

**IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF CAPE TOWN HELD
AT CAPE TOWN**

CASE NUMBER: 2571/2020

In the matter between:

COMMUNICARE NPC

Applicant

(Registration number 1929/001590//08)

And

NCUMISA MATU

First Respondent

CITY OF CAPE TOWN

Second Respondent

ALL OTHER OCCUPANTS OF THE PROPERTY

Third Respondent

HOLDING TITLE UNDER THE FIRST RESPONDENT

JUDGEMENT

The Parties

1. The Applicant is Communicare NPC, legally represented by Ms Sutton from Toefy attorneys.
2. The First Respondent was originally legally represented by Dlakavu attorneys, who filed a Notice of Withdrawal.
3. A Notice to Oppose and Appointment was subsequently filed by Mr Dlova from Dlova Attorneys Inc., and both, the First and Third Respondents, hereinafter, were legally represented by Mr Dlova.

Introduction

4. This is an application brought by the Applicant in terms of Section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation Act 19 of 1998. (The Act)
5. The Applicant seeks the Eviction of the First, Second and Third Respondents.

Facts by the Applicant

6. The Applicant is Communcare NPC, with registration number 19/001590/08, is a non-profit company, incorporated in terms of the Companies Act 19 of 1973, and its core business, is to provide affordable housing to primarily low income earners.
7. The Applicant also avers that it is the registered owner of the premise, situated, at ERF 19896, commonly known as 3410 Goedehoop Flats: 84-90 Justin Street, Brooklyn, in Cape Town.
8. On the 1st of July 2015 at Brooklyn, the First Respondent personally entered a written lease agreement with the Applicant for an indefinite period.
9. The First Respondent was required to pay a deposit and monthly rental in advance, whereof the summary of the salient terms of the Agreement were as follows:
 - 9.1 That the lease agreement commence as from 01 July 2015, and would continue subject to the property being utilized for private residential purposes only, and,
 - 9.2 That either party may end the agreement by giving one month's written notice, the initial rental payable by the Respondent was an amount of R2968.00(two thousand nine hundred and eight rand) per month,
 - 9.3 The deposit payable by the Respondent was R5936.00(five thousand nine hundred and thirty six rand),

9.4 Any indulgence granted by the Applicant to the Respondent or any extension of time shall not in any way limit or constitute a waiver of the Applicant's rights in terms of the agreement, and the Applicant may invoke the relevant provisions of the Agreement at any time,

9.5 The Agreement contained all the necessary terms and conditions as agreed and could not be amended or varied,

9.6 Unless reduced to writing, and signed by the parties and a copy is marked "RJS4" to the court bundle.

10. The Applicant's Founding Affidavit was deposed to by Mr Robert James Siddle who is the Legal Risk Compliance Officer employed by the Applicant in terms of delegation provided to him by the Manager of the Rental Property Management Division, marked "JS1" attached to the court bundle.

11. The aforesaid General Manager has been authorized by the Company's Delegation of Authority Framework as approved by the Board of Directors of the Applicant, marked "RJS2" attached to the court bundle.

12. The Applicant is the registered owner of the property situated at 84-90 Justin Street, Brooklyn, in Cape Town and attached as proof the winded search report, marked "RJS3" attached to the court bundle.

13. The Applicant is a non-profit company duly incorporated in terms of section 21 of the Companies Act 61 of 1973, dependant on good corporate governance and sound business practices to ensure its viability and sustainability, therefore, tenants are required to settle their due liabilities to the Applicant timeously to ensure the Applicant's continuous functionality.

14. The First Respondent has subsequent to taking occupation of the premises, fallen into arrears with her rental since June 2019 and has remained in continued breach to date.

15. As a result of such failure, the First Respondent was placed on a list of defaulting tenants, to be discussed in a debtor management meeting, which was convened by the Applicant on a monthly basis.
16. These meetings were aimed at assessing how the arrear rental can be recovered from the First Respondent, and what responses have been received from the tenant thus far.
17. Based on these considerations, coupled with the fact that the First Respondent remained in breach of the Agreement, despite the efforts of the Applicant, the First Respondent was then initially handed over to the Applicant's legal representatives for the recovery purpose.
18. On 15 August 2019, the Applicant's legal representatives attempted to contact the First Respondent telephonically on both the landline and cell phone number of the First Respondent, but it remained unanswered.
19. During the period of 15 August 2019 to 18 August 2019 the Applicant's legal representatives attempted to contact the First Respondent telephonically on both land line and cell number of the First Respondent but the telephone calls went straight to voicemail.
20. The First Respondent did not return the calls made by the Applicant's legal representatives and further failed to settle her arrears neither did she make payment of her rental in terms of the agreement.
21. As a result, the Applicant instructed its legal representatives to proceed with despatching a letter of demand to the First Respondent, and a formal letter of demand was dispatched on the 16th of January 2020.
22. The letter of demand stipulated:
 - 22.1 That the First Respondent is in breach of the agreement,

22.2 That the Applicant demand payment of the arrear rental amount due and owing to the Applicant in the amount of R31 209, 10(thirty one thousand two hundred and nine rand and ten cents),

22.3 Cancelling the lease should the First Respondent fail to remedy the breach within 20 (twenty) business days, and

22.4 Providing the First Respondent with 1(one) calendar month from the date of cancellation, within which to vacate the property.

22.5 A copy of the Sheriff's return of service is respectively marked "RJS5" and "RJS6" attached to the court bundle.

23. That the First Respondent and all those holding title under her have refused to vacate the premise, and are presently in unlawful occupation thereof, thus the First Respondent as well as anyone occupying the premise through her falls within the meaning of "unlawful occupier" as defined in section 1 of Act 19 of 1998.

24. The Applicant as the registered owner of the premise cannot exercise its rights as the lawful owner of the premise, due to the unlawful occupation of the premise by the First Respondent and all those occupying the said premises.

25. The continuous occupation of the First Respondent is having a negative impact on the Applicant's rights, and is placing a limit on its rights of enjoyment, benefit or trade thereof.

26. The First Respondent and all those holding title under her have had ample time to arrange alternative accommodation for themselves, and that the Applicant has been extremely lenient.

27. There exist, no obligation, or duty by the Applicant to provide the First Respondent with free accommodation.

28. The Applicant will continue to suffer damages, since the financial risk and burden of the premises is carried by the Applicant while the First Respondent and those holding

title under her remain in the premise, and that such loss/damages suffered by the Applicant, can increase indefinitely.

29. Alternative rental accommodation is available to the Respondents and all those holding title under her, in the surrounding area, and furthermore, in the local newspapers and relevant property websites, which lists various properties in the area on a regular basis.
30. The Applicant have no knowledge of and minor, elderly or disabled persons residing at the said premises or any special circumstances that would render the eviction of the First Respondent and all those occupying the premises through her, as being, unjust.
31. Therefore, evicting the First Respondent and all those occupying the premises through her, from ERF 19896, 3410 Goedehoop Flats, 84-92 Justin Street, Brooklyn in Cape Town, is just and equitable

Facts by the First Respondent

32. The First Respondent in her Answering Affidavit confirms that she resides at the said premise and opposed her Eviction application by the Applicant.
33. The First Respondent, was at the filing of this answering affidavit legally represented by Dlakavu attorneys, and her answering affidavit marked in the index, recorded under item 11, pages 79 to 116 of the court bundle, yet the court found that this was not the case but that it was in fact the answering affidavit of the Third Respondent , and not the First Responded, but the court took the liberty of perusing meticulously the entire court file and all its miscellaneous documents, and I discovered the First Respondent's answering affidavit, right at the back of the file (not in the original court bundle and I shall discuss this later on)
34. The initial rental amount was according to the First Respondent's affordability at the time, which was R3900.00 income per month, as they were required to satisfy the requirements to enter into a lease agreement with the Applicant, and that their earnings needed to be between R3500.00 to R7500.00 as per the Social Housing Act.

35. The main objective of the Social Housing Act is to develop the community and its tenants and not to milk the poorer tenants by enforcing exorbitant rental increases, pushing them to market levels or more.
36. Due to the entire community suffering as a result of the exorbitant rental increases by the Applicant, the latter was taken to the Rental Housing Tribunal.
37. This particular unit which the First Respondent occupies, is falling apart, the cracks in the walls makes the house to be dusty and unhealthy to reside in, the leaks in the roof the First Respondent tried to fix but to no success, sewerage pipes are frequently blocked, water pipes are leaking, the buildings are dilapidated, and that the Applicant was duly informed about all these faults but never cared to help but to only insist on rental to be paid.
38. In January 2019 Communicare informed the community and the First Respondent that they are transferring all the assets to a new company, Goodfind PTY LTD, a profit making company, and everyone ought to sign the new leases with Goodfind PTY LTD, informing that the new leases will be more stable than the current ones under Communicare, that if the tenants refuse to sign the new leases, their contracts will be terminated giving them a month's notice, and that the Applicant did not need to furnish any reasons for the termination of the contracts.
39. It then became apparent that the non-profit entity was now becoming a profit driven entity as the rental amounts were going to be increased.
40. The Applicant is that of an NGO, which started as Housing League Limited to assist with accommodating poor people in the 1920's, which also assisted the Government to provide social housing hence the Applicant is being subsidized by the Government, and to now charge more or same as market related rentals due to their unscrupulous rates and dealing unethically, that the Applicant must be viewed as mere caretakers, service delivery people for Government who's task is to provide affordable housing to the financially vulnerable families in the social housing market.
41. The Applicant receives donations from entities such as Shell SA as well as tax incentives from SARS just by being an NGO.

