside in the inner city. In light of the scarcity of land within the inner city, coupled with the very high costs of development and the City’s shrinking share of the national housing budget, the City’s delivery agenda has limited capacity to meet these expectations.
11. In this regard, the City is facing the prospect of a reduction of some R310 million in its Urban Settlements Development Grant (USDG) which forms the backbone of the City’s funding source for housing. There is currently ongoing engagement between the relevant organs of State in this regard. If a decision is ultimately taken to reduce the City’s USDG by R310 million, this will impact substantially on the City’s capacity to deliver on housing and will of necessity result in certain housing projects not being pursued due to inadequate funding.
12. While the City has historically delivered on its emergency housing obligations by way of specific settlements, given the scale of the demand for emergency housing and the City’s acceptance that emergency housing must also be integrated into other housing developments, where possible the City’s current strategy is to focus on emergency housing as a component of a broader housing development.
13. In meeting its housing obligations, the City, amongst other things, executes and implements the housing programmes as identified in the Housing Code.
14. It is estimated that in the 20-year period between 2012 and 2032, some 651 788 households in Cape Town will need support from the City in respect of housing (aside from those living in emergency circumstances who require State assistance) The City intends to implement at least seven different housing programmes over the next 20 years to address the housing plight of households that need support.
15. The City as currently structured was established in terms of Presidential Notice 479/2000 under the Local Government: Municipal Structures Act, No. 117 of 1998 (“*the Structures Act*”) on 5 December 2000. The City is an amalgamation of the previous Metropolitan Council and what then existed as six Metropolitan Local Councils, namely Helderberg, Oostenberg, Tygerberg, Blaauberg, Cape Town, South Peninsula as well as smaller portions of the West Coast and Winelands District Councils.
16. The City’s geographic area covers approximately 2 487 km² and it serves a population of approximately 4 million people, placing significant pressure on its infrastructure. The City’s population increased by 56% between 1996 and 2016 and this figure continues to grow. At the time of Census 2011, the population of Cape Town constituted 3 740 026 people made up of 1 068 572 household units, an increase of 38% over a 10-year period. Cape Town’s total population grew by almost 30% between 2001 and 2011, and by 46% between 1996 and 2011. In 2014 it was estimated that during the period 2015-2030 the population of Cape Town would grow from 3.9 million to 4.6 million. This increase is likely to be exceeded. This growth has increased the pressure for housing.
17. A substantial proportion of newer households in the City were identified in the census as being located in informal structures, suggesting an urgent need for much more low-income housing. There are 178 000 informal structures with a population of ± 570 000 in the City as per the 2011 Census. This equates to 3.2 persons per structure. There are 403 informal settlements and 45 000 backyarder structures with a population of ± 130 000. Approximately 20% of the City's population lives in an informal environment. This has necessitated a shift in the strategy and resulted in an increased focus on these areas.
18. The census identified the following socio-economic profile of the City’s households:
	1. 47% fall into the R0 to R 3200,00 per month category;
	2. 14% fall into the R3 201.00 to R6 400,00 per month category;
	3. 13% fall into the R6 401.00 to R13 000,00 per month category;
	4. 12% fall into the R13 001,00 to R26 000,00 per month category; and
	5. 14% fall into the R26 001, 00 + per month category.
19. A review in 2014 projected the housing need by 2032 (with specific assumptions) and suggested that there would be a further half million households in the City and there would be approximately 650 000 families earning less than R13 000.00 per month, thus relying on government for form of assistance for housing. The backlog in housing need continues to grow annually. The City is not able, on its own, to keep up with the demand. The City does not own sufficient land on which to provide housing for all those in need.
20. Notwithstanding the above constraints, using its capital budget allocation, in the period 2012/13 – 2017/18 the City -
	1. Created 46 90housing opportunities.
	2. Provided 912 new water service points (taps) to informal settlements, (5 340since 2012/13).
	3. Provided 4 275new sanitation service points (toilets) to informal settlements, (22 726since 2012/13).
	4. Installed 1 774subsidised electricity connections, bringing the total to 18 616since 2012/13.
	5. Installed 408 new water and sanitation service points (toilet and tap with hand basin) for backyarders.
	6. Reused 17 767 620 kℓof treated effluent (+/-50 Mℓ averageof water per day for the year).
	7. Replaced 23 000mofsewer mains and installed 22,86kmof new sewer mains.
21. As explained elsewhere, the City is developing emergency housing within existing settlements. There are a number of emergency projects that are underway at present. These are depicted in the two tables reproduced below. I do not give a full description of the sites in order to avoid the risk of unlawful occupation. The last column in the tables identify the emergency housing allocation in respect of various developments:

|  |
| --- |
| **Informal Settlements projects in construction phase** |
| **Project Name** | **Suburb** | **Estimated Yield** | **Estimated Emergency Allocation** |
| Freedom Park UISP | Ottery | 170 | - |
| Kalkfontein UISP | Kuilsriver | 837 | 37 |
| Sweethomes IDA  | Philippi | 390 | - |
| Sweethomes UISP (Services) | Philippi | 4000 | - |
| Wallacedene TRA  | Kraaifontein | 177 | - |
| Ravensmead IDA | Ravensmead | 58 | - |
| Imizamo Yethu - Civil works | Houtbay | N/A | - |
| Enkanini – UISP | Khayelitsha | 8151 | - |
| Driftsands (Los Angeles, Green Park, & Sopokama) | Delf | 1282 | - |
| Mfuleni Ext 2 | Blue Downs | 1043 | - |
| Better Life | Blue Downs | 117 | - |
| Monwood UISP | South Peninsula | 1731 | - |
| Deep Freeze – Macassar UISP | Macassar | 440 | - |
| Garden City - Mfuleni UISP | Blue Downs | 493 | - |
| Hangberg – Houtbay UISP | Houtbay | 330 | - |
| Monwabisi Park – Khayelitsha UISP | Khayelitsha | 7689 | - |
| Backstage 1 & 2 – Khayelitsha UISP | Khayelitsha | 714 | - |
| Wallacedene (4 in 1 plus) – Kraaifontein UISP | Kraaifontein | 269 | 40 |
| Barney Molokwana –Khayelitsha UISP | Khayelitsha | 4213 | - |
| Kampies | Philippi | 236 | 100 |
| Eagle Bar – Strand | Strand | 22 | 22 |
| OR Tambo TRA | Khayelitsha | 330 | 75 |

