

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case no. 1330 /2024

In the matter between:

THE DEMOCRATIC ALLIANCE

Applicant

and



MANGAUNG METROPOLITAN MUNICIPALITY

First Respondent

THE MUNICIPAL MANAGER OF THE
MANGAUNG METROPOLITAN MUNICIPALITY

Second Respondent

THE MINISTER OF POLICE

Third Respondent

NOTICE OF MOTION

TAKE NOTE that the **Democratic Alliance** ("*the Applicant*") intend approaching this court on **Friday, 8 March 2024 at 10h00** or as soon thereafter as counsel for them may be heard, for an order in the following terms:

1. The Applicant's nonadherence to this court's rules related to time periods and service is condoned and the application is heard as an urgent one in terms of Rule 6(12) of the Uniform Rules of Court.

2. In so far as this is shown necessary, the Applicant's failure to comply with section 35 of the General Law Amendment Act is condoned.

3. A rule *nisi* do issue, returnable upon such a date as the court deems meet, calling upon the Respondents to show cause, if any, why the following order should not be made final:
 - 3.1 It is declared that the First Respondent's failure, refusal and/or neglect to take any and all necessary and reasonable steps to carry into immediate effect this court's order of **2 March 2024**, issued under case number **1248/2024** ("*the court order*"), is unlawful.

 - 3.2 The First Respondent is ordered to take immediate steps to enforce the court order.

 - 3.3 It is declared that the Second Respondent's failure, refusal and/or neglect to immediately execute the abovementioned court order is unlawful.

 - 3.4 The Second Respondent is ordered to immediately take all reasonable steps to give effect to the order.

- 3.5 The First- and Second Respondents are ordered to take immediate steps to enforce the provisions of the statutory and regulatory scheme set out in the National Building Regulations and Building Standards Act, No. 103 of 1997, the Regulations promulgated in terms of this Act, and the First Respondents town planning scheme, to the extent that these legislations apply to the property better known as **Subdivision 5 of the farm Brandkop 702, Bloemfontein and Extension 148, Bloemfontein** , and further to the extent that informal dwellings are being erected and/or have been erected on this property unlawfully.
- 3.6 It is declared that the failure, refusal and/or neglect of the South African Police Services to prevent, combat and investigate the trespass and unlawful occupation of the abovementioned property by unknown persons, is unlawful.
- 3.7 The Third Respondent is ordered to take immediate and necessary steps to ensure that the members of the South African Police Services prevent, combat, and investigate the trespass and unlawful occupation of the abovementioned property.
- 3.8 The Respondents are ordered to weekly, before **12h00** on the Friday of each succeeding week after the granting of this order,

report to the Applicants and to this court on the steps they are taking to implement the terms of the order mentioned hereinabove.

3.9 The Respondents are ordered to pay the costs of this application jointly and severally, payment by one the others to be absolved.

4. The order contained in prayers 3.2, 3.4 and 3.7 above shall serve as an interdict with immediate effect, pending the finalisation of this application.

5. The Sheriff is instructed to serve this order upon the unlawful occupiers, collectively, of the property by means of the following:

5.1. The display of the order at a prominent place at the property

5.2. The reading out of the order to any person asking for it, and the provision of carbon copies of the order similarly.

5.3. The announcement of the order by loud hailer

6. Concerning any person able to show that he or she is an unlawful occupier of the property, such a person shall have the right to anticipate the return

date of this order with no less than 48 hours' notice to all parties concerned, and ask for whatever relief such a person may have been advised is feasible.

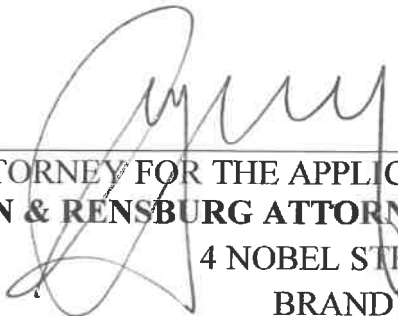
7. Further and/or alternative relief,

TAKE NOTICE FURTHER THAT the affidavit of **DAVID MARK CAMPBELL Mc KAY**, together with annexures thereto, will be used in support hereof.

TAKE NOTE FURTHER THAT the Applicant appoint the address of its attorney **Horn and van Rensburg Attorneys, 4 Nobel Street, Bloemfontein**, as the address where they will accept service of any and all documents in this proceeding.

KINDLY ENROL THE MATTER FOR URGENT HEARING ACCORDINGLY.

SIGNED at BLOEMFONTEIN on this ⁷..... day of MARCH 2024.


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C/O HORN & RENSBURG ATTORNEYS
4 NOBEL STREET
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On instruction of:

H.J. MOOLMAN

MOOLMAN & PIENAAR INCORPORATED ATTORNEYS

ATTORNEY FOR THE APPLICANT

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POTCHEFSTROOM

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TO:

THE REGISTRAR

HIGH COURT

BLOEMFONTEIN

AND TO:

FIRST- and SECOND RESPONDENTS

OFFICE OF THE MUNICIPAL MANAGER

MANGAUNG MUNICIPALITY

BRAM FISCHER BUILDING

NELSON MANDELA DRIVE

BLOEMFONTEIN

SERVICE BY SHERIFF

AND TO:

THE THIRD RESPONDENT

THE OFFICE OF THE STATE ATTORNEY

11TH FLOOR, PERM BUILDING

CHARLOTTE MAXEKE STREET

BLOEMFONTEIN

SERVICE BY SHERIFF

AND TO:
THE MISISTER OF POLICE
WACHTHUIS
7TH FLOOR
231 PRETORIUS STREET
PRETORIA

SERVICE BY SHERIFF

**N THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Case no. /2024

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**THE MUNICIPAL MANAGER OF THE
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Second Respondent

THE MINISTER OF POLICE

Third Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

DAVID MARK CAMPBELL Mc KAY

hereby make oath and say:



1.

I am a member of the **Democratic Alliance**. I serve as Ward Councillor in the Mangaung Metropolitan Municipal Council for Ward 18, which includes Lourier Park, Fauna, Bloemdal, Kelley's View, Kwaggafontein, Sections of Bainsvlei, Spitskop and Tierpoort.

2.

I have been duly authorised to institute this application on the Democratic Alliance's behalf. I append a Resolution passed by the Chairperson of the DA's Federal Council and Federal Executive Council marked "**DM1**" stating as much.

3.

The content of this affidavit falls within my personal knowledge and belief unless the contrary is readily evident, in which event I believe the averments to be true and correct in all respects.

4.

Where I advance legal argument in this affidavit, I do so on strength of advice received from our (the further use of this pronoun should be understood as referring to all the Applicants) attorney and counsel.



THE APPLICANT:

5.

The First Applicant is the **Democratic Alliance**, a political party with its own assets, perpetual succession, and Constitution, with the right to sue and be sued, and it's Federal Head Office at Theba Hoskin House, 16 Mill Street, Gardens, Cape Town.

6.

I refer to it further as "*the DA*".

7.

The DA's *locus standi* emanate from the following:

7.1 The DA is the main opposition political party to the African National Congress in the Mangaung Metropolitan Municipal Council. It has a vested interest – in it's own right – in the doings of the First Respondent. It serves the interest of it's constituents, and is compelled to act on behalf of all those who have trusted the DA to see to their interests in the executive and administrative affairs of the First Respondent.

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7.2 Ward 18 is a DA Ward.

7.3 As Ward Councillor acting on behalf of the DA, I am personally involved in the affairs of Ward 18, with the commensurate responsibilities applicable.

7.5 The DA has capacity and standing in this court in terms of section 38 of the Constitution of the Republic of South Africa, 108 of 1996, to approach the court and seek protection of the public interest, and the members the Applicants represent. Public interest here involves protection of the rule of law, enforcement of public law duties befalling the Respondents ensconced inter alia in our Constitution, and the protection of public order.

THE RESPONDENTS:

8.

The First Respondent is the **Mangaung Metropolitan Municipality**, a local sphere of government and organ of State as is meant in section 239 of the Constitution of the Republic of South Africa, 108 of 1996, properly established in terms of the Local Government: Municipal Structures Act, of Bram Fischer Building, Nelson Mandela Drive, Bloemfontein.



9.

I refer to it further as "*the Municipality*".

10.

The Second Respondent is **The Municipal Manager** of the First Respondent, Mr **S More**. He is the Head of the Administration and the Accounting Officer of the Municipality, responsible and accountable for the management of the Municipality's administration in terms of the Local Government: Municipal Systems Act and other germane legislation applicable to the Municipality. The Municipal Manager is – *inter alia* - responsible for the implementation of court orders impacting upon the Municipality. I refer to him further as "*the Municipal Manager.*"

11.

The Third Respondent is the **Minister of Police**, of the Union Buildings in Pretoria, cited herein in his official capacity as nominal respondent as provided for in section 34 of the General Law Amendment Act, read with section 2 of the State Liability Act.



12.

The South African Police Service Act, 68 of 1995, provides for the establishment, organisation, regulation and control of the **South African Police Services** (*“the SAPS”*). The Third Respondent is responsible for policing in the Republic and is supported by the Secretariat for Police in giving effect to any responsibilities and obligations. The SAPS is – in terms of section 205 of the Constitution – responsible and obliged to prevent, combat and/or investigate crimes, maintain public order, and secure the public and their property. This includes private – and state property.

13.

I refer further to the Third Respondent as *“the Minister”*.

PRECIS:

14.

14.1 This application concerns the non-execution - on it's full terms – of an order this Court had granted on **Saturday, 2 March 2024**, in relation to **Subdivision 5 of the farm Brandkop 702, Bloemfontein and Extension 148, Bloemfontein** (*“the property”*).



I append hereto a photographic image of the order that I have since obtained of the order and mark it “DM2” and my legal representatives will hand up a certified copy thereof, if necessary when the matter is heard. I do not recite the exact terms of the order, save to state that the Municipality had deemed the matter so urgent that it adduced *viva voce* evidence to the court on that day. The Applicant have yet been unable to obtain a transcribed copy of the evidence that was presented on this day, but no doubt:

14.1.1 The court was told of the urgency clinging to the proceeding, in relation to unlawful actions of unidentified Respondents in relation to what is in common parlance referred to as “*land grab*” or “*land invasion*” of the property.