42. Since the Applicants inception it made 100% profit on all rentals as these properties were all Government subsidized.
43. The First Respondent have a right to housing in terms of section 26 of the Constitution, this right is protected, and that Government through its subsidies and tax discounts ensure that these rights are realised and protected.
44. The Project is developmental in nature, the First Respondent pays 30% of her salary as rent as required by the Social Housing policies and is currently on a credit balance, and even if the First Respondent was in arrears that the policy is driven to develop and tenure is guaranteed to all beneficiaries.
45. The First Respondent will be rendered homeless, if she were to be evicted and be a government problem once again.
46. The Court is requested to dismiss all these actions because there is currently a case in the High Court which is dealing with all these matters.
47. The First Respondent disputes that she owes any monies to the Applicant and that the monies paid to the Applicant was in fact in excess and currently have a credit balance with the Applicant.
48. The First Respondent disputes that any meetings were called by the Applicant but in fact it were meetings called by the tenants with the Applicants to attend to the complaints of sewerage, blocked toilets, unmaintained complexes, but to no avail,
49. The Applicant has no right to unilaterally terminate a contract and seek to throw people outside as the Applicant is a mere delivery service.
50. The Applicant will suffer no damages as no loans are serviced due to all these properties are Government subsidized.

Facts by the Third Respondent

The Third Respondent deposed to an answering affidavit and his is attached to the court bundle on pages 79 to 116 and not as stated in the index under item 11 to be that of the First Respondent.

51. The Third respondent at that stage was unemployed due to COVID Retrenchments, and admit that together with her two minor children, they are holding title under her relative, the First Respondent.

52. The Third Respondent raises the following *points in Limine*:

53.1 That the Applicant is not the Landlord with whom the First Respondent entered into an Agreement (albeit the landlord and the Applicant not having contractual capacity).

53.2 Furthermore that clause 2.9 of the Agreement states clearly and categorically no term in the Agreement shall benefit a person (natural, and/or juristic) who is not a party to the Agreement, and therefore the Applicant is not a party to the Agreement and therefore cannot benefit.

53.3 The Landlord with Registration Number: 1929/001590/09 does not exist at the Companies and Intellectual Property Commission (hereinafter referred to as "CIPC") who are the sole registry of companies in the Republic of South Africa wherein CIPC states categorically that Registration number 1929/001590/09 of the Landlord as contained in the Agreement, is an invalid enterprise, therefore the Landlord had and still has no contractual capacity to enter into an Agreement in the first place, which renders the said Agreement entered into with the Landlord, as being null and void ab initio, therefore the Application must be dismissed, and attached annexure from CIPC marked as annexure "MTI" on page 97 of the court bundle.

53.4 That on the 29th of May 2020, the affidavit deposed to by Robert James Siddle, the Applicant's representative with purported authority to depose in support of the Application, referring to annexure "RJSI" and "RJS2" wherein it is stated by Nazil

Wagner (Company Secretary) in a letter to Toefy Attorneys informing them that, Ms Faaieda Jacobs is purportedly authorised to initiate or defend any legal proceedings on behalf of the Applicant in terms of the Company's Delegation of Authority Framework (hereinafter referred to as the "Framework"). The Applicant has merely attached a letter in annexure "R.JS2" and not a resolution of the board of directors duly authorising Ms Jacobs to act on behalf of the Applicant.

53.5 The Companies Act though duly authorised representatives and not by themselves as they are not natural persons. Mr Robert James Siddle is not duly authorised to act on behalf of the Applicant and therefore he has no locus standi to depose to the affidavit as he has erroneously done. Furthermore, the Applicant does not say how this delegation must be carried out, therefore this Application must be dismissed.

53.6 The Landlord's registration number is not reflecting in the winded search report marked "RJS3" furthermore, the said winded report says the size of the purported premises is 9695.0000 m², which does not correlate with the size of the sectional title premises recorded in clause 1.2 as 30m² of the attached agreement marked annexure "RJS4", therefore it is clear that the Applicant is liable to the First Respondent as the Applicant has been enriched unjustifiably and the First Respondent has been impoverished at the Applicant's expense and there is a connection between the aforesaid enrichment and impoverishment with no legal justification for such enrichment as the agreement in annexure "RJS4" is null and void ab initio as the Landlord had and still has no contractual capacity and that the Applicant and/or the Landlord are not the owner of the Premises, therefore, the Landlord and/or Applicant ought to repay all monies paid to them by the Respondents from inception of the purported agreement of lease to date, and, this evidences, again confirm the fact that, the Applicant has no locus standi to bring these proceedings to this Honourable Court and this Application must be dismissed.

53.7 The Applicant has not attached a title deed in its founding affidavit and furthermore in the event that, it produces a title deed written housing league as owner, then the matter is subjudice before the land claims court halting proceedings in my matter pending the findings of the land claims court.

53.8 Citizen Housing League Utility Company U.C 1590 White Group purportedly incorporated itself as a company under the Companies Act, 1926 (Act No.46 of 1926) and made purported name changes under the same companies act and further purported name changes and company registration number changes under the Companies Act no.61 of 1973 culminating in a change to its company registration number under the current Companies Act no.71 of 2008. The following purported incorporations and name changes were purportedly made by the Real Applicant:

53.8.1 Citizen Housing League Utility Company U.C 1590 incorporated under the Companies Act, 1926 (Act No.46 of 1926);

53.8.2 Citizen Housing League U.C 1590 incorporated under the Companies Act,1926 (Act No.46 of 1926):

53.8.3 Housing League UC 1590/08 incorporated under the Companies Act no.61 of 1973:

53.8.4 Communicare 05/1590/08 incorporated under the Companies Act no.61 of 1973;

53.8.5 Communicare 1929/01590/08 incorporated under the Companies Act no.61 of 1973; and

53.8.6 Communicare1929/001590/08 incorporated under the Companies Act no 71 of 2008

53.9 In terms of the Companies Act 1926 (Act No.46 of 1926) Companies Registration Regulations and the Companies Act 1926 (Act No.46 of 1926) there are certain requirements that are to be adhered to by Associations, as the Real Applicant holds themselves out to be, but before elaborating further on requirements the definitions in terms of regulation I of the Companies Act 1926 (Act No. 46 of 1926) Companies Registration Regulations are as follows

53.9.1 The Registrar" means the Registrar of Companies": "the Registrar of Deeds" means the Registrars of Deeds of Cape Town, Pietermaritzburg and Bloemfontein" and

53.9.2 The Act" means Act No. 46 of 1926"

53.9.3 in terms of regulation 2 of the Companies Act, 1926 (Act No. 46 of 1926) Companies Registration Regulations which reads as follows. "All communications may be made and any document required to be sent to or lodged with the Registrar may be transmitted through the post or through an agent authorized to the satisfaction of the Registrar

53.9.4 In terms of regulation 3 of the Companies Act, 1926 (Act No. 46 of 1926) Companies Registration Regulations, which read as follows:

"Subject to the provisions of section 201 (two hundred and one) of the Act, all documents to be filed of record in the company's registration office shall be written, type-written, or printed in the English or Dutch language in legible characters with deep, permanent black ink upon strong foolscap paper of a size approximately 13 inches by 8 inches, and shall have on the left hand part thereof a margin of not less than one inch and a half. Documents or copies of documents to be returned or transmitted to any company or the Registrars of Deeds may, unless otherwise directed by the Registrar, be carbon copies of the originals. The Registrar may, however, reject any document which in his opinion is unsuitable for purposes of record"

53.9.5 In terms of regulation 4 of the Companies Act, 1926 (Act No. 46 of 1926) Companies Registration Regulations, "An application for the registration of a company limited by shares shall be accompanied by

(a) The original memorandum and articles (if any) and four copies thereof certified as true copies by two directors of such company on oath or by a notary public;

(b) Form E (situation of registered office)

(c) Share capital duty receipt and, in the case of public company, Forms G (consent to act as director) and H (list of persons who have consented to be directors). Forms E and H shall be in quadruplicate."

53.9.6 In terms of regulation 5 of the Companies Act, 1926 (Act No. 46 of 1926) Companies Registration Regulations, which reads as follows "Upon the registration of any company the Registrar shall transmit to each of the Registrars of Deeds a copy of the memorandum and articles, Forms E and H. and a copy of the certificate of registration."

53.9.7 In terms of regulation 6 of the Companies Act, 1926 (Act No. 46 of 1926) Companies Registration Regulations which reads as follows, "Upon the registration of any alteration of any memorandum or articles or of any order, minute, resolution, or document required under the Act to be registered by him the Registrar shall transmit to each of the Registrars of Deeds a copy of any such alteration, order, minute resolution or document; provided that in the case of an existing company, or copy shall be transmitted only to the Registrar of Deeds in whose office such company was originally registered."

53.9.8 In terms of regulation 7 of the Companies Act, 1926 (Act No. 46 of 1926) Companies Registration Regulations, "The Registrars of Deeds shall upon receiving any document described in regulations No.5 and 6 record the same in a register to be kept for that purpose."

53.9.9 In terms of regulation 26 of the Companies Act, 1926 (Act No. 46 of 1926) Companies Registration Regulations an association like the Real Applicant and Purported Applicant holds itself ought to be has to go through the this rigorous procedure as per regulation 26, which reads as follows, "An association desiring to be registered with limited liability, but without the addition of the word "limited" to its name shall lodge with the Registrar a formal application for such registration together with a draft of the proposed memorandum and articles. The memorandum shall in addition to the particulars prescribed by section six of the Act include the following clauses:

(a) The income and property of the association whenever derived shall be applied solely towards the promotion of the objects of association, as set forth in this memorandum of association, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise howsoever by way of profit, to the members of the association; provided that nothing herein contained shall prevent the payment in good faith of remuneration to any officer or servant of the association or to any member thereof in return for any services actually rendered to the association.