|  |
| --- |
| **Informal Settlement projects in planning phase** |
| **Project Name** | **Suburb** | **Estimated Yield** | **Estimated Emergency Allocation** |
| Phola Park Gugulethu | Gugulethu | 721 |  |
| Doornbach  | Blaauwberg | 3555 |  |
| Lotus Park | Gugulethu  | 1609 |  |
| The Heights - Seawinds | Lavender Hill | 3188 |  |
| Philadelphia – Relocations | Blaauwberg | 36 |  |
| Marikana  | Philippi | 8000 |  |
| S-section | Khayelitsha | 4369 |  |
| Mfuleni Ext 1 | Mfuleni | 500 | 150 |
| Riemvasmaak Extention | South Peninsula | 200 | 10 |
| AAA – Land  | Khayelitsha | 700 | 120 |
| BBB – Land  | Khayelitsha | 2800 | 500 |
| CCC – Land  | Macassar | 1500 | 550 |
| DDD – Land  | Strandfontein  | 3500 | 600 |
| EEE – Land | Kraaifontein | 3000 | 1500 |
| FFF – Land  | Atlantis | 2600 | 700 |

1. The increase in the occurrence of unlawful land occupations has been astronomical since 2016 as appears from the graph below. There were 14 289 unlawful land occupations in the City in 2017. This number increased to 87 500 unlawful land occupations in 2018. The trend analysis graph below demonstrates the unlawful land occupations for the period July 2016 to December 2019. There are obvious spikes around the April period in each of the 2017, 2018 and 2019 years. This usually correlates with the Easter weekend, as occurred this year in the Empolweni settlement (referred to by the applicants as “Ethembeni”). There were also large spikes in unlawful land occupations in February to June 2018, and September and October 2018.



1. The graphs below depict ownership of erven occupied between 2018 and 2020.



1. By 2018, 232.8559 ha of City owned land had been unlawfully occupied and this figure has increased to 241 4671 ha in 2020.



1. A list of properties unlawfully occupied from June 2018 to July 2020 is set out below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No** | **Settlement Name** | **Size sq m** | **Zoning** | **Ownership** |
| 1 | Monwabisi Park ext.  | 1404787.1 | LU\_Agriculture | CoCT |
| 2 | Msindweni | 332428.8 | Agriculture | CoCT |
| 3 | Wellbeloond | 320407.6 | LU | Private |
| 4 | Philipp Rail yard | 307728.9 | Rail Reserve | PRASA |
| 5 | Green Point ext. | 297729.9 | LU | CoCT |
| 6 | Enkanini Dune | 107911.3 | LU\_TR | CoCT |
| 7 | Ramaphoza Village | 89140.2 | Business | Private |
| 8 | Makaza - Empolweni | 70027.92 | LU | CoCT |
| 9 | Erf 20 Wallacedene | 65715.6 | POS | CoCT |
| 10 | Hangberg | 58533.4 | POS | Sanparks |
| 11 | Vrygrond | 54021.1 | LU\_TR | CoCT |
| 12 | Winni Mandela - Philippi | 31971.5 | Business | Private |
| 13 | Soweto & Siyhlala Du Noon | 31196.7 | Rail Reserve | Transnet |
| 14 | Ekulpholweni du Noon | 31135.3 | Sport Community | CoCT |
| 15 | Siyangena - Philippi | 25785.5 | Business | Private |
| 16 | Intersite Langa | 24662.3 | Rail Reserve | PRASA |
| 17 | Seskona - Philippi | 20371.5 | Industrial | Private |
| 18 | Erf 20 Wallacedene | 16530 | Agriculture | Private |
| 19 | Cathkin - Heideveld | 12290.7 | School | Province |
| 20 | Clive Street | 11689.2 | Industrial | Private |
| 21 | Lotus Park Ext. | 10729.9 | Utility | Transnet |
| 22 | Siyangena - Gugulethu | 10728.1 | Business | Private |
| 23 | Nkandla - Wallacedene | 8446.3 | Community | CoCT |
| 24 | Mzamomhle Mfuleni | 7193 | transport | CoCT |
| 25 | Squalo - Joe Slovo | 6462.5 | Community | CoCT |
| 26 | Marikana - Wallacdene | 5822.3 | POS\_Servitude | CoCT |
| 27 | Phase 7 School Grounds | 5753.7 | School | Province |
| 28 | Erf 13977 - School site | 4932.5 | School | Province |
| 29 | Hlebo Street | 4727.9 | POS | CoCT |
| 30 | Sondela Mfuleni | 3809.5 | Community | CoCT |
| 31 | Siqualo Wallacedene | 2581.6 | School | Province |
| 32 | Pond - Joe Slovo | 2178 | POS | CoCT |
|   |   | 3387429.82 |   |   |
|   |   | **338 HA** |   |   |

1. In order to address the trend of increasing unlawful land occupations, the City has increased its staff complement and allocated more resources to ensure that unlawful land occupations do not derail its service delivery mandate.
2. With unlawful land occupations large pockets of land are lost, which negatively impacts on the City's ability to deliver formal housing opportunities for those on its housing data base. The City is compelled to provide more emergency housing for persons who unlawfully occupy land, with the result that resources which had been allocated to service those lawfully waiting on the waiting list are diverted to deal with emergency housing needs.
3. Unlawful occupations cause intractable problems.
4. The City’s ability to evict people from land unlawfully occupied is hamstrung in that when an eviction order is sought by the City, it must provide emergency accommodation for the unlawful occupiers. If the City is able to provide emergency accommodation, often the relocation of the unlawful occupiers causes friction in the communities to which they are relocated as the City is perceived to be rewarding unlawful conduct. Where unlawful occupiers are left *in situ* the issue of services and bulk infrastructure arises, and the provision thereof is also perceived as unlawful occupiers being rewarded for acting unlawfully.
5. The City finds itself in a difficult position in seeking to provide housing opportunities in an orderly manner, when this is derailed by unlawful land occupations such as those at issue in this matter.
6. The following graph depicts the type of land that has been lost to unlawful occupations. The highest percentage of unlawfully occupied land includes land not suitable for human settlement purposes (marked LU). As a consequence the City usually has to identify suitable alternatives as the land unlawfully occupied cannot be developed for human settlement purposes.