14.1.2 The order obligated the unlawful occupiers (“*the land grabbers*”) to refrain from further taking any steps of squatting on the property, performing any construction related activities, building of houses or other structures, intimidating, verbally abusing or threatening any employee, agent or official of the Municipality, the removal of those land grabbers who were in the process of erecting structures and dwellings on the property and identification of occupiers who had completed dwellings on the property for purposes of further legal action.



14.2 The Respondents have failed to give effect to this order with the commensurate expedience it requires. Consequently, more and more land grabbers have made their way to the property, erected structures and dwellings under the proverbial nose of especially the SAPS. The steps that the Municipality have apparently taken to stop all this – and that on the back of the court order – have been entirely insufficient, both in relation to timing and vigour.

14.3 This inaction, almost laissez faire approach, simply cannot be allowed to continue. The Respondents must be ordered to give effect to this court's order immediately, for reasons that are glaringly obvious (as those relate to issues of safety, security, security of tenure on the part of lawful occupiers in the surrounding area, the rule of law etc.). The property is not serviced. That is to say, it has no sewer reticulation network, no electricity supply and no water reticulation network as well.

JURISDICTION:

15.

I am advised that this court may grant the relief the Applicant seeks due to the following jurisdictional facts:

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15.1 Firstly, it is this court's order that is effectively being scuppered, to the extent that the Respondents are failing to act in accordance with it's terms, and overarchingly in dereliction of statutory duties the Respondents all have. The Municipality was compelled to act when it did. And it did (which is commendable), but it is failing to give full effect to the order with the expediency the situation demands.

15.2 Secondly, the unlawful action we complain of is being purveyed in this court's jurisdictional area; and

15.3 The court has jurisdiction over the legal personae of all the Respondents.

APPLICABLE LEGISLATION:

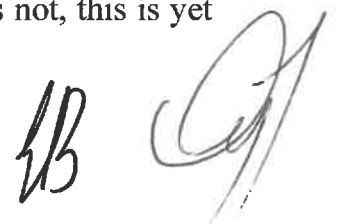
16.

Although this does not warrant further elaboration, I specifically wish to refer the court to the following legislation impacting upon the roles the Respondents are to play concerning land grabbers' actions:

16.1 Section 156(1) of the Constitution confers upon the Municipality the obligation to administer Local Government matters listed in Part B of Schedules 4 and 5.



- 16.2 The Municipality is also the authority responsible – within its jurisdictional area – for the implementation and enforcement of the Statutory and Regulatory Scheme set out in the National Building Regulations and Buildings Standards Act, No. 103 of 1997, the Regulations promulgated in terms of this Act and the Town Planning Scheme. It must do so either through criminal prosecution or civil interdict proceedings.
- 16.3 As a general obligation, the Municipality must provide accountable government for the residents of Bloemfontein, promote social and economic development and undertake developmentally orientated planning.
- 16.4 The Municipality is the owner of the property, which is zoned – to the very best of my belief – still as “*agriculture*” in terms of its planning scheme and for its development and use is bound by the relevant provisions of the Spatial Planning and Land Use Management Act, 16 of 2013, alternatively I submit that the land is not serviced nore yet proclaimed as suitable for a residential area or for human settlement.
- 16.5 I point as well to the Trespass Act, 6 of 1959, although I am unsure of whether the Municipality has indeed laid criminal charges against the land grabbers. If it is ultimately shown up the Municipality has not, this is yet

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a further dereliction of the Municipality's duties owed to not only its own property and infrastructure, but also to the people of Bloemfontein.

16.6 I have already referred to the Constitution of the Republic and the SAPS Act. I refer to section 165 as well, dealing with the effect of court orders on all in the Republic, including the State ; and

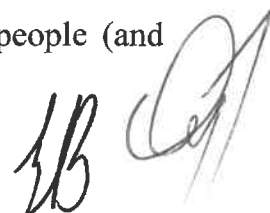
16.7 The Local Government: Municipal Finance Management Act 56 of 2003. It deals (in sections 14 and 90) with the circumstances under which Municipal assets may be disposed of. This is relevant, because of what I state below concerning public speeches the Executive Mayor of the Municipality has made.

17.

This exposition serves to prove the following indisputable facts:

17.1 The land grabbers are acting unlawfully. They are attempting to build for themselves residential dwellings on a property that is not zoned for such use, has not been serviced, has not been sold or otherwise given to them.

17.2 The Municipality is obligated to see to it that such actions are not allowed, threats of such actions are prevented for the benefit of all people (and especially those of Lourier Park) in future.

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17.3 The SAPS is, in terms of Standing Instruction 7 (a copy of which is appended marked “DM3”) obligated to immediately act in the presence of land invasion and land grabbing. The Standing Instruction orders the arrest of land grabbers who fail to heed warnings issued to them, the removal and incarceration of such criminals and the causing of effective cessation of such actions taking place.

THE ORDER:

18.

18.1 With the proviso that I mentioned above, it is common knowledge that the Municipality had obtained an order against the land grabbers on **Saturday, 2 March 2024**. The order – properly interpreted – distinguishes between three types of land grabbers. The first related to relief granted against those who were in the process of carting building material to the property, interdicting them from doing so further. The second are those who have already started constructing dwellings and the third, to whomever was found as having already erected a completed dwelling structure.

18.2 I am told that this distinction was necessary, primarily because of the application of the PIE Act. Anomalous certainly it is – I am told – that in our law unlawful occupiers of erected dwellings, no matter what circumstances led to such occupation, have vested rights in terms of this

legislation. I say no more about this now because I have been told that it is unnecessary.

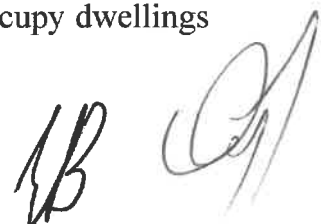
18.3 But what was immediately apparent and readily evident, is that the Municipality understood and accept that to properly deal with this land invasion it had to act immediately, not only concerning the first two categories of land grabbers identified above, but also the third. Concerning the latter, the Municipality obviously had in mind, given the urgency with which that application was brought, the curtailing of the number of land grabbers who would by then already have erected a dwelling and taken occupation.

18.4 This – I say – points to the following:

18.4.1 Firstly, the Municipality accepted that it had to act urgently.

18.4.2 Secondly, it did so in appreciation of the applicable legal dispensation in relation to all three groups of land grabbers.

18.4.3 Thirdly, it knew that it urgently had to implement and give effect to the order to obviate the obvious damage the land grabbing would cause to not only the Municipality but also the residents of Bloemfontein and specifically those citizens who occupy dwellings lawfully in close proximity to the property.

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18.5 But as I show below, and notwithstanding the terms of the order, the Municipality has failed to effectively act on strength of its terms, causing even more damage. And this all happened under the supervision of the SAPS.

NON-IMPLEMENTATION OF THE ORDER:

19.

19.1 I was personally involved with the happenings I describe below, on **Saturday, 2 March 2024** and thereafter.

19.2 I received calls from members of the community shortly after 5 o'clock in the morning of this day. I established that there were protests underway on all the major routes leading to the property. There was protest action under way through the burning of tyres, etc.

19.3 The land grabbers made their way to the property shortly after 4 o'clock that morning. I personally saw several bakkies and vehicles transporting building material. Out of interest, several luxury vehicles were seen at the property as well, in all instances carting what appeared to be building material to the property.

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- 19.4 I contacted the Municipality's Land Invasion Unit (a sub-directorate) and informed them of this. I telephoned the Municipal Manager as well.
- 19.5 As the morning progressed, more and more land grabbers were flocking to the property to stake an apparent unlawful claim. There was informal demarcation going on, shacks were being erected at breakneck speed, etc.
- 19.6 The Municipality subsequently obtained the order on an urgent basis.
- 19.7 But thereafter, and notwithstanding the order being made known to the land grabbers, they continued in their endeavours. I personally saw to the buying of a load haulier, stood on the back of a bakkie and announced to all that would hear that their actions were unlawful. The Sheriff did this as well.
- 19.8 The SAPS was present during that time as well. I specifically refer to the time period after the court order was obtained, and when the land grabbers were simply continuing in their unlawful endeavours. The SAPS stood idly by and did little to nothing to stop the land invasion. No arrests were made.

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19.10 Subsequent to the order, I estimate that approximately 2000 (two thousand) further land grabbers made their way to the property and started erecting dwellings. And I reiterate, this was done in the presence of the SAPS. Further structures were completed as well.

19.11 The Executive Mayor of the Municipality held a public meeting at the property on **Sunday, 3 March 2024**. He stood on a platform and addressed the land grabbers in Sesotho. A video of the Executive Mayor's speech has gone viral and has been distributed freely on social media. I shall make sure that this video may be shown to the court and the Respondents (who may seek its discovery prior to the filing of any opposing affidavits). I do not know the source of the video, but I have no doubt that what I have seen is a true depiction of the speech. The video constitutes – I am told – a Data Message. The Applicant's attorney has obtained a sworn translation of what was said at this meeting, and I append marked "**DM4**" this transcription and a confirmatory affidavit. The Executive Mayor, *inter alia*, said that the existing court order says that "***We must leave people who already have structures alone.***". He also told the hoard that those of them who had not as yet erected structures, should not continue to erect them further, but leave incomplete structures as is "***until the Municipality has decided what to do with this place***". The Executive Mayor called for the respect otherwise the court order but strangely said: "***.....We must find a way of getting out of this court order. We need your support.***".



19.12 I found this troubling. The court order clearly indicated that structures not completed had to be demolished, and here the Executive Mayor was addressing and apparently dishing out advice saying that incomplete structures should be left as is. This must have caused, at least, confusion on the part of the land grabbers and, I say, led them into a false sense of confidence concerning their unlawful actions in that they were apparently told that they were entitled to leave incomplete structures as is until the Municipality had decided what to do further. This was in direct violation of the court order. Of course this is fortified by him stating: *“We must find a way of getting out of this court order”*.