(b) If upon winding up or dissolution of the association, there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the association but shall be given or transferred to some other institution or institutions having objects similar to the members of the association, to be determined by the members of the association at or before the time of dissolution, and, in default thereof, by the Minister of Justice.

These documents, together with his report upon the application, shall be forwarded by the Registrar to the Secretary for Justice for submission to Minister. If the minister is satisfied that the application should be entertained, the Registrar shall, if so instructed, furnish a notice of such application to be inserted by applicant in three consecutive issues of the Government Gazette for the information of the public. The notice shall state the proposed objects of the association and give the public an opportunity of objecting to the registration of the association under section twenty-one of the Act. If no objections are lodged to the issue of a licence, or if any objection lodged is disallowed, the memorandum and articles may be approved, with or without amendment, and the licence granted accordingly, thereafter the applicant shall be dealt with as if it were an ordinary application for the registration of a limited company"

53.9.10 In terms of regulation 14 of the Companies Act, 1926 (Act No. 46 of 1926) Companies Registration Regulations" An application to change the name of the company pursuant to section ten of the Act shall state fully the reasons for such change, and if the change of name is approved the request to enter the new name shall be made on the prescribed Form D."

53.9.11 In terms of regulation 15 of the Companies Act, 1926 (Act No. 46 of 1926) Companies Registration Regulations "The Registrar shall upon registration of any change of any change of the name of a company transmit a copy of the certificate of incorporation issued in terms of sub-section (6) of section ten of the Act to each of the Registrars of Deeds who shall enter the new name in their registers in place of the former name."

53.9.12 In terms of section 10(5) of the Companies Act 1926 (Act No. 46 of 1926), any company may, by special resolution and with the approval in writing of the Minister, change its name.

53.9.13 In terms of section 10(6) of the Companies Act, 1926 (Act No. 46 of 1926) "Where the name of a company is changed in terms of the provisions of subsection (4) and (5), the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case."

53.10 The Third Respondent avers that it is clear from the above paragraphs and sub paragraphs that, an association must submit its memorandum and articles to the Registrar to be ultimately issued with a licence and be recognised as an incorporated association. Now for Citizens Housing League to prove its incorporation in terms of the Companies Act, 1926 (Act No. 46 of 1926) they have to produce the said founding documents (memorandum and articles) and they must be carbon copies of the original founding documents transmitted by the Registrar to the relevant Registrar of Deeds, in this instance being Cape Town Deeds Registry Cape Town Deeds Registry is to safe keep any and all documents transmitted to it by the Registrar.

53.11 For a name change to be effected in terms of the section 10(5) of the Companies Act, 1926 (Act No. 46 of 1926) a special resolution is to be submitted and the Minister has to approve the name change in writing. It therefore follows that, the Registrar must transmit the special resolution and Minister's name approval to Cape Town Deeds Registry together with any alterations made to memorandum or articles. The Companies and Intellectual Property referred to as the "CIPC") which is the current office of the then Registrar's office cannot produce all the above relevant

documents (memorandum and articles, special resolution for name change, Ministers approval of name change, alteration to memorandum and articles etc.) of the Citizens Housing League/Real Applicant from its archives now for the benefit of the Court in the Land Claims Court case that my legal representative is involved in, which is subjudice, and the fact that, the Cape Town Deeds Registry failed and/ignored my legal representatives request for all the above documents mentioned in the paragraphs above.

53.12 It therefore follows that, this Honourable Court ought to suspend all pending evictions till this matter is pronounced on by the Land Claims Court. Find attached marked as annexure "MT2" from CIPC confirming it has no founding documents for Citizen Housing League Utility Company UC 1590 incorporated under the Companies Act, 1926 (Act No.46 of 1926) and/or Communicare and CIPC opted not to participate in the Land Claims Court case despite being served with the Notice of Motion by my legal representative. Furthermore, find attached correspondence marked as annexure "MT3" correspondence wherein Deeds Registry Cape Town is requested to assist the Land Claims Court despite CIPC having no records, but Deeds Registry Cape Town declined to.

53.13 The Real Applicant made further name changes as it purportedly holds out to have done under the Companies Act no.61 of 1973 and Companies Act no.71 of 2008. A conveyancer's certificate is required to verify amendments to company information in name changes. Furthermore, under both of the abovementioned companies acts, the certificate of incorporation/registration certificate of the company needs to amended, a notice of amendment of the memorandum of association/articles of association/memorandum of incorporation and special resolution needs to be filed with Companies and Intellectual Property Registration Office(hereinafter referred to as "CIPRO")/ CIPC and an amended memorandum of association/articles of association/memorandum of incorporation needs to be filed with CIPRO CIPC

53.14 The following name changes for the Real Applicant purportedly occurred under the abovementioned acts and registration numbers changed:

53.14.1 Housing League UC 1590/08 incorporated under the Companies Act no.61 of

1973;

53.14.2 Housing League 05/1590/08 incorporated under the Companies Act no.61 of 1973;

53.14.3 Communicare 05/1590/08 incorporated under the Companies Act no.61 of 1973;

53.14.4 Communicare 1929/01590/08 incorporated under the Companies Act no.61 of 1973; and

53.14.5 Communicare1929/001590/08 incorporated under the Companies Act no.71 of 2008.

53.15 The First Respondent is of the strong view that the Title Deed and/or Sectional Title Deed are required.

Facts continues in Replying Affidavit by the Applicant

53. The Applicant responded to the points-in-Limine raised by the respondents as follows:

54.1 The Applicant submits that it did not misrepresent itself as alleged by the Third Respondent and further submits that the difference in registration number of the Applicant and the registration number of the lease agreement concluded by the Applicant with the First Respondent is due to a typographical error which does not invalidate the lease agreement nor does it preclude the Applicant from benefitting from the terms of the lease agreement. The Applicant therefore submits that Applicant is a valid NPC and has the required locus standi to be before the above Honourable Court as the person in charge of the premises.

54.2 The Applicant wishes to point out that the typographical error between the two registration numbers is one number and refer to the attached CIPC search on the Applicant's registration number marked in the court bundle "RJS4" which clearly

stipulates the validity of the enterprise and the "difference" being one number (i.e. the last number being 9 which should have been 8).

54.3 The Applicant further submits that it is trite law that the Applicant as the landlord is only required to provide the lessee with vacant occupation of the premises as well as guarantee that no other person with a superior right will disturb the lessee's occupancy, and should the landlord fulfil the aforesaid requirements, the lessee has no right to dispute the title of the landlord, therefore, the Applicant submits that it has fulfilled the requirements as set out above and the First and Third Respondent therefore have no right to dispute the Applicant's title to the premises.

54.4 It is clear that the First Respondent was aware that she entered into a lease agreement with the Applicant and acted in accordance with same by initially making payment of the rental to the Applicant up and until she fell into arrears which has currently accumulated substantially to date, that the purported mistake, it submitted has no effect at all, as they did not influence the actions of the person contracting. He emphasized that, simply stated, the mistaken party (i.e. First Respondent) would have entered into the agreement on exactly the same terms even if the truth had been known, and submits that the Third Respondent is therefore attempting to mislead the above Honourable Court as to the Applicant's status as the landlord of the premises.

54.5 Furthermore, it is submitted that the Applicant is confused as to the basis on which the Third Respondent is disputing the Applicant's title to the premises since she has no agreement with the Applicant to reside on the premises nor does the Third Respondent have any rights in terms of the lease agreement which she for some reason unknown to the Applicant decided to dispute.

54.6 The Applicant submits that as per annexure "RJS2" in the court bundle, that the Applicant provides Faleda Jacobs with the authority to initiate or defend any legal proceedings on behalf of the Applicant in terms of its Delegation of Authority Framework, see attached Delegation of Authority Framework ("Framework") marked in the court bundle "RJ53" The Applicant draws the court attention to

page 2 of the Framework which provides that "where responsibility is vested in a party, she can delegate authority to decide or act to subordinate party but she nevertheless remains responsible for the results, where authority is delegated, the subordinates are expected to exercise their own judgment and to take decisions within the purview of their authority" Therefore, Faieda Jacobs was invested with the responsibility to initiate or defend any legal proceedings on behalf of the Applicant and as such. Faieda proceeded to delegate such responsibility to Robert James Siddle as per annexure "RJS1" in the court bundle, bearing in mind that she will be responsible for the results. Thus, the Applicant submits that Robert James Siddle has received the relevant authority to depose to the founding affidavit as well as act on behalf of the Applicant in accordance with the Applicant's Framework.

54.7 In amplification of the aforesaid denial, the Applicant is the owner of ERF 19896 and is further the owner of or person in charge of a number of properties within the Brooklyn area, on which the complexes commonly known as Goedehoop complex, Plane flats complex and Wilgerboom Huis complex, is situated. A copy of the title deed is attached to the court bundle marked "RJS5"

54.8 That the ERF 19896 is rather big and has some 12 blocks of flats/complexes on it. A copy of the diagram showing the layout of ERF 19896 and on which the relevant complexes are clearly demarked is annexed to the court bundle marked "RJS6" and "RJS7"

54.9 At first blush, based on the Title Deed (annexure "RJS5") it may appear as if ERF 19896 is owned by Citizens' Housing League, but in fact owned by the Applicant. The Applicant has since the time of registration undergone two name changes. The first occurred in and during 1981, when its name was changed from Citizens' Housing League. The second named change occurred in and during 1990, where its name was changed from Housing League to Communicare. A copy of the certificates of name change is annexed to the court bundle, marked "RJS8" and "RJS9". It is therefore clear that the premises is owned by the Applicant and for all intents and purposes remains the person in charge of the premises.