1. A further consequence, in winter the heavy rains flood certain areas which the City has identified as being unsuitable for housing but which have been unlawfully occupied.
2. Over the past weekend the settlement on the Welbeloond farm, private land which was unlawfully occupied and is the subject of eviction proceedings in this Court was flooded. The City has repeatedly sought to engage with the occupiers about this land being on a flood plain, but to no avail. The City was in the process of securing emergency accommodation for these unlawful occupiers but for the reasons set out above this process takes time. The City is responding to the emergency caused by the heavy rains this weekend but it will not be in a position to provide immediate relief.
3. With regard to the unlawful occupation of privately owned land, it often happens that such land is lost to the owners due to the unlawful occupation, in particular in circumstances where the landowners do not have the resources to immediately respond to prevent the establishment of homes on their properties as a consequence of the unlawful occupation.
4. In these circumstances the landowners seek compensation from the City. One example of the consequences of the relief sought by the applicants is the Marikana informal settlement, which was the subject of violent and sustained land occupations during 2014. The City’s ALIU attempted to assist but for a number of reasons the occupation could not be stopped. Despite the landowners having sought eviction, due to the scale of the occupation an eviction was not deemed possible. As a consequence, the owners are seeking financial compensation from the City.
5. In addition, the City is cited as a respondent in every matter where an eviction is sought as a result of unlawful land occupation.
6. Currently the City is cited in approximately 12 major eviction cases where it is being asked to provide emergency housing. These cases alone account for approximately 3648 emergency housing opportunities which are required. This excludes the emergency housing needs in respect of matters such as the ongoing Woodstock Hospital and Helen Bowden evictions or the PRASA occupied rail reserve which involves 7844 structures, or the Marikana settlement which involves in the region of 30 000 structures.
7. The graph below depicts the increase in the number of private evictions within the City since 2012.
8. At present the City is cited as a respondent in approximately 385 eviction matters where it is required to provide housing reports to this Court and in which it must indicate what emergency housing it will make available for the persons being evicted.
9. The point that I seek to emphasise is that the City’s actions must be viewed in the broader context of it trying to fulfil its constitutional mandate in relation to all of those residing within its jurisdictional boundaries. The City has gone to great lengths to secure its land parcels as best it can. Regrettably, persons such as those represented by the applicants in this matter who persist in repeatedly attempting to unlawfully occupy the City’s land seriously jeopardise the City’s attempt to provide housing in an orderly and structured fashion.
10. The City is entitled to respond to such unlawful occupations by counter-spoliation but there is a very small window within which it can effectively and lawfully utilise this remedy. The Constitution does not countenance persons taking the law into their own hands. It is untenable that this conduct should be permitted since it inhibits the State in the execution of its housing obligations.

# THE URGENT INTERDICTORY RELIEF

1. I reiterate that the City does not evict persons from or demolish any informal dwellings, huts, shacks, tents or similar structures which are occupied, or which constitute the home of any person.
2. The relief, both interim and final, also implicates the right not to be deprived of property except in terms of a law of general application, as contemplated by s 25(1) of the Constitution.
3. What the applicants are asking this Court to do is to sanction unlawful land occupation and to provide unlawful land occupiers with a shield which would not only provide those occupiers with carte blanche to unlawfully occupy both privately owned and State owned land without consequence, but would deprive landowners of the ability to protect and vindicate their property rights.

## Paragraph 2.1

1. Insofar as the applicants seek relief in paragraph 2.1 of Part A of the Notice of Motion, where such relief relates to occupied structures, the City contends that such relief is not necessary in that the City does not engage in the conduct complained of, i.e. the eviction of persons from occupied structures.
2. The applicants are not entitled to the relief sought in paragraph 2.1 insofar as it relates to unoccupied structures.
3. What the applicants in effect seek in paragraph 2.1 insofar as it relates to unoccupied structures is the extension of the protections provided in PIE to structures which are not the homes of any person. The applicants are not entitled to such relief on settled legal principle and most certainly they are not entitled to such relief on an interim basis.
4. It is settled law that PIE applies only to a structure which is a home. A home for the purposes of PIE requires a degree of security and permanence before it may be called a structure or home in the context of PIE and/or s 26(3) of the Constitution.
5. The applicants are asking this Court, in interim relief proceedings, to extend the definition of home for the purposes of PIE, to any unoccupied structure and in so doing to fundamentally change one of the key jurisdictional facts for the application of PIE, namely that the structure in question must be the home of the person whose eviction is sought. The applicants cannot on an interim basis seek to extend the reach of PIE to unoccupied structures. The City denies that such a reading of PIE would in any event be consistent with the purposive or proper interpretation of the legislation, nor would it be constitutionally defensible.
6. In any event, the applicants have failed to establish any *prima facie* right to such protection.
7. There is no right in law which prohibits a landowner from demolishing or removing an unlawfully erected unoccupied structure from their land. Similarly, there is no right in law to unlawfully occupy the property of another.
8. In order to avoid this flaw in their argument the applicants to seek to conflate an eviction with the prevention of an unlawful land occupation. An eviction occurs only in circumstances where a person is being deprived of their home and not where a person is being prevented from unlawfully establishing a home on the property of another. Until the structure becomes a home it does not attract the protection of PIE.
9. Furthermore, the applicants seek on an interim basis to have this Court declare that the defence of counter-spoliation is entirely unavailable to the City. This notwithstanding the fact that counter-spoliation is a long established and accepted common law principle. It is trite that counter-spoliation is permitted if the original act of dispossession has not been completed.
10. There is no basis in law for this Court, on an interim basis, to deprive the City or indeed any other landowner of a lawful mechanism to protect its property from unlawful occupation. Whether counter-spoliation is constitutionally permissible in the present context is a complex matter which should be determined in Part B of the proceedings in light of all relevant legal and factual arguments. It cannot be determined in the context of parties seeking far-reaching interim relief.
11. Consequently, the applicants cannot on the law as it stands obtain the relief sought in paragraph 2.1. Legal argument on this aspect will be addressed at the hearing of the matter.