19.13 The land grabbing became the attention of much media coverage. And the City has been atwitter (depending on one’s inclination towards such issues) – and panicky about it since **Saturday 2 March 2024**. Social media activity has been alive as well, with several citizens issuing self styled warnings, others uttering threats of expansion of the land grabbing etc. This all caused the Executive Mayor to address the media as well. In a subsequent radio interview, a transcription of which I append marked **“DM5”**, (translated as an accurate reflection of what was said by the same person referred to earlier) the Executive Mayor told the interviewer that he would discuss the land grabbing with residents of Lourier Park, but that the Municipality was supposed to build so-called RDP houses on the property.

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19.14 He further said that he was “*going to involve the Province*” and “*How can we take houses there? Is funding available?*”. Once again, I raise the same concerns had I did earlier concerning these utterances and the perception these create to not only the land grabbers, but also potential land grabbers and law abiding citizens alike.

19.15 I attended a meeting further with the Executive Mayor on **4 March 2024**. It was attended by various stakeholders. The meeting was acrimonious, because *inter alios* the DA had raised concerns because the Municipality’s lack of implementation of the existing court order, and the confusion and misinformation the Executive Mayor was spreading. The Executive Mayor ended off this discussion with “*Take me to court. I have done nothing wrong*”.

19.16 The obvious concern raised in that meeting was the fact that the land grabbing was continuing. More people were flocking to the area consequent to the court order, and the Municipality (and the SAPS) were apparently doing nothing about it. I say again that by my count, approximately 1130 dwellings were erected by at 11:00 and subsequent to the granting of the court order.

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19.17 The problem with the Executive Mayor's actions is quite obvious. Through the speeches and the interview that he gave, he gave the impression that the Municipality might – in gist - either abandon the existing court order or at least a part of it, or indeed has abandoned the court order or at least a part of it. Or deal with the land grabbing in some other way

19.18 There can be no other way of interpreting his utterances, because he told those who was in the process of erecting dwellings that everything must be left as is until the Municipality has decided what to do. The radio interview – moreover – similarly must have cause some illegitimate expectations on the part of the land grabbers that the Municipality would regularise their unlawful occupation in the near future.

19.19 And as a consequence:

19.19.1 The land grabbers continue to occupy the property.

19.19.2 At least, half completed structures have not been – in terms of the court order – demolished.

19.19.3 Public disorder is perpetuated, with new land grabbers flocking to the area.



19.19.4 Commensurate chaos (I do not make this statement lightly) reigns on the property. Tyres are being burned regularly, and as there are – for instance – no ablution facilities and no sewerage reticulation network, the living conditions are deplorable to say the least.

19.20 Our attorney (the DA's attorney) wrote a letter to the Municipality on these issues on **Tuesday, 5 March 2024**. I append a true copy and mark it "**DM6**". It called for a positive answer by no later than 3 o'clock on the same day, failing which the DA would approach the court for relief.

19.21 This letter was answered on the same day by Phatshoane Henney attorneys, and after a further meeting was held the representatives of the Municipality by that attorney's firm. I append it marked "**DM7**". It appears as if the Municipality now does wish to execute the terms of the court order, but the urgency associated with their positive action apparently escapes the Municipality. What caused the delay in implementation in the first place is not entirely clear. Indeed, it is entirely unclear – if not for the reasons I have advanced above – why the Municipality has taken this long to act in terms of the order this court had granted to it on an urgent basis, four days before.

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19.22 Moreover, there is no indication of when indeed the processes the Municipality wishes to embark upon will be completed. The SAPS is doing nothing to prevent the situation on the ground at the property, and I can only believe that the Sheriff of the court (and I do not wish to impugn his or her actions at all) cannot stand alone against the horde and their unlawful occupation.

19.23 This cannot be allowed to continue. The Municipality must act and it must act post-haste. And the SAPS must assist in the implementation of the court order, make the arrests it is obligated to make and prevent the escalation of the situation further.

REPORTING:

20.

20.1 The last thing we want is an order obligating the Municipality to act, but there is no reporting obligation. That is to say, the Respondents must be ordered to not only implement the existing court order but also to report on its implementation going forward. For without such an order, I have no doubt that further politicking and inaction (covered up by bureaucratic processes) will stymie the effect of the court order going forward.

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20.2 This is the reason why the Applicant seeks an order in terms of which the Respondents are obliged to report on their actions on a weekly basis.

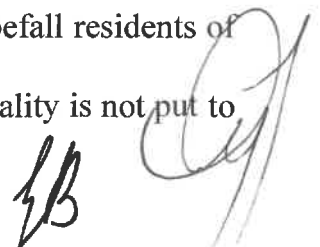
20.3 I cannot stress enough the prejudice caused by the Respondents' inaction to the inhabitants of Lourier Park area especially. And there are widely circulating threats that whoever had orchestrated the land grab (it was orchestrated; - I have no doubt about that) are of intent to escalate it to at least two other suburban areas in Bloemfontein will be targeted next. I append copies of these and mark them "DM8". I obviously do not present this evidence as the truth of what the social media posts says, and that this will indeed happen. I expose these to show simply that the citizenry of these suburbs are in a state of panic, whether rationally or irrationally. This must stop, and the only to achieve that is through implementation of what this court has already ordered.

20.4 It is not good enough to simply obtain the order. It must be implemented. Public interest dictates as much.

HARM:

21.

21.1 I have already explained to the court the harm that will befall residents of Lourier Park and the greater Bloemfontein if the Municipality is not put to

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task and – rather ironically at the behest of the land grabbers as well – ordered to implement an order it has already obtained.

21.2 And the inaction of the SAPS is deplorable. It is constitutionally mandated to see to the upkeep of public order, to act in accordance with its mandates and prevent what is clearly crime being purveyed, whilst it is looking on. This simply cannot be tolerated.

21.3 Nothing in this application should be considered as the Applicant disrespecting the land grabbers' constitutional rights to adequate housing. It might very well be that they have a fair chirp, because – as I understand it – they complain about the Municipality's inaction to provide them with land and adequate housing in the past. We respect that right, and we appreciate – to an extent – their plight.

21.4 But what they cannot do is invade the Municipality's property unlawfully, because of any exasperation with the Local Government's inaction in the past. That is not permitted, and cannot be permitted going forward.

21.5 Neither can they be allowed to effectively flout an order this court has already granted. This hardly warrants any further argument.



URGENCY:

22.

22.1 For reasons I say are abundantly clear from the substance of this affidavit, this application is extremely urgent.

22.2 The longer the Municipality idles upon its obligations – not only in terms of the National Legislation I have mentioned above but also the court order – the greater the harm the inhabitants of Lourier Park and Bloemfontein in general.

22.3 Every day that passes with the situation as is, creates more of a perception on the part of the land grabbers and those standing behind them that their actions are perfectly permissible. This exacerbates the culture of fear that now reigns in the Lourier Park area, causes damage to property values, the environment, the health and safety of all lawful inhabitants etc. Indeed, it is unsafe and degrading to expect of the land grabbers to live under such circumstances.

22.4 The Respondents must be called to order and action, and this must happen immediately.

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22.5 I have been advised that should we launch this application by adhering to the normal time periods cast in the Rules of this Court, this application will be heard in approximately 2 months' time. By then the very serious and immediate harm that I complain of will have solidified. In fact, it will no doubt have gotten much worse.

22.6 Nobody in the entire Bloemfontein area can afford this to happen. The DA is compelled to act.

22.7 I ask that the court condone our noncompliance with the rules of court related to time periods and service and in as far as is necessary, noncompliance with section 35 of the General Law Amendment Act. I ask that the court address this issue on an urgent basis.

23.

Wherefore I pray for an order in terms of the Notice of Motion.

SIGNED at BLOEMFONTEIN this ..6...day of MARCH 2024.



DAVID MARK CAMPBELL Mc KAY



I certify that the deponent has acknowledged that he understands the contents of this affidavit, which is binding on his conscience and that he has no objection in taking the prescribed oath. Furthermore that he has signed and sworn to before me at BLOEMFONTEIN on this 6th day of MARCH 2024, the regulations contained in Government Notice No. 1258 of 21 July 1972, as amended by the Government Notice No. 1648 of 17 August 1977, as amended having been complied with.



COMMISSIONER OF OATHS

FULL NAMES: Etienne Pierre Bester
 ADDRESS: 7 Stewart Crescent
 CAPACITY: Chartered Accountant
 AREA: Free State

COMMISSIONER OF OATHS (RSA)
 Pierre Bester CA(SA)
 Member No.: 30704558
 7 Stewart Crescent, Waverley,
 Bloemfontein, 9301

« DMI 4

SPECIAL POWER OF ATTORNEY

I, **Helen Zille**,

In my capacity as duly elected Chairperson of the Federal Council and the Federal Executive Council of the Democratic council of the Democratic Alliance (DA):

1. Considered the merits of the issue pertaining to the land invasions of vacant and unserviced municipal land of the Mangaung Metro, Free State Province;
2. The interim court order secured for and on behalf of the municipality to protect municipal property under Free State High Court Case number 1248/2024
3. The subsequent failure on behalf of the municipality and other law enforcement agencies to act and give effect to the court order in favor of the municipality.
4. The subsequent and uncontrolled escalation of the land invasion.
5. Give effect to the DA Federal Constitution, that provides that the DA shall only be legally bound by a person who is authorised in advance in writing by me, as the Chairperson of the Federal Council to do so. Clause 1.5.6 of the DA's Constitution states: "The Chairperson of the Federal Executive or someone authorised by him or her in writing represents the Party in all legal proceedings by or against the Party". (A copy of the DA Constitution is available online at <https://www.da.org.za/why-the-da/constitution>. Should the Court require a copy, it will be made available on request).
6. In exercising the mandate of the Federal Executive to institute these legal proceedings, in accordance with clause 1.5.6 have the authority to delegate my powers to represent the DA in legal proceedings.



And by doing so hereby mandate:

- 1) The law firm Moolman & Pienaar Incorporate Attorneys from Potchefstroom to prepare pleadings and to:
 - a) take the appropriate legal action that is reasonably necessary to have the court order by the Mangaung Metro enforced;
 - b) to take appropriate legal action to prevent individuals or organisations from interfering with the execution of the court order.
 - c) To, where necessary, take appropriate legal action to have individuals and/organisations who may have subverted or frustrated the execution of the court order to be held in contempt of the court order secured by the Mangaung Metro.