54.10 Furthermore, in addition to the above, it is trite law that even if the lessor is not the owner of the thing it does not affect the validity of the lease agreement entered into between the parties. However, in principal, a lessor is required to do, no more than to provide the lessee with vacant occupation and warrant, that no person with a superior right will not disturb the Respondents occupation of the premises, with the result that the Respondents may not dispute the Applicant's title to the property. The Applicant submits that it has done all that is required by law as provided above and therefore, the Respondents have no right to dispute the Applicant's title to the premises.

54.11 Furthermore, if the Third Respondent's version was to be accepted, the First and Third Respondent's themselves have no legal or lawful basis to remain in occupation of the premises as there was allegedly (on their version) no agreement in place, regardless, that the First Respondent who at the time entered into the agreement and have been enjoying the benefits of the agreement, are now disputing the Applicant's title to the property in terms of the agreement, it is accordingly submitted that such an approach is bad in law.

54.12 The Applicant admit that the Applicant did not attach a title deed to its founding affidavit,

54.13 The Applicant submits that the Third Respondent, refers to the Land Claims Court matter, without providing any details of the said matter nor provides any connection and/or link between the First and Third Respondents and this alleged land claim. Furthermore, no order granted by the Land Claims Court staying any proceedings in respect of the properties subject to the said claim has been granted and/or provided no such order has been furnished by the Respondents herein. It is therefore submitted that nothing prevents the Applicant from proceeding with this application before the above Honourable Court and it is respectfully submitted that the Third Respondent's argument herein is bad in law.

54.14 The Applicant reiterates that it is the owner and/or person in charge of the premises as set out in annexures "RJS5", "RJS6" and "RJS7 annexed to the court bundle.

54.15 The Applicant submits that it does not understand the reason for the Third Respondent deciding to quote lengthy parts of the Companies Act while failing to provide the above Honourable Court with the relevance of same to this eviction application bearing in mind that ownership is not required to institute eviction proceedings, and reiterates that it is the owner, landlord and person in charge of the premises as provided herein throughout,

54.16 The Respondent request this Court should stay all evictions pending the outcome of the Land Claims Court, the remaining allegations contained the Applicant noted.

54.17 The Applicant submits that despite the Applicant not being required to prove ownership in order to proceed with eviction proceedings, the Applicant is the landlord of the premises who entered into a lease agreement with the First Respondent in terms of which the Applicant provided the First Respondent with vacant occupation of the premises as well as no person with a superior right has disturbed the First Respondent's occupation on the premises, therefore submitted that the Applicant as the landlord has done all that is required in terms of the law to enforce its rights as a landlord in terms of the lease agreement. The lease agreement is therefore valid and enforceable as well as the Applicant has the required locus standi to proceed with this eviction application as the owner, landlord and person in charge of the premises.

54.18 Furthermore, the Applicant pauses to point out that the Deeds Registry Cape Town declined to assist in this allegedly land claim and one can only wonder why a public government office like the Deeds Office, would reject what is sort in terms of the land claim.

54.19 The Applicant submitted that although the Third Respondent may not view the windeed search as relevant, when reading "RJS3" when read together with "RJS5", "RJS6" and "RJS7", it constitutes sufficient evidence placed before the above Honourable Court to prove the Applicant's ownership of the premises.

54.20 The Applicant respectfully refers the above Honourable Court to annexures in the court bundle "RJS3", "RJS5", "RJS6" and "RJS7" which clearly stipulated that the Applicant is an NPC with registration number 1929/00159/08.

54.21 The Applicant reiterates that the lease agreement is valid and enforceable for reasons set out herein throughout. Should the above Honourable Court for some reason find that the lease agreement is invalid (which it is not), the Applicant submits that the First Respondent acted in accordance with the lease agreement by making payment of the rental to the landlord (i.e. the Applicant) since the inception of the lease agreement until she chose to breach the agreement by failing to make payment of her rental. Therefore, a tacit agreement was created between the First Respondent and the Applicant. The court should note that the First Respondent has been in arrears with her rental since June 2019, failed to make any payments of her rental nor arrears and is currently in arrears in the amount of R98 835.32 due and owing to the Applicant. A copy of the rental statement as at 04 June 2021 is annexed to the court bundle marked "RJS10"

54.22 In amplification of the above notation, the Applicant submits that it is trite law that the Respondents who allege homelessness must place before the court facts which demonstrate there is indeed a risk of homelessness and details of the employment status and income of adult members of the household are obviously relevant to substantiate the risk of homelessness, especially those Respondents who have the benefit of legal representation. The Applicant submits that the Third Respondent simply provides the employment status of herself, provides no proof of income of herself nor the other adult persons residing at the premises and furthermore, fails to present to the court any proof of attempts to obtain alternative accommodation.

Facts continue by Third Respondent setting out her personal circumstance attached in court bundle on pages 155 to 158

54. The Third Respondent confirms that she residing at the Premises since March 2020 to date with her two minor children and the First Respondent, however on or about 14

June 2021 the First Respondent, was admitted to hospital for contracting the corona virus and that was the last time she saw the First Respondent, that she was subsequently blocked by the First Respondent, whilst she was in hospital, and ever since there was no communication.

55. That her highest level of education is a level 4 (four) in hospitality, and that she do not have a matric qualification.

56. That she obtained work as a waiter in 2017 in the hospitality industry and was retrenched around April 2021 due to the COVID restrictions affecting the hospitality industry.

57. On about 2 August 2021 she was received employment as a security guard in the movie industry, where she receives a salary of R4200.00 (Four Thousand Two hundred Rand) a month, whereof R2500,00(Two Thousand Five Hundred Rand) is the most she is able and can afford for monthly rental.

58. Her two minor children are respectively, 3 and 12 years old, and attend pre-and-primary school in the Brooklyn area, and more specifically that the 12 year old attends school at Ysterplaat Primary.

59. That they have no alternative accommodation and if evicted, they will be homeless.

Facts continue of Third Respondent by Supplementary Affidavit attached in court bundle pages 189 to 234

60. That she relies on information and/or documentation supplied to her by third parties, and believe such information and/or documents to be both true and correct, and made legal submissions or include any legal conclusions, upon the advice provided to her by her legal representative.

61. That Communicare NPC, a non-profit company with registration number: 1929/001590/08, duly incorporated in terms of section 21 of the Companies Act 61 of 1973 with its principle place of business situate at Block A, Park Lane Office Park

Road, Pinelands, Cape Town, Western Cape, 8001, whose full and further particulars is unknown to her.

62. That an Application for Condonation, was granted by this Honourable Court, to serve and file her Supplementary Affidavit, and avers that the said late filing, is due, to no fault of her own, and she elaborated that:

63.1 On her answering affidavit filed in this Honourable Court date stamped 25 May 2021, that she mentioned , the Applicant's ownership of the Premises is in dispute and that, the dispute of ownership is being presided over in the Land Claims Court and therefore the matter is subjudice.

63.2 That both the Applicant and the first respondent and the registrar of deeds Cape Town (hereinafter referred to as the "registrar") were served with papers by her legal representative for an application to compel the registrar inter alia to furnish proof of ownership of the properties, and that both, did not oppose the notice to compel, and as a result, the order to compel was granted on the 29th of November 2021 and issued upon her legal representative on the 1st of December 2021, attached to this court bundle are the order and the emails, regarding the matter before the Land Claims Court marked as annexure "MNI".

63.3 That the reason for the delay was that her legal representative was waiting for a response from the registrar, however that the registrar responded by being evasive and recently the registrar instructed the Office of the State Attorney to act on its behalf, and that the registrar is evasive and almost defying the order by the said court to compel, and that this matter is still ongoing and that my legal representative is consulting counsel for next steps, attached to this court bundle is the email correspondence and letter from the Office of the State Attorney marked as annexure "MN2".

63.4 That she believes in the prospects of success as the issue of ownership is in dispute and it is being decided upon in a higher court, therefore the proceedings in this Honourable Court must be held over, and that the Applicant will not be prejudiced by the granting of the Condonation Application as the issue of ownership raised by her is

not new, however , now that this issue is being decided upon in a higher court currently, she submits that she will suffer prejudice the most, if her application is not considered.

Facts by the Second Respondent after court ordered that it must provide the court with a comprehensive City report by Gregory Exford in court bundle on pages 159 to 164

63. That this is to advise this Honourable Court whether the City has any emergency accommodation available to the First Respondent in the event that he is rendered homeless if evicted from the premises.

64. It must be stated from the onset that the City faces a huge challenge with regards to the provision of emergency accommodation within its area of jurisdiction, because there has been a huge increase in the number of emergency housing circumstances as defined in the Emergency Housing Programme (EHP). these circumstances include situations where one is evicted from their home, as a result of this, the City's resources have been stretched to the limit with regards to the provision of emergency accommodation, however, the City has taken measures within its available resources to cater for emergency circumstances and that this is evident in emergency accommodation situations that the City has dealt with, including eviction matters where the City has been called upon to provide emergency accommodation.

65. He demonstrated to this Honourable Court the extent to which the City's limited resources have been stretched, on average the City receives approximately 10 to 12 eviction applications a day and of those about 4 to 5 requests for a housing report and that currently there are more than 400 people who are on the emergency accommodation waiting list (eviction matters only), that there is also a huge number of evictees that have been offered emergency accommodation who have not made an indication of whether they are accepting or rejecting the City's offer.