## Paragraph 2.2

1. Insofar as the relief sought in paragraph 2.2 is concerned the City accepts that the eviction and demolition of the home of any person must be done in a manner which respects the dignity of that person.
2. The City denies that on the facts, the applicants have established that the City uses excessive force in preventing unlawful land occupations. This is demonstrated with reference to the factual scenarios relied upon by the applicants as set out in response to the founding affidavit below.
3. Legal argument on this aspect will be addressed at the hearing of the matter.

## Paragraph 2.3

1. In paragraph 2.3, the applicants in effect seek to direct the South African Police Services (SAPS) to perform an oversight role over the City’s actions insofar as evictions and the prevention of unlawful land occupations are concerned.
2. The applicants tellingly state that SAPS is in their view required to protect unlawful land occupiers from the City. Such relief in effect requires SAPS to turn a blind eye to unlawful conduct and indeed to protect those engaged in unlawful conduct, while preventing a landowner from taking lawful steps to protect its property.
3. Further, SAPS does not play an oversight role in regard to evictions. SAPS is required to perform its constitutionally mandated obligations which include the prevention of crime and the protection of private propertyy.
4. To the extent that SAPS may observe City employees (or indeed any other persons) breaching any law including the provisions of PIE or acting in a manner which constitutes a crime during the course of an eviction or demolition of a structure, SAPS members are required to take appropriate steps to ensure that such conduct ceases. They can do no more than that. SAPS most certainly cannot be mandated by a Court to protect unlawful land occupations or prevent landowners from taking lawful steps to protect their property.
5. The applicants fail to identify what prima facie right such relief rests on.
6. Further, SAPS as an organ of State in the national sphere cannot lawfully play an oversight role over the lawful functions of local governmentt. The relief sought in paragraph 2.3 impermissibly intrudes upon the separation of powers and the constitutionally mandated functions of national and local government.
7. Legal argument on this aspect will be addressed at the hearing of the matter.

## Paragraph 2.4

1. In paragraph 2.4, the applicants in effect ask this Court to override orders lawfully granted by this Court in other matters in circumstances where there is no appeal, review or other application to vary or rescind those orders.
2. In the absence of an appeal or a review, or a rescission or variation order, there is no basis upon which this Court will cut across previous or earlier orders of the Court.
3. Further, the effect of the relief sought in paragraph 2.4 would be to nullify lawfully obtained orders of Court and thus in effect to allow parties whose conduct is the subject of those orders to takee the very actions which those orders proscribe.
4. The applicants do not make out a case that these orders are incompetent but merely that they should not apply. Such relief is incompetent and offends against the rule of law. Legal argument on this aspect will be addressed at the hearing of the matter.

## Paragraph 2.5

1. In paragraph 2.5 the applicants seek to prevent the City, not only from implementing the tender referred to but also from considering and adjudicating any bids submitted or awarding the tender, in circumstances where none of the bidders have been cited and where the applicants have set out no basis on which it could be contended that any aspect of the tender is unlawful.
2. The applicants suggest that the purpose of the tender is to outsource the functions of the ALIU.
3. On any consideration of the tender this is simply not the case.
4. The purpose of the tender is to engage contractors to demolish unoccupied structures in circumstances where the ALIU has determined that City land has been unlawfully occupied and where such unoccupied structures can lawfully be removed by the City.
5. The purpose of the tender is not to outsource the functions of the ALIU. Private security guards are not being lined up as the applicants suggest.
6. The City and indeed every municipality in the country operates on the same basis, as a reasonable and effective means to respond to unlawful land occupations without having to employ a large number of permanent staff who may only be required in particular circumstances and on a case by case basis.
7. In practice, the ALIU attends at a particular municipal property, where a suspected unlawful land occupation is taking place. The ALIU identifies where plots are in the process of being marked out (usually with pegs) and identifies which structures are vacant and/or unoccupied and which may lawfully be removed.
8. In certain circumstances the property in question already has an established settlement in place or certain structures are already occupied. In those circumstances the ALIU identifies those structures which may not be removed. In certain circumstances the property in question borders on private land or land belonging to another state entity but the attempted occupation spills over on to such other (non-City owned) property, in which case the ALIU tries to contact the relevant landowner to advise them of the impending occupation and request that they take steps to protect their property.
9. The ALIU then issues an instruction to a contractor who then undertakes the removal of pegs and/or the structures identified for removal by the ALIU and takes any building material into storage.
10. I reiterate that the contractor does not take any action in the absence of specific instructions by the ALIU. The contractor has no authority to act on City land or to remove any structure unless specifically instructed to do so by the ALIU.
11. The need for contractors is simply a capacity issue. The City does not have sufficient ALIU or law enforcement officers to attend at every unlawful land occupation site and remove every structure or marking peg. Hence the need for external contractors to perform the very limited function of removing those structures or other materials which have been identified by the ALIU as being appropriate for removal in the circumstances.
12. There is simply no basis for the applicants to contend that the tender is unlawful. Legal argument on this issue will be addressed at the hearing