I mandate David McKay in his capacity as lawfully elected municipal ward councilor of the DA in the Mangaung Metro to depose to and sign all documents to give effect to mandate in 1 above for an on behalf of the DA.

Signed at CAPE TOWN on the 6th day of March 2024

X

Helen Zille
Chairperson





IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case No: 1248 /2024

DMZ

Before the Honourable Judge S CHESIWE

On the 2nd day of MARCH 2024

In the matter between:

MANGAUNG METROPOLITAN MUNICIPALITY

Applicant

and

ALL PERSONS SEEKING TO UNLAWFULLY APPROPRIATE,
OCCUPY, MARK OUT STANDS AND/OR ERECT STRUCTURES
ON ANY PORTION OF SUBDIVISION 5 OF THE FARM
BRANDKOP 702, BLOEMFONTEIN AND EXTENSION 148,
BLOEMFONTEIN

1st Respondent

ALL OWNERS AND/OR BUILDERS OF INCOMPLETE AND/OR
UNOCCUPIED STRUCTURES UNLAWFULLY CONSTRUCTED
ON SUBDIVISION 5 OF THE FARM BRANDKOP 702,
BLOEMFONTEIN AND EXTENSION 148, BLOEMFONTEIN

2nd Respondent

ALL OCCUPIERS OF COMPLETED STRUCTURES
ON SUBDIVISION 5 OF THE FARM BRANDKOP 702,
BLOEMFONTEIN AND EXTENSION 148, BLOEMFONTEIN

3rd Respondent

Having considered the documents filed of record and having heard the legal practitioners,

IT IS ORDERED THAT:

1. Condonation is granted in respect of the applicant's non-compliance with the usual forms and manner of service as prescribed by the Uniform Rules of Court as well as the applicant's non-compliance with Rule 41A, and it is directed that the matter be enrolled and heard on an urgent *ex parte* basis, with evidence to be given by *viva voce* evidence as opposed to affidavits;

1/B

2.A *RULE NISI* is issued, calling upon the respondents to show cause why an order in the following terms should not be granted:

- 2.1. Declaring and confirming that the following properties are owned by the applicant and that the respondents have no entitlement in law or otherwise to occupy, seize or inhabit same:
 - (a) SUBDIVISION 5 OF THE FARM BRANDKOP 702, BLOEMFONTEIN; and/or
 - (b) EXTENSION 148, BLOEMFONTEIN (Hereinafter referred to as "*the property*").
- 2.2. The 1st and 2nd respondents are ordered and directed to disassemble any and all incomplete and unoccupied structures erected by them on the property, remove all building materials, and vacate the property with immediate effect.
- 2.3. The 1st and 2nd respondents are thereafter interdicted and prohibited from:
 - 2.3.1. Loitering or gathering upon the property without the applicant's consent;
 - 2.3.2. Taking occupation or possession of any portion the property;
 - 2.3.3. Marking-out or otherwise allotting any portions of property as purported and prospective residential erven;
 - 2.3.4. Erecting structures of any description on the property and also from digging, levelling, clearing or performing any other preparations in anticipation of building activities;
 - 2.3.5. Bringing, leaving or storing any building materials on the property;
 - 2.3.6. Intimidating, verbally abusing or threatening any employee, agent or official of the applicant;
 - 2.3.7. Directly or indirectly inciting, taunting, encouraging, instigating, prompting and/or provoking other individuals to perform any of the acts described in paragraphs 2.3.1 to 2.3.6 above;
- 2.4. The Sheriff(s) of this Honourable Court and/or the South African Police Services are authorised and directed to remove and expel from the property any of the 1st or 2nd respondents who refuse to comply with paragraphs 2.2 and 2.3 above, and furthermore to demolish and/or remove any incomplete and unoccupied structures or building materials found on the property in contravention with this order;
- 2.5. In so far as any completed structures are found to exist on the property, the Sheriff(s), with the assistance of the South African Police Services, are authorised and directed:
 - 2.5.1. To determine which such structures are occupied by any 3rd respondents;
 - 2.5.2. To mark each such completed and occupied structure with a chronological number to be painted clearly on the exterior of such structure, starting from 1;
 - 2.5.3. To take photographs each such completed, occupied and numbered structure;
 - 2.5.4. To obtain the following information from the occupiers (3rd respondents) of each such completed, occupied, and numbered structure:
 - (a) Number of the structure
 - (b) The names of all occupiers

- (c) The sex of all occupiers
- (d) Identity numbers of all occupiers
- (e) Details of any disabilities of any occupiers
- (f) Where each of the occupiers resided prior to taking occupation
- (g) Whether each of the occupiers are employed

2.6. Pending any application by the applicant in terms of the Prevention of Illegal Eviction and Occupation of Land Act 19 of 1998, the 3rd respondents are interdicted and prohibited from:

- 2.6.1. Taking occupation or possession of any further portion the property;
- 2.6.2. Marking-out or otherwise allotting any further portions of property as purported and prospective residential erven;
- 2.6.3. Erecting any further structures of any description on the property and also from digging, levelling, clearing or performing any other preparations in anticipation of building activities;
- 2.6.4. Bringing, leaving or storing any further building materials on the property;
- 2.6.5. Intimidating, verbally abusing or threatening any employee, agent or official of the applicant;
- 2.6.6. Allowing any other persons apart from those whose details are provided to the Sheriff in terms of paragraph 2.6 above from taking occupation of the structure;
- 2.6.7. Directly or indirectly inciting, taunting, encouraging, instigating, prompting and/or provoking other individuals to perform any of the acts described in paragraphs 2.6.1 to 2.6.6 above.

2.7. The costs of this application shall be paid by the applicant, except if the matter is opposed, in which case those respondents opposing the relief sought be ordered to pay the costs jointly and severally, the one paying the other to be absolved;

3. The relief in paragraphs 2.2 to 2.6 above shall serve as an interim interdict with immediate effect;

4. The applicant is granted leave to file a Supplementary Affidavit on or before 25 April 2024, unless the matter is opposed before then, in which case within 5 (FIVE) days of the Notice of Opposition, dealing with any further information and/or developments as may be required or deemed appropriate;

The proceedings are to be transcribed and service is to be effected in the following manner:

- 5.1. By the Sheriff(s) of the Honourable Court and/or South African Police Services and/or officials, agents or employees of the applicant handing out 20 (TWENTY) copies of this order to 1st and 2nd respondents found on the property.
- 5.2. By handing a copy of this order to the occupiers of each completed and occupied structures (the 3rd respondents) and/or by affixing a copy of this order to each such completed and numbered structure.
- 5.3. By keeping a copy of this order, Notice of Motion, any Supplementary Affidavit and, once typed, also the transcribed record of oral evidence and exhibits at the main reception of the Bram Fischer Building, Markgraaff Street, Bloemfontein, for

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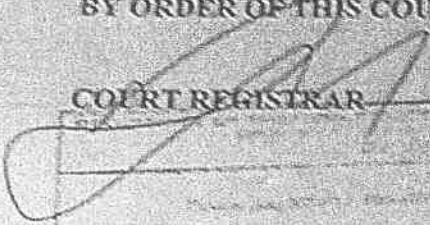
inspection and so that any respondent who requests a copy during normal office hours may be supplied with one;

- 5.4. By the Sheriff(s) of the Honourable Court, if necessary, reading out the order, in ENGLISH and SESOTHO, by megaphone at such places and occasions on the property as may be deemed necessary to bring the order to the notice of the respondents;
- 5.5. By handing a copy of this order to any respondents who are removed or expelled from the property pursuant to paragraph 2.4 above.

BY ORDER OF THIS COURT

COURT REGISTRAR

PH ATTORNEYS INC.


2024-03-02
ESD-277-204
REGISTRAR OF THE HONOURABLE COURT



DM3

NATIONAL INSTRUCTION 7 OF 2017 TRESPASSING, UNLAWFUL OCCUPATION OF LAND AND EVICTIONS

Table of Contents

1.	Background	2
2.	Purpose	3
3.	Regulatory Framework	3
4.	Definitions.....	4
5.	Different legal positions	6
6.	Practical guidance for operational commanders and members.....	15
7.	Dealing with land invasions	18
8.	Responsibilities of members of the SAPS in relation to evictions.....	20
9.	Responsibilities during an unlawful land invasion.....	22
10.	Complaints in terms of the Rental Housing Act	25
11.	Implementation and review.....	26

EB [Signature]

1. Background

- (1) The mandate of the South African Police Service, as set out in section 205(3) of the Constitution of the Republic of South Africa, 1996, is, *inter alia*, to prevent, combat and investigate crime, to maintain public order, protect and secure the inhabitants of South Africa and to uphold and enforce the law.

- (2) Legislation was enacted to give effect to potentially competing Constitutional property and tenure rights as are envisaged in sections 25(2) and (3), and sections 25(6), (7) and (8), and 26(2) and (3) of the Constitution of the Republic of South Africa, 1996. The State and all its organs must, in accordance section 7 of the Constitution, respect, protect, promote and fulfil these rights. These statutes include the following:
 - (a) Trespass Act, 1959 (Act No. 6 of 1959) ("Trespass Act");
 - (b) Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998);
 - (c) Extension of Security of Tenure Act, 1997 (Act No.62 of 1997);
 - (d) Land Reform Act, 1996 (Act No. 3 of 1996); and
 - (e) Restitution of Land Rights Act, 1994 (Act No. 22 of 1994).

- (3) The practical application of the Constitutional and statutory rights pertaining to ownership, tenure and other rights to land pose certain challenges where *members* of SAPS are more than often confronted with complicated factual situations in the field of its operations. The situations are often charged with emotions as result of the tension between the respective competing rights. Occupation of land by *unlawful occupiers* which is against the wishes of the owner of such property, is an issue often precipitated by socio-economic, socio-



historic or socio-political factors.

- (4) As such, the SAPS may be involved in matters of land invasions or *evictions* and must guard against overzealous or unlawful intervention. The SAPS is at risk not only regarding civil claims resulting from injury to persons or damage to property where *members* are involved, but also negative publicity and loss of public confidence.
- (5) Land owners and occupiers must be requested to report incidents of land invasions and illegal *evictions* to their local police stations. In the absence of proper police response the Station Commander, District Commissioner or Operational Coordination or the Office of the Provincial Commissioner should be contacted to ensure that the matter is attended to.

