

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NUMBER:

In the matter between:

JEROME BADENHORST

1ST APPLICANT

**THE UNLAWFUL OCCUPIERS OF
THE IMMOVABLE PROPERTIES AT PORTION
102, HOLGATFONTEIN 36 IR NIGEL,
also known as MACKENZIEVILLE EXTENSION**

**2ND AND FURTHER
APPLICANTS**

and

**CITY OF EKURULENI METROPOLITAN
MUNICIPALITY**

1ST RESPONDENT

THE SHERIFF OF THE HIGH COURT NIGEL

2ND RESPONDENT

**THE SOUTH AFRICAN POLICE SERVICES
NIGEL**

3RD RESPONDENT

**CITY EKURULENI METROPOLITAN POLICE
DEPARTMENT (EMPD)**

4TH RESPONDENT

NOTICE OF MOTION - URGENT APPLICATION

BE PLEASED TO TAKE NOTICE that the Applicants herein intend bringing an application on an urgent basis at 10h00 on Tuesday 28 February 2023 or so soon thereafter as the honourable court may hear the matter for an order in the following terms:

1. That this honourable court condones the noncompliance by the Applicants with the rules of court regarding the form and time limits and manner of service stipulated therein be condoned and hears this application as one of urgency.
2. That the execution of the order of eviction granted by the Honourable Judge Molahlehi on 21 April 2021 be stayed pending the determination of the relief sought in **PART B** hereof.
3. That the Applicants be granted leave to supplement their papers in respect of the relief sought in **PART B** having regard to the circumstances under which the application in **PART A** is brought.
4. That the Honourable Court grants the Applicants such further and alternative relief as the court may deem necessary.
5. That such Respondents as may oppose the relief sought in Part A hereof be ordered to pay the costs of the application in Part A.

TAKE FURTHER NOTICE that should any of the Respondents wish to oppose the application, that such Respondents shall:

- (i) Immediately on receipt of the founding papers deliver a notice of intention to oppose the application by email to the Applicants' attorneys of record at the following email address chrisbillings@yahoo.com.
- (ii) That such Respondents shall appear at the High Court at Johannesburg at 10 h00 on 28 February 2023 and advise the Applicants and the Honourable Court if the Respondents wish to file opposing papers and by what time they intend to do so.
- (iii) That failing such notification of intention to oppose and appearance at court that the application for the relief sought in **Part A** hereof shall be heard on an unopposed basis.

TAKE FURTHER NOTICE that the founding affidavit deposed to by VUYO / JEROME, together with the annexures thereto will be used in support of the application.

TAKE FURTHER NOTICE that the Applicants hereby appoints **CHRIS BILLINGS ATTORNEYS**, 3rd Floor Mathomo House, 132 Fox Street,

Johannesburg, as their attorneys of record and as the address at which they will receive service of all documents in this matter.

PART B

BE PLEASED TO TAKE NOTICE THAT the Applicants hereby give notice of their intention to make application to the Honourable Court on such date as may be determined by the Honourable Court or the Registrar of the court for an order in the following terms:

1. That the matter be remitted to a court afresh for the determination of a just and equitable date for the execution of an eviction order after compliance with the orders set out hereunder.
2. That a declaratory order be made that the CITY OF EKHURULENI METROPOLITAN MUNICIPALITY is obliged to provide all the persons who are cited in the eviction order of the Honourable Judge Molahlehi with temporary emergency accommodation prior to evicting them in terms of the order.
3. That the CITY OF EKHURULENI METROPOLITAN MUNICIPALITY be ordered to deliver a report to the Honourable Court, confirmed on affidavit by an appropriate official of the City

of Ekurhuleni, detailing the accommodation that it will make available to the Applicants and when such accommodation will be available and containing an undertaking to make such accommodation available.