## Conclusion on the interim relief

1. The interim relief sought would effectively prevent the City for an indefinite period (probably months if not years) from taking any steps to prevent unlawful land occupations on City land.
2. The City will be deprived of the ability to protect its land through counter-spoliation even before a Court has definitively pronounced on the validity of the defence of counter-spoliation.
3. City land earmarked for housing would be permanently lost to unlawful land occupations with devastating consequences for the delivery of housing.
4. Unlawful land occupations would be allowed to run largely unchecked. This would lead to a breakdown in law and order and would lead to unacceptable levels of violence in communities where land occupations are seen as attempts by *“outsiders”* to obtain preferential treatment from the City.
5. The City would be compelled to redirect a substantial portion of its housing budget to the provision of emergency housing. It could be that the extent of unlawful land occupation on City land would be such as to undermine all the City’s housing plans as it would have no means of protecting any of its land from occupation.
6. It is no answer to state that the City may seek urgent eviction orders, in particular where it is settled law that no eviction (urgent or otherwise) may be granted in circumstances that would render the persons being evicted homeless. The City would be compelled to provide emergency accommodation, even in urgent eviction proceedings resulting from unlawful land occupations.
7. Practically, by the time such matters come to Court the property in question would have been occupied and the occupiers would have established rights in terms of PIE. This would effectively mean that the City would be completely unable to protect land that it intends to use for housing or other purposes.
8. Further the interim relief will set a dangerous precedent for all landowners and will lead to serious consequences for the rule of law and the orderly administration of justice.
9. If the applicants obtain the relief that they seek it would be almost impossible for landowners to protect their property from unlawful occupation and to prevent people from establishing homes, albeit unlawfully, on the property of others.
10. Court rolls will be flooded with applications by landowners, both private and public, seeking urgent and immediate relief from Courts to determine whether or not a particular structure is occupied and subject to PIE, as this will be the only way that they can protect their property in the face of the relief sought by the applicants.
11. Consequently, urgent courts will have to be convened to consider and pronounce on disputed factual matters forthwith. Were this not to be the case private and public landowners would effectively be left without any remedy at all in circumstances where their land is being unlawfully occupied.
12. The increase in urgent eviction applications will also have financial consequences for the City. The City will be compelled to redirect a substantial portion of its human and financial resources to providing housing reports, given that an eviction cannot be granted without the involvement of the municipality.
13. The consequences for the administration of justice are manifest.
14. Poor people who cannot afford to approach Courts would lose their land or be forced to take the law into their own hands and face the egregious consequences of such actions. In these circumstances there is a significant risk of violent conflict between land occupiers and landowners.
15. The applicants are asking this Court on an interim basis to go much further than PIE or the Constitution allow, in that it would be protecting unlawful land occupiers in circumstances where they have not established homes. The effect of such relief would be to treat every structure irrespective of whether it is occupied or unoccupied as a home until proven otherwise. The Courts would be required to provide advisory opinions to landowners in urgent circumstances.
16. The applicants are asking this Court to ignore the rights of landowners in favour of the rights of unlawful land occupiers. Such relief should not be countenanced.

# THE FOUNDING AFFIDAVIT

1. I will now respond to those portions of the founding affidavit which are relevant to interim relief.

**AD PARAGRAPHS 1-3**

1. Save to state that the content of the founding affidavit is not all true and correct, the remainder of the content hereof is noted.

**AD PARAGRAPHS 4-7**

1. The identity of the respondents is not in dispute.

**AD PARAGRAPHS 8-11**

1. The property referred to in these paragraphs is known as erf 18332 Khayelitsha, which property is owned by the City (the property). The applicant refers to the settlement as Ethembeni as opposed to Empolweni which is its common name. In order to avoid confusion, I reiterate that this is the same property which is the subject matter of the order of this Court referred to above.
2. Since about August 2017 to September 2017 there were several attempts to unlawfully occupy the property and in the process the City removed a number of incomplete and/or unoccupied structures from the property. Thirteen structures which were erected during this period were occupied and were thus not removed and were marked with paint and numbered in order to identify them.
3. In consequence of the aforementioned unlawful occupation the City obtained an urgent interdict to prevent further occupation of the property which was granted on 8 September 2017 under case no. 16416/2017.
4. That order expressly protected the persons who were occupying structures at the time and the order records that is not to be construed as an eviction order and does not entitle the City to demolish any occupied structures or to evict the occupiers.
5. During or about 2018 a further attempt to unlawfully occupy the property was made and that matter came before this Court in the matters of *Kolanisi and Others v The City of Cape Town under* case no. 6277/2018 and *Takani and Others v The City of Cape Town* under case no. 8308/2018. Notwithstanding the fact that a number of interlocutory applications brought by the City in those matters were successful, some 300 unlawful structures were erected on the property and have been occupied.
6. That area is different to the portion of the property which was the subject of the attempted unlawful occupation which took place on 8, 9, 11 and 12 April 2020.
7. The City has not sought the eviction of these unlawful occupiers of the property in that it would have to provide them with emergency accommodation elsewhere to the detriment of persons within the City’s jurisdiction who have lawfully awaited their housing opportunities from the City.
8. During April 2020 a further attempt to unlawfully occupy a different portion of the property resulted in yet another operation by the City’s ALIU to protect the property.
9. That matter came before this Court in an application where it was alleged that the applicant, Mr Habile, had been in occupation of the property since March 2020 and had been unlawfully evicted. An order was issued on 17 April 2020.
	1. The City was directed to return all building materials in its possession, and which had been removed from the property between 9 April and 11 April to the persons named in paragraphs 1.1 to 1.4 of that order.
	2. Subject to what is set out below the persons listed in annexure ‘A’ to the order were granted permission to erect a total of **49 structures** on a portion of the property marked in red on a map attached to the order and to occupy those structures for a period described in paragraph 7 of the order.
	3. The aforementioned paragraph was made subject to the requirement that no other person was to occupy the property or erect any structure on the property and the applicant was to use his best endeavours to ensure that the number of structures on the property did not increase.
	4. In addition, the order expressly states that it does not affect the City’s right to counter-spoliate should anyone else erect or try to erect structures on the property.
	5. The applicant was directed to take all reasonable and effective measures to prevent any other persons occupying the property or erecting structures on the property.
	6. If any persons not listed in the annexure to the order occupied or attempted to occupy the property or erected or attempted to erect structures on the property, the applicant was directed to immediately notify the City.
	7. The order was put in place for so long as the restriction compelling every person to remain in their residence except for obtaining or performing essential services in terms of the lockdown regulations issued in terms of s 27(2) of the Disaster Management Act 57 of 2002 dated 18 March 2002 and as amended on 25 March 2020, 26 March 2020 and 16 April 2020 remained in force.
	8. Once the lockdown regulations were no longer in force either party could enrol the matter on reasonable notice on papers duly supplemented.
10. Subsequent to the granting of that order and on or about 30 June 2020 the ALIU during the course of a routine patrol of the area noted that persons were once again unlawfully attempting to occupy the property. As a consequence, the ALIU attended on the property on 30 June 2020 in order to remove the unlawfully erected, unoccupied structures.
11. The ALIU observed four unoccupied structures being erected on the property and commenced removing those structures. They were only able to remove one structure before the community became volatile and the ALIU left the site.
12. On the next day, 1 July 2020, the ALIU returned to the site to complete the operation and they noted that a further two structures had been erected since the previous day and therefore there were now a total of five unoccupied structures which required removal.
13. City law enforcement and ALIU officers involved in the incident have all indicated that the structure Mr Qolani alleges was occupied by him was in fact unoccupied.
14. The law enforcement officers removed Mr Qolani from the structure as documented in the video evidence accompanying this affidavit and as has been widely publicised in the media.
15. Mr Qolani disputes the version of the ALIU and law enforcement officers and states that he had taken occupation of the structure and was in the process of taking a bath when he was forcibly removed from the structure. In media reports he is alleged to have indicated that he took occupation on 16 Match 2020 and in other reports he is quoted as having indicated that he was there two weeks prior to the incident involving him and the law enforcement officers. According to the ALIU officials his structure was not on the property when they attended at the site on 30 June 2020. They noticed his structure when they returned on 1 July 2020.
16. The law enforcement officers involved in this incident have all been suspended pending disciplinary proceedings to be instituted against them shortly. The conduct of the law enforcement officers and the manner in which Mr Qolani was treated cannot be condoned. His unlawful conduct of invading the property despite a court order barring such action cannot be overlooked as a consequence of the treatment at the hands of the law enforcement officers.