2. Purpose

The purpose of this National Instruction is to provide guidance to *members* of the SAPS in respect of their roles and responsibilities during incidents of trespassing, land invasions or *evictions*, to ensure that *members* act within the perimeters of all applicable Legislation.

3. Regulatory Framework

This Instruction is informed by *inter alia* the following:

- (a) Constitution of the Republic of South Africa, 1996;
- (b) Extension of Security Tenure Act, 1997 (Act No. 62 of 1997);
- (c) Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996);
- (d) Magistrates Court Act, 1944 (Act No. 32 of 1944);
- (e) Prevention of Illegal Eviction from and Unlawful Occupation of Land



- Act, 1998 (Act No. 19 of 1998);
- (f) Rental Housing Act, 1999 (Act No. 50 of 1999);
 - (g) Rules regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa (GNR.740 of 23 August 2010);
 - (h) Sheriffs Act, 1986 (Act No 90 of 1986); and
 - (i) Trespass Act, 1959 (Act No. 6 of 1959).

4. Definitions

In this Instruction, unless the context otherwise indicates, —

- (a) "*arrest*" means to, in accordance with Chapter 5 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), take a suspect (during or after the commission of an offence) into custody to ensure his or her attendance in court where he or she stands accused of committing of such offence;
- (b) "*court*" means any division of the High Court or a magistrates court;
- (c) "*ESTA*" means the Extension of Security Tenure Act, 1997 (Act No 62 of 1997);
- (d) "*evict*" means to lawfully and in accordance with a court order granted in civil proceedings by competent court, expel someone together with their personal belongings from land, a place, premises or property in terms of the law (or a court order), and "*eviction*" has a corresponding meaning (Our courts have expressed in a number of judgments the challenge of dealing with this definition, for instance the cutting of the electricity would not amount to an eviction. However, the cutting of the electricity that powers the water pump to grant access to water, would amount to an eviction. To deprive the occupier of use of

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land which he or she previously had, such as gardening, would also amount to an eviction.);

- (e) “*eviction order*” means an order issued by a court that compels someone to leave vacant land, a place, premises or property and that authorises an eviction in the event that such land is not vacated voluntarily;
- (f) “*land claim*” means a land claim that was duly lodged in accordance with section 16 of the *LTA* and section 10 of the *Restitution Act*;
- (g) “*LTA*” means the Land Reform (Labour Tenants) Act, 1996 (Act No 3 of 1996);
- (h) “*member*” means a member appointed in terms of the South African Police Service Act, 1995 (Act 68 of 1995);
- (i) “*occupier*” means a person who resides on land with the permission or consent of the owner. The consent does not have to be expressed (in writing or orally), but may also be given tacitly in accordance with the provisions of sections 3(4) and 3(5) of *ESTA*;
- (j) “*PIEA*” means the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No 19 of 1998);
- (k) “*reside*” means that a person has his place of abode or dwells permanently at a particular place;
- (l) “*Restitution Act*” means the Restitution of Land Rights Act, 1994 (Act No 22 of 1994);
- (m) “*SAPS*” means the South African Police Service;



- (n) “*sheriff*” means a person appointed in terms of section 2 of the Sheriffs Act, 1986 (Act No 90 of 1986), and a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and a deputy sheriff, respectively;
- (o) “*Trespass Act*” means the Trespass Act, 1959 (Act No 6 of 1959); and
- (p) “*unlawful occupier*” means a person who occupies and *resides* on land without the express or tacit consent of the owner or person in charge.

5. Different legal positions

(1) Lawful Occupiers

A lawful *occupier* is a person who *resides* on land with the permission of the owner of the land. There are two distinctive categories of persons identified in the legislation:

(a) Occupier regulated by ESTA

- (i) An occupier in terms of ESTA is a person living (residing) on farm land with the owner’s consent. This consent does not have to be express (in writing or orally) but may also be given tacitly in accordance with and after the expiry of the periods referred to in section 3(4) and 3(5) of ESTA. An example of express consent is where an occupier resides on the land after asking the owner permission. An example of tacit consent would be the case where a person lives on a farm with the full knowledge of the owner for longer than the periods as prescribed in section 3(4) and 3(5) of ESTA. If the owner does not take steps to evict that occupier within the prescribed periods, the



owner will by operation of be regarded to have given gave tacit consent through his or her conduct. An occupier in terms of *ESTA* is sometimes referred to as a "farm dweller".

- (ii) A person earning more than the prescribed gross income (currently R 13 625.00) is not regarded as an *occupier* in terms of *ESTA*.
- (iii) *ESTA* protects the rights of the *occupier*, but does not protect persons who use the land for industrial, mining, commercial or commercial farming purposes and it does not apply in land proclaimed, recognized as townships or urban land. *ESTA* refers to the owner at the time of the relevant act, and extends the concept to the holder of mineral rights.
- (iv) An *Occupier* occupying the land in terms of *ESTA* may only be evicted in terms of an order of the Magistrate's Court, Land Court or High Court. An eviction order granted by the Magistrate's Court can only be carried into effect after such order was confirmed on automatic review by the Land Claims Court.
- (v) The effect of this provision is that *members* and commanders must note the fact that Magistrates Court Orders for eviction in terms of *ESTA* can only be executed once it has been reviewed by the Land Claims Court and the Land Claims Court has endorsed the Order. Attorneys

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and the Sheriff are sometimes unaware of this provision or Attorneys act in an unethical manner by instructing the Sheriff to execute the Order without endorsement by the Land Claims Court.

(b) Labour tenant regulated by the LTA

- (i) A labour tenant is a person —
- who is residing or has the right to reside on a farm;
 - who has or has had the right to use cropping or grazing land on the farm, referred to in the first bullet, or another farm of the owner, and
 - in consideration of such right provides or has provided labour to the owner or lessee; and
 - whose parent or grandparent resided or resides on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided or provides labour to the owner or lessee of such or such other farm

A person claiming to be a labour tenant must meet all three the abovementioned requirements to qualify as a labour tenant.

- (ii) The labour tenant may provide this labour through someone else – for example, the father is a labour tenant who uses the farm in return for his son or daughter working for the owner.

- (iii) A farm worker, who gets paid for his or her work mainly in

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cash as opposed to the value of any copping and grazing rights, does not qualify as a labour tenant. Farm workers have to do the work themselves, which is another factor distinguishing them from labour tenants. The right of occupation of a labour tenant and his or her "associates" (family members, employees) is protected by the *LTA*.

- (iv) A labour tenant may only be evicted in terms of an order of the Land Claims Court.
- (v) Persons claiming to be labour tenants are not excluded from invoking rights in terms of *ESTA* in the event where the status of a person claiming to be a labour tenant cannot be verified.

(2) Unlawful Occupiers

- (a) An *unlawful occupier* is someone who *resides* on land without the express or tacit permission of the owner. *Occupiers* who fall under the *ESTA* or *LTA* are not *unlawful occupiers*.
- (b) The rights of an *unlawful occupier* are protected by the *PIEA*. This category of *occupiers* will mostly be what is commonly known as "squatters".
- (c) As soon as a building or structure has been erected on land and is inhabited by a person (the person has factual control of the building or structure), the person is considered to *reside* on such land. It is a factual question how long he or she was *residing*

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there, to be best dealt with by the relevant *court*. A person in the process of erecting a building or structure and not inhabiting the building or structure is not *residing* on such land.

- (d) *Unlawful occupiers* may only be evicted in terms of an order of the Magistrate's Court or High Court.
- (e) Where the *PIEA* refers to a "building or structure", and includes a hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter.
- (f) Where the *PIEA* refers to "consent", it means *express or tacit* (in accordance with the provisions of sections 3(4) and 3(5) of *ESTA*) consent of the owner of the land (or the person in charge) to the occupation by the *occupier* of the land in question.
- (g) Sections 3(4) and 3(5) of *ESTA* provides as follows
 - "(3) For the purposes of this Act, consent to a person to reside on land shall be effective regardless of whether the occupier, owner or person in charge has to obtain some other official authority required by law for such residence.
 - (4) For the purposes of civil proceedings in terms of this Act, a person who has continuously and openly resided on land for a period of one year shall be presumed to have consent unless the contrary is proved."

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- (h) If persons start occupying property and the owner or person in charge allows this occupation unhindered, it may be construed as tacit consent, subject to the provisions of sections 3(4) and 3(5) of *ESTA*.
- (i) Where *PIEA* refers to "owner", it means the *registered* owner of land, including an organ of state. Where *PIEA* refers to the "person in charge", it means the person who has the necessary legal authority to give permission to a person to enter or reside upon the land in question.

(3) Trespasser

- (a) A trespasser is someone who enters land without the permission of the owner.
- (b) Section 1 of the *Trespass Act*, provides that any person who without the permission of the lawful occupier of any land or any building or part of a building; or of the owner or person in charge of any land or any building or part of a building that is not lawfully occupied by any person, enters or is upon such land or enters or is in such building or part of a building, will be guilty of an offence, unless he has lawful reason to enter or be upon such land or enter or be in such building or part of a building. A person who is entitled to be on land in terms of the *ESTA* or *LTA* is deemed to have lawful reason to enter and be upon such land.
- (c) A *court* who finds a trespasser guilty of an offence in terms of section 1(1) of the *Trespass Act*, 1959, may order the summary

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removal of such a person from the land concerned.

- (d) Trespassers must be arrested as soon as possible by *members* of the *SAPS* after a complaint of trespassing was lodged (if the person is still on the relevant land) and must be brought before a *court*.
- (e) The owner or person in charge of the property must lodge a formal complaint with the *SAPS* and provide an affidavit with the following information clear for *members* to act:
 - (i) the capacity of the complainant (whether he or she is the owner, lawful *occupier* or person in charge of the property in question) (A *member* may not refuse to accept such a complaint on the basis that the complainant cannot immediately provide proof that he or she is the owner, person in charge of land or lawful occupier);
 - (ii) particulars of the suspect(s) who entered the property in question;
 - (iii) whether the owner, lawful *occupier* or person in charge gave permission to the suspect(s) to enter the property in question or not; and
 - (iv) whether the suspect(s) have any lawful reason for entering the property.
- (f) If the suspect leases the property or is an employee of the complainant or *bona fide* visitor to a lawful *occupier*, the suspect may have a lawful reason for his or her presence. *Members* must establish from the facts provided by the complainant whether the *Trespass Act*, *ESTA* or *LTA* is applicable in the

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circumstances. A visitor of an unlawful occupier, do not have a lawful reason to be present on the property where the illegal occupier is residing.