66. The City takes note of the personal circumstances of the First Respondent as contained in the questionnaire delivered to it and has come to a determination that she can be assisted with emergency accommodation.
67. The First Respondent is required to advise the City on whether she accepts or rejects the City's offer for emergency accommodation within 30 days of attesting hereto. I attach hereto as annexure "GE" an emergency accommodation acceptance form that the First Respondent is required to complete and deliver to the City.
68. If the First Respondent accepts the City's offer, she can be provided with an emergency housing kit which allows for a structure of 6x3 to be constructed , however that the emergency housing kit will only be made available to the First Respondent after she has secured a site for its construction and the landowner or person in charge of the land, has consented thereto.
69. If the First Respondent is unable to secure a site as mentioned above, she may be integrated into an emergency accommodation site. The First Respondent will be informed when a structure becomes available for occupation.
70. That the City is currently in the process of securing an emergency accommodation area where it can relocate those who will be rendered homeless if they are evicted from the property they reside in and once the said process has been completed, the First Respondent will be informed of the area where she can be relocated to if she accepts the City's offer for emergency accommodation.
71. The nature of the emergency accommodation that can be provided to the First Respondent will be in the form of a 6x3m structure constructed from corrugated iron sheets and the offer of a structure includes water and sanitation facilities which are supplied in the form of one water point for every 25 units and one toilet per five units.
72. In the circumstances, the City respectfully requests this Honourable Court to grant it a period of eight months, from the date of having received a completed acceptance form, to make a structure available for occupation to the Respondents.

Facts by the Department of Social Development which was requested to provide the Honourable Court with a report on personal circumstances of the First and Third Respondents and the impact an eviction order would have on both respondents should an eviction order be granted against them filed in the court bundle pages 235 to 240

73. The Social Worker consulted with the third respondent Ms. Mandisa Tshona. on the 19th of September 2021 and she stated in her report that her assessment of the personal circumstances were as follows:

74.1 Firstly that the First Respondent could not be contacted neither traced or located on the 17 February 2022.

74.2 She set out the following table to explain to the court the position of the Third Respondent:

Mandisa Tshona	Third Respondent	B3410 Goedehop Flat Brooklyn
Secretary Maggie	Ysterplaat Primary School	Koeberg Road Brooklyn
Mrs. Alta	Alta Day Care	Silvia Road Brooklyn

74. That the Third Respondent was born at Umthatha and raised at Butterworth, Eastern Cape, completed Grade 12 in 2009, both her parents are deceased, in 1996 and 2010 respectively, that her 2 older siblings are married and live with their families in East London.

75. In 2018 she relocated to Cape Town to seek better prospects of life and she lived with, the First Respondent , Ms. Ncumisa Matu, her sister, at the current residence, whereby the sisters shared the flat which the First Respondent was renting, with their children , until March 2021 when Ms. Matu, the First Respondent, moved out to live with her boyfriend and left the Third Respondent , Ms. Tshona, was left behind with her two children.

76. The Third Respondent resides with her 12 year old daughter and 3 year old son. The children attend local Primary School and Pre-school. The Eldest daughter. Ndimphiwe Tshona is a Grade 5 learner at Ysterplaat Primary School in Ms. Mathee's class.

77. The 3 year old son, Mangaliso Ephrahim Tshona attends Day Care in the area. The children attends school regularly and that according to Ms. Tshona, she met and dated

Mr. Destiny Mahoku, from the Democratic Republic of Congo while she was visiting her sister Ncumisa Matu, who was already a resident in Cape Town.

78. The girl child, Ndimphiwe Tshona was born out of the intimate relationship they started during her visits to Cape Town. In 2018, she left the Eastern Cape with her daughter to live with her sister who was willing to assist her search for employment opportunities.
79. She had her second born child with boyfriend Destiny Mahoku. Ms. Tshona reported that the father of her children left South Africa about 4 years ago, and it is believed that he is back in the Democratic Republic of Congo and that he is not providing nor paying maintenance support for the children. \
80. The family occupies a 1 roomed Unit situated on the 3rd floor of Goedehop Flat. The Unit has a bathroom and small kitchen space. The Unit in a dilapidated state. The ceiling has visible dirt marks caused by continuous leaks in several areas. Paint on the walls is peeling. It is clear that maintenance work of the Unit is neglected.
81. She confirms that the Third Respondent lives with her children. Ndimphiwe Tshona and Mangaliso Ephrahim Tshona, and that there is no older person living with them.
82. The Third Respondent, Ms Tshona worked at Radisson Blue Hotel as a waitress, she was retrenched in April 2021. She lived on Unemployment Insurance Fund(UIF) and COVID Funds(TERS). TERS (COVID Funds) was R6 500 per month was paid to her for 4 months. UIF of R2 200 per months was paid in for 5 months. On 9 October 2021. She started working as a waitress for Sky Hotel al Foreshore, Cape Town.

83. Monthly income and expenditure is tabled as follows:

Income	Expenditure
Salary R 5000.00	Rent R3900.00
SASSA Grant R 940.00	Food R1200.00
Gratuity (Tips) R500.00	School fees R 420.00
	Day care R800.00
	Transport R700.00
	Electricity R200.00
	Water R300.00
Total R6 440.00	Total R3620.00 + R3900.00

84. She has applied for school fees exemption, the amount paid towards her daughter's schooling is likely to be reduced and that the Social Worker contacted the school to motivate for the school fees exemption.
85. The Social Worker gathered that Ms. Tshona is hoping to negotiate with Communicare to review the monthly rent.
86. The children attend the local day-care and primary school which is more favourable and safer since the parent is working during the day.
87. In Conclusion the Social Worker submit that interviews were held with the Third Respondent, the First Respondent could not be located for consultations. Third Respondent. Ms. Tshona reported that she does not have contact with her sister. At this stage, priority for the third respondent is the need to secure housing accommodation for her family. She is willing to pay affordable monthly rent.
88. The Third respondent has expressed her willingness to negotiate for decreased rent.
89. Her place of employment is in Cape Town and both her children attend school in Brooklyn, and removing the children from current schools will negatively affect or disrupt their daily life.
90. Should she move her family from the area, she stands to lose support systems she established over the years, and these include friends she trusts to care for her children when she is at work till late or during weekends. Ideas of alternative accommodation discussed with her previously were further away from her place of work and children's school.
91. She feared that the location of these areas would be more costly in respect of travelling to, work and school, and that finding a new school would be challenging since the Western Cape Department of Education is battling with placement in schools.
92. It is the Social Worker's opinion that eviction will have negative impact on the Third Respondent and the children and recommended that:
- 93.1 The Third Respondent be permitted to remain in the current residence to allow the single parent an opportunity to raise her minor children in a familiar area.
- 93.2 Housing Department and Human Settlement Departments should assume the responsibility for securing alternative Social Housing accommodation for the Respondent.

93.3 Communicare Housing Department should consider provisioning of affordable rental or review current rental.

Issues in Dispute

94. At this stage the court took judicial notice regarding the disappearance of the First Respondent as the Social Worker's report informed, that the First Respondent vacated the premise on or about March 2021 when Ms. Matu, the First Respondent, moved out to live with her boyfriend and left the Third Respondent in the said premise. The Third respondent tried numerously to contact the First Respondent however to no avail. Although, the court gist that the First Respondent is no longer a party hereto, the court however place on record that the First Respondent argued that the Applicant failed to proof how it acquired the properties from Housing League, that exorbitant rental increases occurred unilaterally without proper consultation, that no meetings were ever called to discuss the shortfall in rental payments, and that it is common cause that the Applicant provides social housing.

95. The Third Respondent opposed the granting of an eviction order and in her respective answering affidavit raised the fact that she was unemployed as a result of COVID and will be homeless, should the court grant the eviction.

96. Furthermore she also avers in her affidavit, as directed by the court, regarding her personal circumstances, that she obtained work as a waiter in 2017 in the hospitality industry and was retrenched around April 2021 due to the COVID restrictions affecting the hospitality industry, then on the 2nd of August 2021 she received employment as a security guard in the movie industry, where she receives a salary of R4200.00 (Four Thousand Two hundred Rand) a month, whereof R2500,00(Two Thousand Five Hundred Rand) is the most she is able and can afford for monthly rental as her two minor children are respectively, 3 and 12 years old, and attend pre-and-primary school in the Brooklyn area, and more specifically that the 12 year old attends school at Ysterplaat Primary, that they have no alternative accommodation and if evicted, they will be homeless

97. The Third Respondent rendered various defences as per the points *in limine* and on the merits. In respect of their points *in limine*, the Third Respondents avers that the Applicant is an invalid or non-existent enterprise with no locus standi to initiate and proceed with the eviction, and avers that the registration number 129/001590/09 does not exist at the Company and Intellectual Property Commission (CIPC), thereby argued that the Applicant had no contractual capacity to enter into the lease agreement which rendered it null and void.