**AD PARAGRAPH 12**

1. While it is correct that the manner in which Mr Qolani was treated was not authorised by an order of Court, the removal of unoccupied structures from the property is expressly contemplated by the order of this court of 17 April 2020.

**AD PARAGRAPH 13**

1. The content hereof is denied insofar as it does not accord with that which is set out above.

**AD PARAGRAPH 14**

1. The content hereof is denied and in particular it is denied that the City uses excessive force against defenceless people. The City, as it is entitled to do, acts against unlawful occupations of its land for the purposes set out above. This is perfectly lawful, and the City is entitled to protect its property.

**AD PARAGRAPH 15**

1. The content hereof is noted.

**AD PARAGRAPHS 16-19.5**

1. Save to state that the relief sought in this application is not competent and the applicants are not entitled to such relief for the reasons set out above, the remainder of the content hereof is noted.

**AD PARAGRAPH 20**

1. The content hereof is noted.

**AD PARAGRAPHS 21-27**

1. The content hereof is not in dispute insofar as it accurately reflects the provisions of the South African Human Rights Commission Act and the Constitution.

**AD PARAGRAPHS 28-37.4 (INCORRECT NUMBERED 27.4)**

1. The content hereof is noted and will be responded to when the City responds to the main relief.

**AD PARAGRAPHS 35-36**

1. The applicants’ recordal of the factual situation is selective and inaccurate. The applicants cannot avoid factual disputes by stating that they do not wish to become embroiled in factual disputes which are key to the relief sought.

**AD PARAGRAPHS 37-41**

1. I refer to what I have stated above in regard to the Empolweni unlawful occupation over the period 9 to 11 April 2020. To the extent that that which is set out in these paragraphs contradicts what is set out above and what is set out in the answering affidavits of the City filed in that matter, it is denied. For the purposes of interim relief and due to the urgency with which this affidavit has been prepared the City is not in a position to traverse all of the relevant facts save to state that:
	1. no evictions took place during the operations between 9 and 12 April 2020 on the property;
	2. the only structures which were removed were those which were unoccupied; and
	3. the only structures which were demolished were those which were unoccupied.
2. I point out that aerial photographs taken by the South African National Space Agency demonstrates that the portion of the property which was the subject of the unlawful occupation in April 2020 was unoccupied on 13 November 2019; 3 December 2019; 1 January 2020; 26 February 2020; 25 March 2020 and on 4 April 2020. Copies of those photographs are annexed marked **“RP1”** to **“RP6”**.
3. This is in stark contrast to the version of Mr Habile who claimed that he had taken occupation of the property on 28 March 2020. His version is inconsistent with the evidence of the City. The version of Mr Qolani as referred to above that he was in occupation since 16 March 2020 is also not borne out by the aerial photographs.
4. Furthermore, since the operation on 9 to 11 April 2020 a further 150-200 structures have been erected on the property in direct contravention of the order of this court of 17 April 2020 which only permitted the erection of 49 structures. I point out that the further 150-200 structures on the property are in addition to the 49 structures which this Court authorised. The reason that the structures have not been removed is because they are occupied, and hence the City would have to obtain an eviction order in order to deal with these structures.
5. If, as the applicants would have this court accept, the City unlawfully demolishes occupied structures, there is no reason why the City would allow 200 structures to be erected on the property and only selectively remove certain occupied structures.

**AD PARAGRAPHS 42-43**

1. The content hereof is not in dispute insofar as it accurately reflects the content of the order annexed as ‘CN3’.

**AD PARAGRAPH 44**

1. The City has no knowledge of the content hereof.

**AD PARAGRAPHS 45-47.2**

1. The content hereof is not in dispute insofar as it accurately reflects the contents of the letter annexed as ‘CN4’ and ‘CN5’. The Hangberg matter is currently pending before this Court.