- (g) If it is clear that the suspect(s) have been *residing* on the property, the owner must be advised that the trespasser should be evicted by means of an order of *court*.
- (h) As soon as a building or structure has been erected on land and is inhabited by a person (the person has factual control of the building or structure), the person is considered to reside on such land. In such case, the occupier will not be evicted, but a case of trespassing may still be registered and investigated. Unlawful occupation of land does not establish immunity from prosecution for Trespassing. There is a difference between prosecuting a person for a crime already committed and an order for the eviction of a person.
- (i) A clear distinction must be made between *eviction* and *arrest* for trespassing. A person who entered land without the permission of the owner, person in charge of the land or lawful occupier (whether he or she is in the process of erecting a building or structure and completed the building or structure) may be arrested for trespassing.
- (j) In the logical sequence of events a land invasion is preceded by trespassing. In the matter of *Economic Freedom Fighters and Another v Minister of Justice and Correctional Services and Another 2021 (2) SA 1 (CC)*, the Constitutional Court refused



the Applicant's application for an order to declare that the *Trespass Act* does not apply to unlawful occupiers under the *PIEA*.

- (k) Only *ESTA* and *LTA* occupiers are exempted from evictions in terms of subsection 2(2) of the *Trespass Act*. An unlawful occupier mentioned in *PIEA* does therefore not enjoy statutory immunity from prosecution in terms of the *Trespass Act*. In the matter of *S v Koko 2006 (1) SACR 15 (C)*, the Western Cape High Court held that *PIEA* does not prevent the owner from proceeding with complaints of trespassing and that the two processes can be combined or can be dealt with in a parallel manner. *Members* are quick to respond to complainants that a trespass case cannot be opened in matters where *PIEA* finds application, this incorrect and must stop immediately.
- (l) A court who finds a trespasser guilty of an offence in terms of section 1(1) of the *Trespass Act*, may order the summary removal of such a person from the land concerned. Otherwise an eviction order must be obtained from a Magistrates Court or High Court. The *SAPS* does not evict persons or remove structures erected, unless specifically ordered by a Court to do so.
- (m) It is important to immediately when the land owner, lawful occupier or person in charge thereof becomes aware of the trespassing to make a complaint with the *SAPS*.

Two handwritten signatures in black ink, one on the left and one on the right, appearing to be initials or names.

6. Land claims

- (1) Land Claims are lodged against the State and not against individual private land owners.
- (2) Claimants in a land claim will not have any right to privately owned land up until the claim was settled and the claimed land was acquired by the State against payment of compensation as envisaged in section 25(2) and 3 of the Constitution.
- (3) Land Claims lodged in terms of the LTA are administered and processed by the National Department of Agriculture, Rural Development and Land Reform and the status of any claim can be verified with the nearest regional offices of the said department.
- (4) Land Claims lodged in accordance with the Restitution Act, are administered and processed by the Commission on Restitution of Land Rights and the status of any claim can be verified with the provincial offices of the Commission.
- (5) The existence of land claim against any land in accordance with the said legislation will not constitute a defense against a charge of trespassing, unless the claim was settled, the land was acquired or lawfully expropriated from a private land owner by the abovementioned state departments for and on behalf of the claimants and possession of such land, as result of the purchase or expropriation, was given to the claimants.

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- (6) The private land owner and claimant must provide proof of ownership to resolve the matter, should criminal charges be brought for trespassing.

7. Practical guidance for operational commanders and members

- (1) Station Commanders, as well as operational commanders, must ensure that *members* are conversant with the provisions of legislation in regard to trespassing and unlawful occupation of property, including the rights of all involved parties, in order to ensure that *members* follow the correct procedures when confronted with situations of such nature.
- (2) A *member* will most likely come into contact with the above-mentioned issues, if —
- (a) a property owner lodges a complaint at the Community Service Centre of the police station that his or her land was illegally trespassed on, occupied or invaded by a person or persons; or
 - (b) an *occupier* complains of an unlawful *eviction*.
- (3) Whenever an owner or a person in charge of vacant land, place, premises or property approaches the *SAPS* to lay a charge of trespass in terms of the *Trespass Act*, the *members* must ascertain whether the rights of the person against whom the charge is laid are not protected by other legislation, e.g. the *ESTA* or *LTA*.
- (4) If it is clear that the person against whom the complaint lodged does not reside on the land or the property and that the person is not an *occupier*, the *member* attending to the complaint must deal with the matter according to the normal procedures for trespassing.

- (5) However, when the person "trespassing" is an *occupier*, that person enjoys the protection of the *LTA* or *ESTA* and the *member* should immediately advise the complainant to obtain legal advice or consult an attorney in order to obtain an *eviction order* in terms of the applicable legislation. No person may *evict* an *unlawful occupier* except on the authority of an *eviction order* of a competent *court*.
- (6) This does not preclude the owner or person in charge of the property to make a complaint of trespassing. A case docket must be registered and investigated.
- (7) *Evictions* outside the applicable legislation are illegal and the legislation provide for criminal offences – section 8 (1) of *PIEA* and section 23(1) of *ESTA* provide that *eviction* without a *court* order is an offence. The discretion to arrest or not to arrest in these circumstances remains a challenge, as a contravention of section 23(1) of *ESTA* normally is committed in the presence of a *member* and in terms of section 23(3) of *ESTA*, the penalty applicable to such a contravention falls within the ambit of Schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (8) A *member*, even though authorised by law, should normally refrain from arresting a person if the attendance of the person may be secured by means of a summons as provided for in section 54 of the Criminal Procedure Act, 1977, unless the person continues to commit the offence in his or her presence. If a *member* is satisfied that the attendance of the person may be secured by means of a summons as provided for in section 54 of the Criminal Procedure Act, 1977, the



member must open a docket and refer it to the public prosecutor for the public prosecutor to have a summons issued. The summons may then be served on the person. Pocket Book and Occurrence Book entries must be made in all these instances.

- (9) The *SAPS* is often cited in court orders to provide assistance to applicants or the Sheriff in the execution of a court order whereby unidentified persons are being interdicted from entering private property and prevented from erecting and occupying structures on such private land, even though the *SAPS* was not a respondent in such matters. Where the persons do enter the property and then have ample time to erect a structure and the applicant alleges that the structure is not yet occupied and requests the *SAPS* to proceed with assisting them to remove the persons and break down the structures. The *SAPS* is under no obligation to provide such assistance. Consideration should be given in these circumstances to open a case of contempt of court subject to the availability of the evidence, such as proof of service of the order and the failure to comply with the order.

8. Dealing with land invasions

- (1) If a *member* of the *SAPS* is notified of an invasion of land on a large scale, it is important to act within the shortest possible period of time. Land invasions are usually associated with the occupation of land by force or threats of force. Keeping in mind that if a person in the process of erecting a building or structure and not inhabiting the building or structure he or she is not *residing* on such land and therefore a case of trespassing may be made out and such persons may be arrested.

- (2) The Station Commander must inform the Provincial Head: Operational Response Services and the Provincial Commissioner immediately if he or she becomes aware of an intention to invade land or of a land invasion, to immediately activate or place the relevant Provincial Public Order Policing Unit or National Intervention Unit on standby depending on the severity of the incident.
- (3) If a complainant informs a *member* that a person or persons have entered his or her land or premises without consent and are threatening to erect buildings or structures or they are in the process of erecting buildings or structures for habitation, the *member* must act immediately to ensure that the complaint is attended to and the situation on the land (at the crime scene) is assessed to determine if there is a threat of unlawful occupation.
- (4) If persons are found on the land or premises that are in the process of erecting buildings or structures for habitation or threatening to erect such buildings or structures, the *member* at the scene must inform them that they are trespassing and that they will be arrested if they do not leave the land or premises immediately. If the trespassers refuse to leave the land or premises they must be arrested in order to stop them from continuing to commit the offence of trespassing. If the trespassers have erected the building or structure on land and is inhabiting it (the person has factual control of the building or structure), the complainant must be informed that he or she will have to apply for an eviction order in terms of *PIEA*. He or she may still register a case of trespassing in such an event.
- (5) If a specific person can be identified who is planning or instigating



persons to invade a specific land an interdict may be obtained by the owner or *occupier* to prevent the invasion of the land. The *SAPS* can only act against a respondent who is committing contempt of *court* and for this purpose the *SAPS* would require statements indicating that the respondent was in breach of the conditions as set out in the interdict. However, a warrant of arrest is required before such person may be arrested.

- (6) In addition to the above, if information exists under oath that a person or persons are conspiring to invade land such person or persons may be arrested in terms of section 18(2)(a) of the Riotous Assemblies Act, 1956 (Act No. 17 of 1956).