4. That the report shall also set out the steps taken by the CITY OF EKURULENI METROPOLITAN MUNICIPALITY to meaningfully engage the Applicants in finding alternate accommodation for the Applicants.
5. That the Applicants be granted 10 days from the date of the City of Ekurhuleni's affidavit to the court to file affidavits dealing with the contents of the City's report and specifying any objections thereto and
6. That the City is entitled within two weeks thereafter to deliver such further affidavits as it deems appropriate.
7. That the matter may thereafter be set down on the opposed role for hearing and the determination of a just and equitable date for the execution of an eviction order should the Honourable Court make such an order.
8. That such Respondents as may oppose the relief sought in PART B be ordered to pay the costs of the application.

TAKE FURTHER NOTICE that should any of the Respondents wish to oppose the application in PART B, that such Respondents shall:

- (i) Within 10 days of receipt of the founding papers deliver a notice of intention to oppose the application by email to the Applicants' attorneys of record at the following email address chrisbillings@yahoo.com or by delivery thereof to the offices of the Applicants' attorneys of record at the address set out hereunder.
- (ii) That within 15 days of filing and delivery of such notice to oppose the Respondent/s shall serve and file an answering affidavit.
- (iii) That failing such notification of intention to oppose and filing of an answering affidavit that the Applicant shall set down the application in PART B hereof on the unopposed roll for hearing on such date as may be determined by the Registrar.
- (iv) The Applicants consent to the filing of documents electronically and shall accept such service at **chrisbillings@yahoo.com**.

TAKE FURTHER NOTICE that the Applicants hereby appoint **CHRIS BILLINGS ATTORNEYS** as their attorneys of record and as the address at which they will accept service of all documents in this matter.

Dated at Johannesburg on this the 28th day of February 2023.

CHRIS BILLINGS ATTORNEYS
3RD FLOOR WEST WING
OPH BUILDING
132 FOX STREET
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LEBEA INCORPORATED ATTORNEYS

First Respondent's Attorneys

2nd Floor, Northwing

90 Rivonia Road

SANDOWN, SANDTON

TEL: 011 4921341

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28/02/2023

Ref: T Lebea/ MAT452/LIT

THE SHERIFF OF THE HIGH COURT NIGEL
74 VON GEUSAU STREET, NIGEL
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CITY OF EKURHULENI METROPOLITAN MUNICIPALITY
EKURHULENI CITY
145 HENDRIK VERWOERD STREET
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SOUTH AFRICAN POLICE SERVICES
ALRA PARK POLICE STATION

EKURHULENI MUNICIPAL POLICE DEPARTMENT
EKURHULENI CITY

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**CITY EKURULENI METROPOLITAN POLICE
DEPARTMENT (EMPD)**

4TH RESPONDENT

FOUNDING AFFIDAVIT OF JEROME BADENHORST

I, the undersigned,

JEROME BADENHORST

Do hereby make oath and state as follows:

1. I am an adult male person residing at Alra Park Mackenzieville in a property which to date has not been allocated a street number or other address.
2. I am one of the persons or Respondents who are referred to as “The Unlawful Occupiers of Alra Park Mackenzieville” and I was the 43rd Respondent in the eviction application under case number 10264/2020.
4. The facts and allegations herein are within my personal knowledge except where it appears from the context thereof and are to the best of my knowledge and belief, true and correct.
5. Where I make submissions of law I do so on the advice of my legal representatives whose advice I accept as being true and correct.
6. Where I express a legal opinion I do so on the advise of my legal representatives whose advice I accept as true and correct.

7. I was mandated by the 4th to 484th Respondents in the eviction matter under case number 10264/2020 to depose to this affidavit in respect of the urgent application to stay our eviction from the properties which we currently occupy at PORTION 102, HOLGATFONTEIN 326 IR NIGEL, also known as MACKENZIEVILLE EXTENSION 2, pending the determination of the relief sought in PART B of the NOTICE OF MOTION to which this my founding affidavit is annexed.
8. Due to the urgency of this matter and the short amount of time which we had to prepare the papers for this urgent application, it has not been possible to depose confirmatory affidavits for signature by all the Respondents I refer to above.
9. Such affidavits will however be deposed in due course and will be filed in court as soon as they are to hand. I however beg leave of the Honourable Court to take into consideration the urgency with which we approach the Honourable Court in this regard.
10. The purpose of this application is firstly to seek an order staying our eviction from the properties which we occupy at Mackenzieville Extension 2 in terms of an order made by the Honourable Judge Molahlehi on 9 June 2016. A copy of the order is annexed hereto marked as "Annexure "JB 1".