**AD PARAGRAPHS 48-56**

1. The content hereof is not in dispute insofar as it accurately records the content of the documents annexed as ‘CN6’ to ‘CN10’.
2. Insofar as the applicants seek to contend that the City evicted any person from the property this is denied for the reasons set out above.
3. Save insofar the correspondence relates to Mr Qolani’s structure, I refer to what I have stated above.
4. I reiterate that no occupied structures were removed on that day.
5. As stated above the conduct of the law enforcement officers involved is the subject of disciplinary proceedings.
6. The City declined to meet with the first applicant (SAHRC) for good and proper reasons. There is a pending disciplinary enquiry ongoing in respect of the law enforcement officers involved and the Empolweni matter is currently pending before this Court. Further, the City explained its position to the SAHRC in detailed correspondence.
7. The City could not reasonably be expected to provide an undertaking that would in effect prevent it from protecting its property from unlawful land occupations which is what the applicants sought. The reasons for the City’s stance and the inappropriateness of such a request are set out above.
8. There is no question of the City failing to take the applicants’ demands seriously. It simply disagrees with them. No adverse inference can be drawn from this.

**AD PARAGRAPHS 57-59**

1. For the reasons set out above the applicants are not entitled to the relief sought.

**AD PARAGRAPHS 60-64.4**

1. The content hereof is not in dispute insofar as it accurately reflects the content of s 26(3) of the Constitution and the provisions of PIE. For the reasons set out above the City submits that the relief sought by the applicant is not appropriate at interim relief stage. Legal argument on this aspect will be addressed at the hearing.

**AD PARAGRAPH 65**

1. The content hereof is noted.

**AD PARAGRAPH 66**

1. The content hereof is not in dispute insofar as it accurately reflects the requirement that one may only be evicted from one’s home in terms of an order of court. The City does not dispute that evictions may only take place in terms of orders of court and the City does not engage in unlawful evictions.

**AD PARAGRAPH 67-69**

1. Argument as to the proper interpretation of PIE is properly before this Court as part of the relief sought in part B. For the purposes of interim relief it is inappropriate for this Court to grant relief which extends the reach of PIE in the manner contended for by the applicants for the reasons set out above.

**AD PARAGRAPHS 70-74**

1. The content hereof is denied insofar as it does not accord with that which is set out in this affidavit.
2. The City’s position is that as a landowner it is entitled to take all lawful steps to protect its property from unlawful land occupations. When the City observes that its property is in the process of being unlawfully occupied it immediately takes action insofar as it is able to do so within its available resources and within the boundaries of the law.
3. However, once the occupation is completed and a person or persons have established their homes on City property, the City no longer is in a position to take any action other than to seek eviction orders insofar as the City may deem this to be appropriate and necessary.
4. Legal argument on this aspect will be addressed at the hearing.

**AD PARAGRAPHS 75-76**

1. The content hereof is denied. The City’s position is lawful and constitutional. Legal argument on this aspect will be addressed at the hearing of part B.

**AD PARAGRAPHS 77-86**

1. The Disaster Management Regulations do not permit this Court on an interim basis to extend the ambit of PIE or to deprive the City of the defence of counter-spoliation, or to interdict the City from utilising any lawful remedy to protect its property. The regulations provide that no one may be evicted from his or her land or home during Alert Level 3 save insofar as the court may deem it appropriate. This accords with the established definition of PIE and has no bearing on the removal of unlawfully erected structures which are not the homes of any person. Legal argument on this aspect will be addressed at the hearing.

**AD PARAGRAPH 85**

1. The content hereof is denied. The content hereof does not accord with the accepted legal principles and would require this Court in effect to extend the definition of PIE to any structure irrespective of whether it is home or not. For the reasons set out above the applicants are not entitled to such relief.

**AD PARAGRAPH 86**

1. For the reasons set out above the applicants are not entitled to the interdictory relief sought.

**AD PARAGRAPH 87**

1. Save to state that the applicants are not entitled to the relief sought in part B the content hereof is noted and will be addressed in the City’s response to part B.

**AD PARAGRAPHS 88-88.4**

1. The requirements of interim relief with regard to paragraph 2.1 have not been met for the reasons set out above. The applicants do not identify the *prima facie* right that they seek to rely on, in particular in relation to unoccupied structures.
2. The undertakings sought from the City are inappropriate. The City has repeatedly emphasised to the applicants that it does not engage in unlawful evictions. Insofar as the applicants believe that the City’s actions amount to unlawful evictions there are remedies available to them under PIE as well as the *mandement van spolie*.
3. There is no reasonable apprehension of irreparable harm in circumstances where the City has indicated that it will not, and does not, unlawfully evict anyone from their home.
4. In these circumstances the issue of balance of convenience does not arise.

**AD PARAGRAPHS 89-97**

1. I refer to what I have stated above in regard to the relief sought in paragraph 2.2 of the Notice of Motion. In the case of Mr Qolani the City has taken decisive action and has suspended the employees involved. They will be subject to disciplinary proceedings, if appropriate.

**AD PARAGRAPHS 98-105**

1. I refer to what I have set out above in regard to the relief sought in relation to SAPS. SAPS does not play an oversight role in regard to evictions. Such relief is wholly inappropriate whether on an interim or final basis. Legal argument on this aspect will be addressed at the hearing.

**AD PARAGRAPHS 106-115**

1. The content hereof is denied for the reasons set out above. The tender does not seek to outsource the functions of the ALIU. There is no reason why the City should not be entitled to adjudicate this tender pending the outcome of the main application. Legal argument on this aspect will be addressed at the hearing.

**AD PARAGRAPHS 116-120**

1. For the reasons set out above the applicants are not entitled to ask this Court to interdict the City’s reliance on Court orders lawfully obtained in this Court in other matters. Legal argument on this aspect will be addressed at the hearing.