9. Responsibilities of members of the *SAPS* in relation to evictions

- (1) Only a *sheriff* and persons authorised by a *court* to assist the *sheriff* may carry out an *eviction order*, provided that the *sheriff* must at all times be present during such *eviction* or actions authorised by the *court* (e.g. demolition and removal of buildings or structures), subject to the conditions as determined by the *court*.
- (2) In situations where there is sufficient information to indicate that a *sheriff* and his or her employees may be exposed to injury, death or damage to property, *members* of the *SAPS* will be requested to assist the *sheriff* to enforce law and order, as well as protection service.
- (3) The *sheriff* may request assistance from the *SAPS* with the execution of a *court* order where that *sheriff* expects resistance. In practice, the

following process should be followed:

- (a) The *sheriff* applies in writing to the Station Commander. The applications must —
 - (i) provide the date of execution of the *court* order;
 - (ii) be accompanied by a copy of the *court* order;
 - (iii) provide a brief description of the nature and extent of the assistance; and
 - (iv) state reasons why assistance is needed and in the case of expected resistance, information available to the *sheriff*.
 - (b) The Station Commander must consider the application and decide whether assistance may be given in the light of —
 - (i) the necessity demonstrated by the *Sheriff*,
 - (ii) the available resources; and
 - (iii) threat assessment reports from Crime Intelligence; and
 - (iv) weather conditions, such a rain, extreme cold, etc. (the *sheriff* must be informed that should adverse weather conditions exist on the particular day that assistance is required, he or she should wait for conditions to improve before assistance can be provided).
 - (c) Where assistance is refused, full reasons must be provided and a copy of the refusal must be forwarded to the Office of the relevant Provincial Commissioner.
 - (d) If the Station Commander is in doubt concerning the legal position of an application, he or she may obtain legal advice from the relevant Provincial Legal Services.
- (4) Members of the SAPS may not participate in the eviction, but must render protection to the *sheriff* and his or her staff. A person, who



wilfully obstructs or interferes with the duties of a *sheriff* or his or her assistants in the performance of their duties, is guilty of an offence. Where the *sheriff* and his or her staff exceeds his or her powers, assaults or otherwise act unlawful in the presence of *members* of the SAPS, he or she or the relevant *member* of his or her staff must be requested to refrain from such conduct or restrained (and a case be opened and investigated).

- (5) The Station Commander must ensure that a written operational plan is drafted by the officer responsible for the operation and that full and proper records are kept of the event. Even if it is not expected that the assistance may involve the management of crowds, the planning principles contained in National Instruction 4 of 2014 with regards to crowd management, may be of some assistance in the planning phase.
- (6) In all cases where assistance is to be rendered, consideration must be given to request assistance from the relevant Public Order Policing Unit.

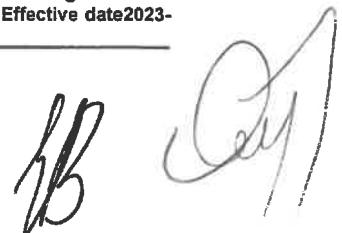
10. Responsibilities during an unlawful land invasion

Members must take note of the responsibilities of the following role-players:

- (1) Owner of land
 - (a) Both state-owned land and privately-owned land can be invaded unlawfully.
 - (b) State-owned land is land that is under the control of the Departments of Rural Development and Land Reform or Public Works, provincial government or the municipality.

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- (c) Depending on available resources, the state has a constitutional duty to ensure that all citizens can enjoy their basic rights to have access to land and to housing. In special circumstances, such as large-scale invasions, the state has a similar duty to assist private landowners to protect their land.
 - (d) Where *unlawful occupiers* whose basic rights are not at risk need to be evicted, the government authority responsible for the state land concerned or the private land owner must, without delay, approach the *court* for an *eviction order* in terms of *PIEA*.
 - (e) Individuals (including *unlawful occupiers*) who have no access to agricultural land can approach the Department of Agriculture Rural Development and Land Reform for assistance to find suitable agricultural land.
 - (f) Individuals in need of housing can approach the local municipality or, if necessary, the provincial or national Department of Housing for assistance.
- (2) Department of Agriculture Rural Development and Land Reform
- The Department of Agriculture Rural Development and Land Reform must—
- (a) approach the *court* for an order to evict *unlawful occupiers* of *state land* under its control as long as the basic rights of the *unlawful occupiers* are not in question;
 - (b) assist *unlawful occupiers* of any state or private land who need and have no agricultural land to obtain access to suitable agricultural land;
 - (c) assist other government authorities to find suitable alternative land for the *unlawful occupiers* in need of housing; and

Two handwritten signatures in black ink are located at the bottom right of the page. The first signature is a stylized 'B' with a vertical line through it. The second signature is a cursive name, possibly 'Ceylan'.

- (d) if required and where special circumstances exist, assist private agricultural land owners whose land has been unlawfully invaded to relocate *occupiers* in need of agricultural land to suitable alternative land.
- (3) The SAPS
- (a) Where a complaint is made which seems to be related to land invasion, a *member* of the SAPS on duty in the Community Service Centre must —
- (i) act in terms of paragraph 8 of this National Instruction;
 - (ii) advise the land owner to approach the *court* without delay for an *eviction order* in terms of the *PIEA* and inform the land owner that any delay may have an impact on the implementation of an *eviction order* - where private land has been unlawfully invaded and no special circumstances exist with regards to the vulnerability of the *occupiers*;
 - (iii) advise the land owner to approach any office of the Department of Agriculture Rural Development and Land Reform for assistance - where private land has been unlawfully invaded and special circumstances exist regarding the vulnerability of the *occupiers*, e.g. a need for access to agricultural land exists; and
 - (iv) advise the land owner to approach the area's local municipality or, if necessary, the provincial or national Department of Housing for assistance - where private land has been unlawfully invaded and special circumstances exist, e.g. a need for housing exists.



- (b) The *SAPS* must investigate offences committed.
- (c) In all cases where *members* of the *SAPS* act during land invasions or illegal *evictions*, proper records must be kept for evidence purposes.
- (d) Even though the *SAPS* has a role to play in *evictions*, that role is limited to its mandate. It is clear that land invasions and *evictions* must be dealt with through proper *court* processes.
- (e) It is important to establish operational protocols to deal with requests for assistance, whether it is in the form of a criminal complaint by a property owner or an evictee or a request for assistance by the *Sheriff*.
- (f) If the circumstances are of such a nature that the incident results in public violence, the Provincial Head: Operational Response Services should be contacted to activate the responsible Public Order Unit, who are properly trained to deal with such incidents, to assist in dispersing disorderly crowds. If suspects are arrested in huge numbers proper record must be kept of the police official who arrested each suspect. The circumstances which resulted in the public violence must be clearly recorded. Each different offence will be dealt with and investigated according to its own criteria and requirements.

11. Complaints in terms of the Rental Housing Act

- (1) The Rental Housing Act, 1999, provides for the Rental Housing Tribunal which is a statutory body which provides mechanisms to



resolve disputes between land lords and tenants. A ruling by the Rental Housing Tribunal is regarded to be an order of the Magistrates' Court.

- (2) It is expected of every Station Commander to designate a *member* (preferably the Commander of Visible Policing at the station) to co-ordinate requests for assistance by the Rental Housing Tribunal.
- (3) Although it is an offence to unlawfully lock out a tenant or to unlawfully shut off the utilities of the rental housing property, *members* may not open such rental housing property or reconnect a utility.
- (4) The case must be registered in terms of National Instruction 3 of 2011: Registration of Case Dockets on the Crime Administration System (CAS) and investigated.
- (5) Where the landlord is known, he or she should be contacted and requested to open the property for the tenant or reconnect the utilities and be informed that he or she should refer the matter to the Rental Housing Tribunal for decision rather than taking the law into his or her own hands.

12. Implementation and review

- (1) Every Provincial Commissioner must monitor compliance and where a *member* acted in contravention of the National Instruction and ensure that the commander of the *member* institutes disciplinary steps and criminal charges, where applicable, against the *member*.



- (2) The Divisional Commissioner: Visible Policing and Operations may issue Standard Operating Procedures regarding any aspect relating to the National Instruction and may develop and implement measures to monitor and evaluate compliance with the National Instruction.

- (3) This National Instruction must be reviewed at least every three (3) years from the date of its approval.



"D Mg".

Lets start this way: We are going to help those who have no home anywhere. [Applause.] If you have no ID, just pack, and go. Those whose ID shows that they have houses in Botshabelo, Bloemfontein or anywhere will be removed. [Applause.] The work is going to be done by the municipality, we have a list. There are things I need to clarify. We do not know all of you. We have no proof of who you are. We have a court order that says to us – municipality and the police: "Those who have already made fences, we must not remove them, however, those who have not started must wait for the municipality to come help. We need to make the law easier on us by listening to what the law says to us. Please do not make the police's duties difficult; and the municipality to take the decision that we won't like. Please listen to what the law says to us. The law says we are not supposed to build any fences and shacks until municipality does. That will help us to give those who really need homes. We have people even in Lourie Park. This is our issue we must support each other. I am pleading with you to listen to what I am saying - as of now, there is no one who is going to build a shack, no one. I do not want a conflict with the police because if you do that, the police will arrest you. And you are going to blame us and say we threw you in the hands of the police. Please, do not do that, I am warning you, don't. All of you who know that you have homes, and places to stay, I am pleading with you to please leave in peace and never come back. To you with no IDs, you who know that you are not South Africans, please leave this place peacefully. And those who really need homes, you are in the hands of the municipality, give us time. We will work with you. I don't want to talk for long. We are going back to the office tomorrow. We are focusing on how we will adhere to the court order. It is important to make sure that we do not find ourselves in trouble. We want to help our people and we are requesting your support. Are we together Batswana? I see you are raising your hands; I am not here to discuss. [Inaudible]. Listen! Listen! You have reps(sub) and we also respect it. It also has responsibilities on the issue that we are here for. I am not going to allow anyone to talk contrary to the issue. [Inaudible.] I thank you very much.

LB Q

cc (DMS)

Mayor: the issue is about the councilor forcing people to go and stay there only because he is responsible for that area, as the councilor. No, I am not even going to talk about that, because it is not about who says what. It is important to note that our people need homes. That councilor must just use his mind and remember that our people need homes. He must just resolve his issues with those other councilors and stop spreading news about them. He must count me out should they sue him. I don't think councilors can do such irresponsible acts – they are elected by the people. I will also call him to order. At the moment, we – me and him – must be knowing how to find and give our people homes. Yes.

Presenter: there is an unhappy citizen from Lourie Park, who complains that she has been paying her bond, however, there are people who occupy the land unlawfully. She is totally unhappy – what would be your submission on that complain?

Mayor: I am going to have a meeting with the people of Laurie Park. The truth is – everyone has rights, if that complainant's rights are infringed upon; it is our duty to correct that. We must listen, understand his complaint, and try and resolve the issue. I can't resolve this without involving the council. The truth of the matter, that area is set aside to build RDP houses on. I am meeting with the province at 10h00. We will look at the issue and on how to resolve it. If there is money, we will replace those shacks with houses. We should also remember that we are talking about South Africans. We need to consult and negotiate with them before we even kick-start the issue. We should have done that already.