98. The Third Respondent disputes, Mr Siddle, deponent of applicant's founding affidavit, authority to depose the affidavit. According to her the letter marked "RJS2" is insufficient and that *no* resolution by the board of directors of the applicant is attached duly authorising Ms Jacobs to act on behalf of the applicant. She in fact emphasized that on the 29th of May 2020, the affidavit deposed to by Robert James Siddle, the Applicant's representative with purported authority to depose in support of the Application, referring to annexure "RJSI" and "RJS2" wherein it is stated by Nazil Wagner (Company Secretary) in a letter to Toefy Attorneys informing them that, Ms Faaieda Jacobs is purportedly authorised to initiate or defend any legal proceedings on behalf of the Applicant in terms of the Company's Delegation of Authority Framework (hereinafter referred to as the "Framework"). The Applicant has merely attached a letter in annexure "R.JS2" and *not* a resolution of the board of directors duly authorising Ms Jacobs to act on behalf of the Applicant. The Companies Act duly, authorised representatives, and not by themselves, as they are not natural persons. Mr Robert James Siddle is not duly authorised to act on behalf of the Applicant and therefore he has no locus standi to depose to the affidavit as he has erroneously done

99. That the Applicant is not the Landlord with whom the First Respondent entered into an Agreement (albeit the landlord and the Applicant not having contractual capacity, furthermore that clause 2.9 of the Agreement states clearly and categorically no term in the Agreement shall benefit a person (natural, and/or juristic) who is *not* a party to the Agreement, and therefore the Applicant is not a party to the Agreement and therefore cannot benefit.

100. The Landlord with Registration Number: 1929/001590/09 does not exist at the Companies and Intellectual Property Commission (hereinafter referred to as "CIPC") who are the sole registry of companies in the Republic of South Africa wherein CIPC states categorically that Registration number 1929/001590/09 of the Landlord as contained in the Agreement, is an invalid enterprise, therefore the Landlord had and still has no contractual capacity to enter into an Agreement in the first place, which renders the said Agreement entered into with the Landlord, as being null and void ab initio.

101. The Landlord's registration number is not reflecting in the winded search report marked "RJS3" furthermore, the said winded report says the size of the purported premises is 9695.0000 m², which does not correlate with the size of the sectional title premises recorded in clause 1.2 as 30m² of the attached agreement marked annexure "RJS4", therefore it is clear that the Applicant is liable to the First Respondent as the Applicant has been enriched unjustifiably and the First Respondent has been impoverished at the Applicant's expense and there is a connection between the aforesaid enrichment and impoverishment with no legal justification for such enrichment as the agreement in annexure "RJS4 is null and void ab initio as the Landlord had and still has no contractual capacity and that the Applicant and/or the Landlord are not the owner of the Premises, therefore, the Landlord and/or Applicant ought to repay all monies paid to them by the Respondents from inception of the purported agreement of lease to date, and, this evidences, again confirm the fact that, the Applicant has no locus standi.

102. The Applicant has not attached a title deed in its founding affidavit and furthermore in the event that, it produces a title deed written Housing League as owner, then the matter is subjudice before the Land Claims court, halting proceedings in this or any matter pending the findings of the land claims court.

103. Citizen Housing League Utility Company U.C 1590 White Group purportedly incorporated itself as a company under the Companies Act, 1926 (Act No.46 of 1926) and made purported name changes under the same companies act and further purported name changes and company registration number changes under the Companies Act no.61 of 1973 culminating in a change to its company registration number under the current Companies Act

no.71 of 2008. The following purported incorporations and name changes were purportedly made by the Real Applicant:

Citizen Housing League Utility Company U.C 1590 incorporated under the Companies Act, 1926 (Act No.46 of 1926);

Citizen Housing League U.C 1590 incorporated under the Companies Act,1926 (Act No.46 of 1926):

Housing League UC 1590/08 incorporated under the Companies Act no.61 of 1973:

Communicare 05/1590/08 incorporated under the Companies Act no.61 of 1973;

Communicare 1929/01590/08 incorporated under the Companies Act no.61 of 1973; and

Communicare1929/001590/08 incorporated under the Companies Act no 71 of 2008

104. The Third Respondent elaborates on the Companies Act 1926 (Act No.46 of 1926) Companies Registration Regulations and the Companies Act 1926 (Act No.46 of 1926) that there are certain requirements that are to be adhered to by Associations, as the **Real** Applicant holds themselves out to be, and gropes onto many supporting legislation, in particular sections and regulations, and explains that in terms of regulation 15 of the Companies Act, 1926 (Act No. 46 of 1926) Companies Registration Regulations "The Registrar shall upon registration of any change of any change of the name of a company transmit a copy of the certificate of incorporation issued in terms of sub-section (6) of section 10 of the Act to each of the Registrars of Deeds who shall enter the new name in their registers in place of the former name." In terms of section 10(5) of the Companies Act, 1926 (Act No. 46 of 1926) any company may, by special resolution and with the approval in writing of the Minister.change its name." In terms of section 10(6) of the Companies Act, 1926 (Act No. 46 of 1926) "Where the name of a company is changed in terms of the provisions of subsection (4) and (5), the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case." The Third Respondent avers that it is clear from the above paragraphs and sub paragraphs that, an association must submit its **memorandum and articles to the Registrar** to be ultimately **issued with a licence** and be **recognised as an incorporated association**. Now for Citizens Housing League to prove its incorporation in terms of the Companies Act, 1926 (Act No. 46 of 1926) they have to produce the said founding documents (memorandum and

articles) these must be carbon copies of the original founding documents transmitted by the Registrar to the relevant Registrar of Deeds, in this instance being Cape Town Deeds Registry Cape Town Deeds Registry is to safe keep any and all documents transmitted to it by the Registrar. For a name change to be effected in terms of the section 10(5) of the Companies Act, 1926 (Act No. 46 of 1926) a special resolution is to be submitted and the Minister has to approve the name change in writing. It therefore follows that, the Registrar must transmit the special resolution and Minister's name approval to Cape Town Deeds Registry together with any alterations made to the memorandum or articles. The Companies and Intellectual Property referred to as the "CIPC") which is the current office of the then Registrar's office cannot produce all the above relevant documents (memorandum and articles, special resolution for name change, Ministers approval of name change, alteration to memorandum and articles etc.) of the Citizens Housing League/Real Applicant from its archives. Now for the benefit of the Land Claims Court case, which is subjudice, and the fact that, the Cape Town Deeds Registry failed and/ignored request for all the above documents mentioned, therefore it follows that, this Honourable Court ought to suspend all pending evictions till this matter, case number LCC100/2019, is pronounced on by the Land Claims Court.

104. The First Respondent is of the strong view that the Title Deed and/or Sectional Title Deed is required, as the *Real* Applicant made further name changes as it purportedly holds to have done under the Companies Act no.61 of 1973 and Companies Act no.71 of 2008. A conveyancer's certificate is required to verify amendments to company information in name changes. Furthermore, under both of the abovementioned companies acts, the certificate of incorporation/registration certificate of the company needs to be amended, a notice of amendment of the memorandum of association/articles of association/memorandum of incorporation and special resolution needs to be filed with Companies and Intellectual Property Registration Office(hereinafter referred to as "CIPRO")/ CIPC and an amended memorandum of association/articles of association/memorandum of incorporation needs to be filed with CIPRO CIPC and that the following name changes for the *Real* Applicant purportedly occurred under the abovementioned acts and registration numbers changed:

Housing League UC 1590/08 incorporated under the Companies Act no.61 of 1973;

Housing League 05/1590/08 incorporated under the Companies Act no.61 of 1973;
Communicare 05/1590/08 incorporated under the Companies Act no.61 of 1973;
Communicare 1929/01590/08 incorporated under the Companies Act no.61 of 1973; and
Communicare 1929/001590/08 incorporated under the Companies Act no.71 of 2008.

105. In reply the Applicant responded to the points-in-Limine raised by the respondents that The Applicant submits that it did not misrepresent itself as alleged by the Third Respondent and further submits that the difference in the registration number of the Applicant and the registration number of the lease agreement concluded by the Applicant with the First Respondent is due to a *typographical error* which does not invalidate the lease agreement nor does it preclude the Applicant from benefitting from the terms of the lease agreement. The Applicant therefore submits that the Applicant is a valid NPC and has the required locus standi to be before the above Honourable Court as the person in charge of the premises, and that the typographical error between the two registration numbers is one number and refer to the attached CIPC search on the Applicant's registration number marked in the court bundle "RJS4" which clearly stipulates the validity of the enterprise and the "difference" being one number (i.e. the last number being 9 which should have been 8).

106. The Applicant further submits that it is trite law that the Applicant as the landlord is only required to provide the lessee with vacant occupation of the premises as well as guarantee that no other person with a superior right will disturb the lessee's occupancy, and should the landlord fulfil the aforesaid requirements, the lessee has no right to dispute the title of the landlord, therefore, the Applicant submits that it has fulfilled the requirements as set out above and the First and Third Respondent therefore have no right to dispute the Applicant's title to the premises.

107. It is clear that the First Respondent was aware that she entered into a lease agreement with the Applicant and acted in accordance with same by initially making payment of the rental to the Applicant up and until she fell into arrears which has currently accumulated substantially to date, that the purported mistake, it submitted has no effect at all, as they did

not influence the actions of the person contracting. He emphasized that, simply stated, the mistaken party (i.e. First Respondent) would have entered into the agreement on exactly the same terms *even if the truth had been known*, and submits that the Third Respondent is therefore attempting to mislead the above Honourable Court as to the Applicant's status as the landlord of the premises.

108. Furthermore, it is submitted that the Applicant is confused as to the basis on which the Third Respondent is disputing the Applicant's title to the premises since she has no agreement with the Applicant to reside on the premises nor does the Third Respondent have any rights in terms of the lease agreement which she for some reason unknown to the Applicant decided to dispute.