**AD PARAGRAPHS 125-141**

1. The content hereof relates to part B and will be addressed at the appropriate time.

**AD PARAGRAPHS 142-147.2**

1. The City does not dispute the urgency of the matter. The City disputes that the applicants have set a reasonable or sensible timeline for the determination of the matter. The City disputes that the applicants are entitled to the relief sought.

**AD PARAGRAPH 148**

1. The City disputes that the applicants are entitled to the relief sought. The interim relief application should be dismissed with costs including the costs of two counsel.

# THE AFFIDAVIT OF KASHIEFA ACHMAT

**AD PARAGRAPH 1-3**

1. Save to state that the City has no knowledge of the identity or occupation of Ms Achmat and to deny that all the allegations in Ms Achmat’s affidavit are true and correct, the remainder of the content hereof is noted.

**AD PARAGRAPH 4-10**

1. Save to state that the applicants are not entitled to the relief sought for the reasons set out above, the remainder of the content hereof is noted.

**AD PARAGRAPH 11-34 (generally)**

1. The property owned by the Ocean View Trust is erf 5144, which is directly adjacent to City and SANPARKS land, with no boundaries in place between the erven. The City property is erf CA948-9 and the SANParks property is identified as land key “400578”.
2. Attempts to occupy the properties referred to in these paragraphs started during February 2020.
3. A report of an unlawful land occupation was received by the City on or about 3 February 2020 and ALIU responded with an investigation which led to a planned dismantling operation of 2 unlawfully erected unoccupied structures. The building material in respect of these structures was left on site and not removed.
4. The investigation established that some of the structures were erected on SANParks' property whereas others were erected on a property owned by the Ocean View Development Trust (the Trust). SANParks was informed immediately about these development and a Mr Buchman, who is responsible for this area, asked the City to assist in the removal all new and unoccupied structures.
5. Initially the City could not contact the responsible person from the Trust but requested the ward councillor and other complainants to provide contact details for the Trust so that it could be informed of what was taking place on its property.
6. One of the unlawful occupiers, Mrs Bernadette Rossouw, managed to re-erect her structure and took occupation thereof.
7. Two unoccupied structures were being erected next to Mrs Rossouw’s structure, with a group of people demarcating their plots being assisted by Mrs Rossouw who was making a list of all the unlawful occupiers. According to the information received from local SAPS, they (SAPS) tried to stop the occupation and had instructed the occupiers to vacate the site, but that instruction was only adhered to on one occasion.
8. The City made contact with a representative of the Trust to address the matter. He advised that he would be placing himself at risk if he went to the site to try and stop the unauthorised conduct as some of the illegal occupiers were affiliated to certain gangs in the vicinity. Previously the Trust had refused to register a trespass case or to obtain an interdict to stop unlawful occupations. The Trust indicated that it would be consulting with attorneys to deal with the matter after the lockdown was lifted.
9. The City continued receiving complaints about unlawful land occupations in this area including in respect of the slopes of the mountainside in Ocean View. Another complaint of an unlawful land occupation was received around or about 7 February 2020. However, the City had no authority to deal with the Trust’s property, so no action was taken.
10. Another complaint of an unlawful land occupation at this site was received on or about 13May 2020. An investigation was conducted with Ocean View SAPS and officials conducted a foot patrol in the affected areas. The investigation revealed that a number of new unoccupied structures had been erected in the affected area and an operation was conducted on 15May 2020 to remove these structures. A total of 10 unoccupied structures were taken down and most of the building materials were removed.
11. The investigation further revealed that someone identified as “Miss Kashiefa” had a caused a trench to be dug approximately 5 meters from her illegal structure, which trench measured approximately 9 by 9 meters, and which appeared to be in preparation for the erection of a brick/block and mortar building.
12. This area is of particular concern to the City as there are no clear demarcations indicating where private land stops and City land starts.

**AD PARAGRAPH 11-13; 17-21 and 33-34**

1. The content hereof is denied to the extent that it does not accord with that which I have stated above.

**AD PARAGRAPH 14-16**

1. The City has no knowledge of the discussions between the LRC and Mr Dick. The content hereof is denied to the extent that it does not accord with that which I have stated above.

**AD PARAGRAPH 22-23**

1. The content hereof is denied to the extent that it seeks to suggest that the City engages in unlawful evictions.

**AD PARAGRAPH 24**

1. The City has no knowledge of the content hereof.

**AD PARAGRAPH 25-32**

1. The content hereof is noted insofar as it accurately reflects the contents of the letter marked “KA5” to “KA8”.

**AD PARAGRAPH 35-36**

1. The content hereof is denied for the reasons set out above.

# THE AFFIDAVIT OF BULELANI QOLANI

**AD PARAGRAPHS 1-2**

1. Save to state that the settlement is known as Empolweni and not Ethembeni, the remainder of the content hereof is noted.

**AD PARAGRAPHS 3-14**

1. I refer to what I have stated above in regard to the events of 1 July 2020 involving Mr Qolani. The law enforcement officers involved in this incident have all been suspended and are facing disciplinary proceedings. The City cannot at this stage pre-empt the disciplinary proceedings involving the ALIU and law enforcement officers.

**AD PARAGRAPHS 15-17**

1. As set out above, there is a pending disciplinary enquiry ongoing in respect of the ALIU and law enforcement officials involved and the Empolweni matter is currently pending before this Court. The City has explained its position to Mr Qolani’s attorneys. The disciplinary proceedings are at investigation stage and the City is anxious not to prejudice the proceedings in any way.

**AD PARAGRAPH 18**

1. For the reasons set out above, the applicants have failed to make out a case for the interim relief sought.

## CONCLUSION

1. For the reasons set out above, the interim relief sought is inappropriate and falls to be dismissed with costs including the costs of two counsel.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RIANA PRETORIUS**

I certify that the above signature is the true signature of the deponent who has acknowledged to me that she knows and understands the contents of this affidavit, which affidavit was signed and sworn to at ………………………on this ………day of ………………………………… in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 **COMMISSIONER OF OATHS**