Now, we both know that it is not the municipality that placed them there. It is the process of unlawful occupation of the land. It has happened already; now we are here on the radio to try and hear the voices of our people and consult to restore peace. Still in Lourie Park I have people who called me and informed me that they are looking for stands (land). They told me that they are staying in front of stands and if they occupy them, the police are called on them. They complain that they see unknown people coming in to occupy the land. That means, its people who are not even under the municipality of Lourie Park. Everyone who has an issue must come forward so that we can resolve all their issues.

EB

Presenter: We thank you for your time. We have heard that you are rushing to a meeting, we are releasing. Your last submission on this issue – looking at the situation in general – what do you want to say to the citizen of Mangaung Municipality?

Mayor: I am pleading with our people to work with us; to respect the laws governing the municipality and really understand what the President has already alluded to on unlawful occupation of land. Let us behave well, respect our leaders and governance of the municipality. We will never disappoint them; we are here to serve them. Thank you.

Presenter: Thank you Mr Mayor. That was the mayor of Mangaung Metro. We were talking about the events of Lourie Park wherein people were unlawfully occupying the land. You have heard, hopefully you understood him. I hope the listeners of Motheo FM understood him clearly. We will continue talking with the Municipality and check how far it has gone. We will also keep you posted on all the gains on housing. There is housing shortage, the Mayor agrees too.

The image shows two handwritten signatures in black ink. The signature on the left is a stylized, cursive 'EB'. The signature on the right is a more complex, flowing cursive signature, possibly 'GJ' or similar.

cc. DM6''

HJ Moolman

From: Esme Grobler
Sent: Tuesday, 05 March 2024 12:44
To: neo@phinc.co.za
Cc: HJ Moolman
Subject: FW: LAND INVASION: SUBDIVISION OF THE FARM BRANDKOP 702, BLOEMFONTEIN AND
Attachments: Letter to PH Attorneys - 4 Mar 2024.pdf; WhatsApp Audio 2024-03-05 at 12.23.03_0e5f10c2.opus

Dear Sir

We refer to the abovementioned matter as well as previous correspondence.

We also attach hereto a voice note pertaining to the matter.

We hope you find the above to be in order.

Vriendelike groete / Kind Regards

Esmé Grobler

Sekretaresse vir HJ Moolman / Secretary for HJ Moolman



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REG: 2007 / 028053 / 21



BEE Certificate Number: EMELOS030935 Level 4

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From: Esme Grobler
Sent: Tuesday, March 5, 2024 12:38 PM
To: 'neo@phinc.co.za' <neo@phinc.co.za>
Cc: HJ Moolman <hj@mmlaw.co.za>
Subject: LAND INVASION: SUBDIVISION OF THE FARM BRANDKOP 702, BLOEMFONTEIN AND

Dear Sir / Madam

We refer to the abovementioned matter.

Find attached hereto a letter for your attention.

Attached hereto also a we transfer link to a video clip refer to in the letter.

<https://we.tl/t-UjWREcqqVz>

Hope you find the above to be in order.

Kind acknowledge receipt at your soonest.

Vriendelike groete / Kind Regards

Esmé Grobler

Sekretaresse vir HJ Moolman / Secretary for HJ Moolman



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REG: 2007 / 028053 / 21



BEE Certificate Number: EMELOS030935 Level 4

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Ons verwysing/Our reference: MR. HJ MOOLMAN / AF / MAT10384
U verwysing/Your reference:

5 March 2024

**PH ATTORNEYS BLOEMFONTEIN
FOR ATTENTION: LUCIAN COMPANIE/NEO MADLALA**

PER E-MAIL: neo@phinc.co.za

Sir

**LAND INVASION: SUBDIVISION OF THE FARM BRANDKOP 702, BLOEMFONTEIN AND
EXTENTION 148 BLOEMFONTEIN**

1. We act for the Democratic Alliance, a voluntary organisation and political party that is represented by its duly elected councilors in the abovementioned local legislature.
2. For record purposes the party in 1 above will be referred to as "our client"
3. This letter is addressed to you in your instructed attorneys in proceedings before the Free State High Court under case number Case 1248/2024.
4. Our instructions are that over the weekend of 2 and 3 March 2024 the abovementioned properties were unlawfully invaded by unknown persons. Apart from invading the land, the said persons erected buildings or structures as defined in section 1 of the National Building Regulations and Building Standards Act, Act 103 of 1997.

DIREKTEURE / DIRECTORS: HANS-JURIE MOOLMAN LL.B., CLARISSA PIENAAR LLM

Bygestaan deur / Assisted by: SUMARI SCHUTTE LL.B

Registrasienuommer / Registration number: 2007/028053/21 BEE Certificate Number: EMELOS030935 Level 4

In assosiasie met / in association with:

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Reg. No. 1994 / 000022141 Reg. No. 0571002

5. We are further instructed that the invaded land is currently vacant land for which no basic services were installed and as far as our clients are concerned, most of the statutory requirements pertaining to the consideration, safeguarding and balancing of their interests on the land in question as neighbouring and nearby residents and members of the local community as defined in section 1 of the Local Government: Municipal System Act, Act 32 of 2000 were not given effect to in order to allow for the lawful use of the municipal land in question for purposes of a human settlement area. In this regard we confirm that our clients hold a legitimate interest in the consistent application and enforcement of national legislation and local bylaws pertaining to land development and environmental considerations and in doing so that the municipality will also set an example by adhering thereto in its own dealings with land.
6. Over and above the legal position pertaining to land development, we are instructed that the disposal of municipal assets is governed by the requirements of section 14 of the Local Government: Municipal Finance Management Act, Act 56 of 2003 read together with the Asset Transfer Regulations published in GN R878 IN GG 31346 of 2 August 2008. As far as the councilors in the local legislature are concerned, no resolution was passed by the metro council for the disposal of the abovementioned municipal fixed properties and not to unknown and unverified persons.
7. Following the invasion, we are instructed that the municipality, as it was duly obliged to do, approached the High Court on an urgent basis for an interim order. The order was obtained based on *viva voce* evidence that was tendered under oath and we must assume that the evidence that was tendered in support of the application and the relief that was granted must have been aligned with our submissions above.
8. Regrettably and despite the court order that was obtained, we are informed that instructions that deviated from the court order were given by an office bearer/s of the municipality who have no administrative or delegated authority to interfere in the administrative affairs of the municipality and who has no powers to dispose of municipal

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- capital assets or to exonerate any person from compliance with the regulatory framework that applies to land development.
9. As a result of the abovementioned deviating instructions, the South African Police Services ("SAPS") withdrew their resources from the invaded land and we are instructed that the situation was allowed to escalate to the extent that more persons were allowed to move onto the land and to erect more structures.
 10. Following the withdrawal and the ongoing and unlawful escalation of the land invasion, we were instructed to pursue an appropriate court order to compel the enforcement of the court order that the municipality obtained and to interdict any interference with the execution of the order.
 11. We have now been informed that the municipality has instructed your firm to implement the court order and after this information was verified with both your Mr. Companie and Mr. Madlala we have been instructed to pend further legal action to allow your client the opportunity to act as per the undertaking and to monitor progress in respect of immediate steps to curtail the further invasion of the land and the implementation of the court order.
 12. We are accordingly instructed by virtue of our clients' vested interests, to demand the following by 15:00 today:
 - 12.1.1. Confirmation that the court order will be implemented without delay.
 - 12.1.2. Confirmation of what will be done and the time frames within which the court order will be executed.
 - 12.1.3. That appropriate steps have been taken to prevent and curtail any political interference in the execution of the court order.
 13. We attach hereto a video clip depicting the Executive Mayor of the Mangaung Municipal council making public statements of which the court order is effect, and the execution of the court order is subverted.



14. We are also hereby instructed to demand that clarity be provided with regard to the position of the Mayor and confirmation whether the content and his utterances in the video are indeed correct.
15. We await your urgent response.

Yours faithfully



MOOLMAN & PIENAAR INC
HJ MOOLMAN
E-MAIL: hj@mmlaw.co.za
litigation3@mmlaw.co.za

DIREKTEURE / DIRECTORS: HANS-JURIE MOOLMAN LL.B., CLARISSA PIENAAR LL.M
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Reg. No. 1994 / 000020/21 Nat Reg No. 421/0020



Handwritten initials: "DM" with a checkmark and a vertical line.



Our ref / Ons verw 272825 // N MADLALA // LS
Your ref / U verw HJ MOOLMAN / AF / MAT10384
Date / Datum 5 March 2024

MOOLMAN & PIENAAR INC.
5 MAREE STREET
POTCHEFSTROOM

EMAIL

Sir,

WITHOUT PREJUDICE

MANGAUNG METROPOLITAN MUNICIPALITY // UNLAWFUL LAND GRABBERS:

1. The abovementioned matter and your letter of even date refers.
2. We confirm that we act on behalf of the Mangaung Metropolitan Municipality ("our client"), with instructions to address this letter to yourselves as we hereby do.
3. We will not answer to every allegation contained in your abovementioned letter and failure thereto should not be construed as an admission of any of the alleged facts in the abovementioned letter.
4. We confirm that we have consulted with our clients on 4 and 5 March 2024 in order to provide advice on this matter.
5. Our instructions are that our client intends on fully complying with the Order, but due to capacity issues our client has had to procure the services of a third party in order to assist with the implementation. Our client is in the process of such procurement and we are further discussing with the relevant sheriffs on how the implementation of the enforcement of the Court Order will occur.
6. Pertaining to allegations made against the Executive Mayor of our client, we have not consulted the Mayor pertaining to any remarks that were made and do we not hold any instructions to respond to such allegations.

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*Phalshoane Henney Attorneys (Gauteng) Incorporated

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phalshoanehenney
ATTORNEYS

Handwritten signatures: "LB" and a large, stylized signature.

7. We trust that the above is in order and shall provide yourselves with further correspondence once the matter has developed.

Yours sincerely,

PH ATTORNEYS

R: N. MADLALA
T: 051 400 4000 // 4074
C: 074 869 2032
E: neo@phinc.co.za

[Transmitted electronically & therefore no signature]

Handwritten signatures in black ink, including a stylized 'NB' and a large, flowing signature.

Hare qeta ka Louriepark
reya Langhoven Park



Langhoven Park after we finish at Louriepark



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Handwritten signatures or initials.