109. The Applicant submits that as per annexure "RJS2" in the court bundle, that the Applicant provides Faieda Jacobs with the authority to initiate or defend any legal proceedings on behalf of the Applicant in terms of its Delegation of Authority Framework, as per the attached Delegation of Authority Framework ("Framework") marked in the court bundle "RJ53" The Applicant draws the court attention to page 2 of the Framework which provides that "where responsibility is vested in a party, she can delegate authority to decide or act to subordinate party but she nevertheless remains responsible for the results, where authority is delegated, the subordinates are expected to exercise their own judgment and to take decisions within the purview of their authority" Therefore, Faieda Jacobs was invested with the responsibility to initiate or defend any legal proceedings on behalf of the Applicant and as such. Faieda proceeded to delegate such responsibility to Robert James Siddle as per annexure "RJS1" in the court bundle, bearing in mind that she will be responsible for the results. Thus, the Applicant submits that Robert James Siddle has received the relevant authority to depose to the founding affidavit as well as act on behalf of the Applicant in accordance with the Applicant's Framework.

110. In amplification of the aforesaid denial, the Applicant is the owner of ERF 19896 and is further the owner of or person in charge of a number of properties within the Brooklyn area, on which the complexes commonly known as Goedehoop complex, Plane flats complex and Wilgerboom Huis complex, is situated. A copy of the title deed is attached to the court bundle marked "RJS5", and avers that the ERF 19896 is rather big and has some 12 blocks of

flats/complexes on it. A copy of the diagram showing the layout of ERF 19896 and on which the relevant complexes are clearly demarked is annexed to the court bundle marked "RJS6" and "RJS7"

111. At first blush, based on the Title Deed (annexure "RJS5") it may appear as if ERF 19896 is owned by Citizens' Housing League, but in fact owned by the Applicant. The Applicant has since the time of registration undergone *two name changes*. The first occurred in and during 1981, when its name was changed from Citizens' Housing League. The second named change occurred in and during 1990, where its name was changed from Housing League to Communicare. A copy of the certificates of name change is annexed to the court bundle, marked "RJS8" and "RJS9". It is therefore clear that the premises is owned by the Applicant and for all intents and persons remains the person in charge of the premises.

112. Furthermore, in addition to the above, it is trite law that even if the lessor is not the owner of the thing it does not affect the validity of the lease agreement entered into between the parties. However, in principal, a lessor is required to do no more than to provide the lessee with vacant occupation and warrant that no person with a superior right will not disturb the Respondents' occupation of the premises with the result that the Respondents may not dispute the Applicant's title to the property. The Applicant submits that it has done all that is required by law as provided above and therefore, the Respondents have no right to dispute the Applicant's title to the premises.

113. The First and Third Respondent's themselves have no legal or lawful basis to remain in occupation of the premises as there was allegedly (on their version) no agreement in place, regardless, that the First Respondent who at the time entered into the agreement and have been enjoying the benefits of the agreement, are now disputing the Applicant's title to the property in terms of the agreement.

114. The Applicant *admit that the Applicant did not attach a title deed* to its founding affidavit,

115 The Applicant submits that the Third Respondent, refers to the Land Claims Court matter, without providing any details of the said matter nor provides any connection and/or link between the First and Third Respondents and this alleged land claim. Furthermore, no order granted by the Land Claims Court staying any proceedings in respect of the properties subject to the said claim has been granted and/or provided no such order has been furnished by the Respondents herein. It is therefore submitted that nothing prevents the Applicant from proceeding with this application before the above Honourable Court and it is respectfully submitted that the Third Respondent's argument herein is bad in law.

116. The Applicant reiterates that it is the owner and/or person in charge of the premises as set out in annexures "RJS5", "RJS6" and "RJS7 annexed to the court bundle.

117. The Applicant avers that it does not understand the reason for the Third Respondent deciding to quote lengthy parts of the Companies Act while failing to provide the above Honourable Court with the relevance of same to this eviction application bearing in mind that ownership is not required to institute eviction proceedings, and reiterates that it is the owner, landlord and person in charge of the premises as provided herein throughout, The Applicant submits that despite the Applicant not being required to prove ownership in order to proceed with eviction proceedings, the Applicant is the landlord of the premises who entered into a lease agreement with the First Respondent in terms of which the Applicant provided the First Respondent with vacant occupation of the premises as well as no person with a superior right has disturbed the First Respondent's occupation on the premises, therefore submitted that the Applicant as the landlord has done all that is required in terms of the law to enforce its rights as a landlord in terms of the lease agreement. The lease agreement is therefore valid and enforceable as well as the Applicant has the required locus standi to proceed with this eviction application as the owner, landlord and person in charge of the premises.

118. the Applicant pauses to point out, that the Deeds Registry Cape Town declined to assist in this alleged land claim and one can only wonder why a public government office like the Deeds Office, would reject what is sort in terms of the land claim.

119. The Applicant submitted that although the Third Respondent may not view the windeed search as relevant, when reading "RJS3" when read together with "RJS5", "RJS6" and "RJS7", it constitutes sufficient evidence placed before the above Honourable Court to prove the Applicant's ownership of the premises, respectfully refers the above Honourable Court to annexures in the court bundle "RJS3", "RJS5", "RJS6" and "RJS7" which clearly stipulated that the Applicant is a NPC with registration number 1929/00159/08.

120. The Applicant reiterates that the lease agreement is valid and enforceable for reasons set out herein throughout. Should the above Honourable Court for some reason find that the lease agreement is invalid (which it is not), the Applicant submits that the First Respondent acted in accordance with the lease agreement by making payment of the rental to the landlord (i.e. the Applicant) since the inception of the lease agreement until she chose to breach the agreement by failing to make payment of her rental. Therefore, a tacit agreement was created between the First Respondent and the Applicant.

121. The Applicant submits that it is trite law that the Respondents who allege homelessness must place before the court facts which demonstrate there is indeed a risk of homelessness and details of the employment status and income of adult members of the household are obviously relevant to substantiate the risk of homelessness, especially those Respondents who have the benefit of legal representation. The Applicant submits that the Third Respondent simply provides the employment status of herself, provides no proof of income of herself nor the other adult persons residing at the premises and furthermore, fails to present to the court any proof of attempts to obtain alternative accommodation.

The Law

122. Section 4 of the Prevention of illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 prescribes the procedure to be followed by an applicant in proceedings for the eviction of unlawful occupiers. Section 4(2) provides: At least 14 days before the hearing of the proceedings contemplated in subsection (1), the

court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction. The proceedings contemplated in section 1 are 'proceedings by an owner or person in charge of land for the eviction of an unlawful occupier.' Section 4(1) makes it clear that the provisions of the section are peremptory. See *Cape Killarney Property Investments (Pty) Ltd v Mahamba* 2001 (4) SA 1222 (SCA). The notice of proceedings contemplated in s(2) must –

- (a) state that proceedings are being instituted in terms of s (1) for an order for the eviction of the unlawful occupier;
- (b) indicate on what date and at what time the court will hear the proceedings;
- (c) set out the grounds for the proposed eviction; and
- (d) state that the unlawful occupier is entitled to appear before the court and defend the case and, where necessary, has the right to apply for legal aid.'

123. The respondents have been unlawful occupiers on the property for longer than six months. In terms of section 4(7) of the PIE Act, an eviction order may only be granted if it is just and equitable to do so, determined after the court has had regard to all the relevant circumstances, including the availability of land for the relocation of the occupiers and the rights and needs of the elderly, children, disabled persons and households headed by women. If the requirements of section 4 are satisfied and no valid defence to an eviction order has been raised, a court 'must' in terms of s 4(8) grant an eviction order. When granting such an order the court must, in terms of s 4(8)(a) of the PIE Act, determine a just and equitable date on which the unlawful occupier or occupiers must vacate the premises (the next inquiry). The court is empowered in terms of s 4(12) to attach reasonable conditions to an eviction order. The date that it determines must be one that is just and equitable to all parties.

124. The Court in *Occupiers of erven 87 & 88 Berea v Christiaan Frederick De Wet N.O.* [2017] ZACC where the learned Majapelo J stated the following: "The application of PIE is mandatory, and courts are enjoined to be of the opinion that it is just and equitable' to order

an eviction. Accordingly, a court is not absolved from actively engaging with the relevant circumstances where the parties purport to consent. PIE enjoins courts to balance the interests of the parties before it and to ensure that if it is to order an eviction, it would be just and equitable to do so. Without having regard to all relevant circumstance the court will not have satisfied the duties placed upon it by PIE.”

125. There was some debate about the meaning of a "valid defence" in terms of PIE during the hearing with reference to *Changing Tides* wherein Wallis JA stated: Under section 4(8){the court] is obliged to order an eviction if the requirements of the section have been complied with and no valid defence is advanced to an eviction order. The provision that no valid defence has been raised refers to a defence that would entitle the occupier to remain in occupation as against the owner of the property, such as the existence of a valid lease.

126. It is apparent that the discussion of "valid defence" is in reference to section 4(8) and not section 4(6) or (7). Furthermore, read in context, the Supreme Court of Appeal does not exclude other possible defences and does not move away from the settled position that the court must come to a decision that is just and equitable to all parties to evict. It follows that where it is unjust or inequitable to evict, the unlawful occupiers have a defence, and no eviction can be ordered. This is so because in terms of PIE, a court may order an eviction only if it is just and equitable. Accordingly, a defence directly concerning the justice and equity of an eviction, not necessarily the lawfulness of occupation, must be taken into account when considering all relevant circumstances. To limit the enquiry under section (6) and (7) to the lawfulness of occupation would undermine the purpose of PIE and be a reversion to past unjust practices under the Prevention of illegal Squatting Act.⁵⁷ The enquiry is whether it is just and equitable to evict. This is a more extensive enquiry than simply determining rights of occupation."