11. The order of the Honourable Judge Molahlehi had ordered that we vacate the properties at Mackenzieville Extension 2, by 21 July 2021 failing which the Sheriff of the court was authorized to evict us on or after 14 July 2021.
12. This order of eviction was not executed as we lodged an application for leave to appeal the order of Judge Molahlehi which application was heard on 7 December 2021 and was subsequently dismissed. A copy of the said order dismissing the application for leave to appeal is annexed hereto marked as "Annexure JB 2".
13. The First Respondent has since then not approached the Honourable Court for a new order setting a new date by which we should vacate the properties or by which the Sheriff of the court would be authorised to execute the order of eviction, the dates set by the Honourable Judge Molahlehi having prescribed.
14. It is our respectful submission that it is trite that, the dates for vacation and eviction having prescribed due to the lodgement of the application for leave to appeal, which stayed the execution of the order of Judge Molahlehi, it was incumbent on the First Respondent to approach the Honourable Court for a new order setting new dates.

15. It is common cause that the First Respondent has not done so and therefore cannot proceed with an eviction on the basis of the order dated 9 June 2021.
16. On 27 February 2023 at approximately 15h30 I received a telephone call from one of the residents of Mackenzieville Extension 2 informing me that she had just received information confidentially from a person who is employed at the Alra Park police station informing her that the police at the police station were receiving instructions to prepare to assist the Sheriff of the Court with our eviction starting at 05h00 on 28 February 2023.
17. I annex hereto, marked as “Annexure JB 3”, a photo of the alert which was sent from the police station referring to the intended eviction.
18. Significantly, we were not given prior notice of the date of the intended eviction nor were we engaged in any way with regard to the intended eviction.
19. We as a community have, since the dismissal of our application for leave to appeal, been preparing to petition the Supreme Court of Appeal for leave to appeal the order granted by the Honourable Judge Molahlehi.

20. To this end we have been raising funds to fund the appeal and as at 23 February 2023 we have managed to finalise the required powers of attorney for all the Appellants as well as compiled affidavits setting out the personal circumstances of each of the Appellants. Our petition is also being finalised and our attorneys are engaging a correspondent in Bloemfontein to file our petition for leave to appeal in the next few days.
21. These affidavits are annexed hereto as “Annexures JB 4 to JB 484” and will also be used in support of our application for the relief sought in PART B of the notice of motion to which this my affidavit is annexed.
22. I respectfully submit that it is trite that the PIE Act was passed to give effect to Section 26(3) of the Constitutions requirement that a court consider all the relevant circumstances before granting an eviction order.
23. These circumstances or factors include whether the occupiers include vulnerable categories of persons such as the elderly, persons with disabilities, children and female headed households, the duration of occupation and the availability of alternative accommodation or the state provision of alternative accommodation in instances where occupiers are unable to obtain accommodation without assistance.

24. To this end the National Housing Code makes peremptory provision for Emergency Housing Programmes which the First Respondent is bound by.
25. This programme makes provision for local government to apply for grants from provincial governments to provide for emergency housing to persons who find themselves in an emergency housing situation.
26. An eviction or the threat of imminent eviction is specifically listed in the policy as an emergency housing situation.
27. The Emergency Housing Programme makes provision for a broad range of possible emergency housing options, including various types of temporary and permanent accommodation options and sets out the process that local government officials should follow when providing emergency housing.
28. According to the Housing Act, the National Housing Code is delegated legislation which is binding on provincial and local government. Therefore the National Housing Code should be treated the same as legislation.
29. This principle has been confirmed by our courts including the Constitutional Court which has recognised that the code was

enacted to give effect to the right of access to adequate housing in section 26 of the constitution. This enforces the notion that the code, and the Emergency Housing Programme constitute concrete legally enforceable legislative instruments requiring positive proactive action from a Municipality intending to evict a large number of people such as the First Respondent intends in this matter.

30. It is accordingly submitted that the First Respondent is legally obliged to make alternative accommodation available to occupiers who would otherwise become homeless as a result of being evicted from public or private land.
31. Our courts have also held that it would be contrary to the public interest to allow the state to evict unlawful occupiers, if the state does not provide the evicted occupiers with alternative accommodation and secure tenure in that accommodation.
32. Our courts have further held that local government, including municipalities, is the primary duty bearer in relation to the provision of alternative accommodation in instances of eviction.
33. In the present instance the First Respondent has not engaged with us at all on the issue of alternative accommodation in the face of the intended eviction.

34. we as a community have sought engagement with the First Respondent on numerous occasions to discuss the plight we find ourselves in to no avail.
35. The First Respondent has refused to engage us at all on the issue of the eviction and the provision of alternative accommodation.
36. In view of the time constraint we are faced with I do not intend to elaborate on the personal circumstances of each individual occupier facing eviction. In this regard I respectfully refer the Honourable Court to their individual affidavits setting out their personal circumstances.
37. I however wish to highlight the fact that the majority of the occupiers facing eviction are female headed household with minor children. At last count there were approximately 700 children of school going age whose rights need to be protected.
38. For these reasons it is respectfully submitted that the intended eviction of the Applicants should be stayed pending the determination of the relief sought in part B of the application.
39. Alternatively it is submitted that the eviction should be stayed pending engagement with the occupiers facing eviction by the

First Respondent and the resolution of the question of provision of alternative accommodation.

40. It is also respectfully submitted that the eviction order should be stayed pending the fresh determination of a just and equitable date for the vacation of the property and for the determination of a eviction date in view of the fact that the dates order by the Honourable Judge Molahlehi have fallen away.

URGENCY

41. I respectfully submit that in view of the fact that the eviction which is sought to be stayed is imminent the matter is sufficiently urgent for the Honourable Court to hear the matter in the urgent court and to condone our non compliance with the rules of court with regard to time frames and service.
42. As alluded to in my affidavit, I only became aware of the intended imminent eviction after 15h30 yesterday when I received a telephone call informing hereof.
43. In the short time available I had called a meeting of the affected residents and had also contacted our legal representatives to appraise them of the situation.

44. In the time thereafter we had managed to have a video conference with our legal representatives and gave instructions for the preparation of papers for this urgent application.
45. As there was no prior warning of the imminent eviction we were unable to anticipate having to approach the court and also cannot wait for the matter to be enrolled on the ordinary roll.
46. Similarly due to the circumstances I have set out it is necessary to severely truncate the times and methods of service in order to approach the Honourable Court for relief.

PREJUDICE

47. I respectfully submit that the Applicants stand to suffer severe prejudice in that they will be left homeless should the eviction be allowed to proceed in the absence of suitable arrangements for temporary emergency alternate accommodation.
48. As indicated the schooling and safety and security of the vulnerable children, female and elderly persons in the community will be severely compromised should the eviction be allowed to proceed.

49. This will lead to irreparable harm not only to the safety and security of the Applicants but to their dignity as well.
50. It is respectfully submitted that the prejudice to the First Respondent is less as at worst a order staying the eviction will only delay the eviction process should the Honourable Court refuse to grant the Applicants the relief sought in PART B of the application.
51. In these premises I pray that the Honourable grant an order to stay the eviction intended to proceed today pending the determination of the relief sought in PART B.
52. I also pray that the Honourable Court grant the Applicants leave to supplement their papers if necessary in view of the haste with which the papers needed to be drafted given the imminence of the eviction.

DEPONENT

**THUS SIGNED AND SWORN TO before me at Johannesburg
on this 28th day of February 2023 by the deponent who**

acknowledges that he knows and understands the contents of this affidavit, that it is true to the best of his knowledge and belief and that he has no objection to taking the prescribed oath and regard the oath to be binding on his conscience and that the administration of the oath complies with the Regulations contained in Government Gazette No: R1258 of 21 July 1972 as amended.

COMMISSIONER OF OATHS

EX OFFICIO

FULL NAMES

PHYSICAL ADDRESS

DESIGNATION