Application of the law to the facts

127. It is the Respondents case that the Applicant does not have the necessary locus standi which renders the lease agreement void and that the person who deposed of the Founding Affidavit, lacks the necessary capacity to depose to the said affidavit.

128. In this regard, the court now need to place on record that this matter appeared before myself on the 21st of June 2021 for the first time, and was set down for hearing on this date, and it is when I noted that there is in fact no Resolution in the court bundle, and enquired from the attorney of the Applicant the whereabouts of the Companies Resolution, as it would assist the issue relating to locus standi, but the attorney of the Applicant referred the court to a letter, namely, Delegation of Authority as attached to the court bundle and marked “RJS 2” on pages 16 and 17.

129. Meanwhile, the court continued to listen to the Arguments by both attorneys and noted with much concern, that the attorney for the Respondents erred to place onto record the personal circumstances of his clients, as it is trite law that when the court becomes aware of any likelihood of homelessness, the court must do an extensive enquiry in terms of section 4 (7) of Act 19 of 1998. The attorney of the Respondents requested a remand which was mutually agreed upon by both attorneys as it would be in the interest of justice to afford proper ventilation of all the relevant factors before the court.

130. The court ordered that the Second Respondent, City of Cape Town, as well as the Department of Social Development to compile reports to assist the court in this regard and remanded the matter accordingly, however, yet again, on numerous occasion, the hearing was delayed, due to COVID related levels being increased, especially with regards to the operations in the courts itself, thus causing restrictions upon all relevant parties, which delayed also the retrieval of these two reports as requested by the court.

131. The condonation application for the Respondents personal circumstances as well as supporting affidavit was so agreed upon by both attorneys and the matter was eventually, after the reports requested by the court were filed, the matter was set down for further hearing on the 20th of May 2022.

132. The court noted that even after the final hearing of this matter, that the Applicant's Company Resolution by the shareholder/directors, were still, not filed, and enquired the reasons hereto from the Applicant's attorney, who responded to the court that she unfortunately is unable to trace the resolution or any other documents from the client, the Applicant, and that it is normal accepted practise by all the Lower and Higher Courts in the Western Cape, which ordinarily accepts its application.

133. What prompted the court to enquire about the Resolution, is contained in paragraph 2 of the Applicant's Founding affidavit, wherein he refers to "*as approved by the Board of Directors of the Applicant*", as everyone in civil litigation proceedings understand the term, one either stand or fall on one's Founding Affidavit, however in his replying affidavit it seems to the court that the Applicant had a light bulb moment and realized his omission, therefore attached a Delegation of Authority Framework, which is also only a copy without any signatories, and not a Board of Directors Resolution.

134. Now, from the onset, 21 June 2021, the court requested the discovery and tracing of the Resolution, and was promised that it will be traced, as this Resolution is vital for the court as the issue of locus standi, mandating and directing this particular Applicant to depose of its founding affidavit, is in direct dispute. and informed that she will trace the said Company resolution. the whereabouts of the Resolution in terms of the Companies Act, mandating and directing this particular Applicant to depose of its founding affidavit when the issue of locus standi was raised as the First and Third respondent disputed Ms Faieda Jacobs and Mr Robert Siddle's authority to act. Binns-Ward J in **Absa Bank Ltd v Le Roux 2014 1 SA 475 (WCC)** stated "where the affidavit fails to measure up to these requirements, the defect, may nevertheless, be cured by reference.

135. In this particular case, before this court, it was only referred to a letter of authority then later on, after the court enquired about the resolution as well as replying to the Third Respondent's answering affidavit that a Delegation of Authority Framework was filed with the Applicant's replying affidavit, as locus standi basically is the right to bring an action or to appear before court and therefore a vital requirement.

136. Common sense dictates that the Companies Act 71 of 2008 is a practical guide for all companies operating within the Republic of South Africa, and it clearly states therein, that a Board Resolution is also at times referred to as the Directors Resolutions, and it, are the records of the decisions made by the Board of Directors, when they meet, and it is a formal written motion used to track details of any organization's specific decision, including their functions/responsibilities, who voted, etcetera. I find it mind-boggling as to the reasons furnish to the court for the non-discovery or non-compliance to basic legislation by the Applicant as the capacity to act was the bone of contention and argued vigorously by both attorneys.

137. It is evident that the incorrect registration number was reflected on the lease agreement and citation on the subsequent notices, however the court noted that the correct registration number is reflected in the founding affidavit in paragraph 6 on page 7 of the court bundle, In *HUV Cape Spice v Hotspice Sauces CC (WCC)* (unreported case no 22227/2010 10-5-2011) Louw J held 'The description of a party to a suit does not immutably determine the nature and identity of a party. The law reports are replete with instances where the incorrect description of a party was allowed, in the absence of prejudice to the other parties involved, to be changed to reflect the true state of affairs, see *Four Tower Investments (Pty) Ltd v André's Motors* 2005 (3) SA 39 (NPD).

138. The attorney for Applicant raises that the Respondent argues that the Applicant "does not exist", as it was not a party to the lease agreement as the lease states the registration number 1929/01590/09 and the Applicant provides for its registration number being 1929/01590/08 and therefore, the Applicant and the landlord is allegedly not one and the same person. The First Respondent further argues that based on this allegedly "error", the Applicant is not properly before the above Honourable Court and allegedly has no locus standi to initiate the current eviction proceedings and further had no capacity to enter into the lease agreement rendering same null and void. The Applicant cite that In *Christie's Law of Contract in South Africa* and later confirmed in the SCA judgement in *Jalite (Pty) Ltd v Shanghai Furniture Import & Export* provides that: 'A party who has been induced to enter into a contract by the other party's misrepresentation of an existing fact is entitled to rescind the contract provided the misrepresentation was material, was intended to induce the person

to whom it was made to enter into the contract and did so induce that person to. The respondent do not dispute that the respondents are the defaulting parties however he argues on a point of law in limine, and he points out that points in limine should not be ignored or overlooked. I fully agree with the submission as a court has to carefully consider the points especially if it is raised as a defence, and he contends that the proof of ownership is a point of law, that simply put is the Applicant the owner or not, and if it is the owner it purports to be then proof to such must be placed before this court.

139. From the papers it is apparent that the citation in the founding affidavit differed from the citation on the notices and lease agreement, the windeed property report reflects correctly the applicant's position. This document was not disputed by the respondents. Many jurist use *Chetty v Naidoo 1974 (3) SA 13 (A)* to supplement this averment, where it states in the cited case, that once the plaintiff succeeds in proving ownership the onus shifts on the defendant. Fair enough, however the crux of the aforementioned case is *rei vindicatio* and not relevant in terms of PIE nor ESTA matters, I cannot find that the applicant succeeded in proving ownership, which is a requirement for Evictions under PIE.

140. Given the contentious issue, raised by both attorneys regarding the winded report, the attached report in my view is not sufficient proof that the applicant is the owner and the NPC exists as the Applicant attached the title deed of Citizens Housing League and not Communicare, without any supporting evidentiary proof as to the nexus between the two entities. Now, yet again, the Companies Act, be it Act no. 46 of 1926 or Act no61 and 71 of 2008, the basic rules of name changes applies, which is not provided for in this case, as the Applicant need to prove its case on a balance of probabilities that it is the lawful owner of the said premise. I find it strange that the legal team, be it internal or external, have disregarded this error as it is a long standing NPC, and ought to be guided correctly to the basic legal principles regulating any Non Profit Company. A perusal of the winded report reflects the registration number as 192900159008. The certificate of registered title handed in further proves existence of a different entity, namely, Citizens Housing League, which differs from the Registration Regulations 14 and 15 of Act 26 of 1946 furthermore section 10 of Act 71 of 2008 describes the

procedure for the name change or the procedure to be followed as promulgated in the said Act.

141. (*Griffiths & Inglis v Southern Cape Blasters* 1972 (4) SA 249 (C) at 252F and 254B). In dealing with the representation of an artificial person in legal proceedings brought on notice of motion, it must appear that the deponent to the founding affidavit on behalf of the applicant (the artificial person) is duly authorised by it to do so. Evidence must be placed before the court to show that the applicant has duly resolved to institute the proceedings and that the proceedings are instituted at its instance. The best evidence of the proper authorisation of proceedings would be in the form of an affidavit by an office bearer of the artificial person to which affidavit a copy of the resolution is attached. This form of proof is not necessary in every case. Each case must be considered on its own merits, and in this regard the court must decide if enough evidence has been placed before it to warrant the conclusion that it is the applicant that litigates and not some unauthorised person. (*Mall (Cape) (Pty) Ltd v Merino Ko-operasie Bpk* 1957 (2) SA 347 (CPD) at 351G-352B).

142. On the face of it there is no resolution by the Board of Directors, I am of the view that the resolution ought to have sufficiently identified and authorised the institution of proceedings,. While this observation may in some instances be regarded as matters of form rather than substance it is nevertheless, and for more compelling reasons to follow, a fait accompli that the resolution, is not present, it could not be retrieved therefore non-existent.

143. In the *Nelson Mandela Bay Municipality and another v Premier of the Eastern Cape and others* the Court further held as follow, "[13] Legislation obliges municipalities to develop a system of delegation to inter alia maximise administrative efficiency and to provide for checks and balances, and for the delegation of powers and duties to functionaries within the municipal environment. The preamble to the municipality's Systems of Delegations of Powers ("the delegations") specifically states that its purpose is to infuse all relevant specific legislation governing the local government sphere".

and

'NMBMM will utilise this document as a single integrated document for their day to day operations and guidance."

In my view however, with regards to any company, it is currently regulated, by the provisions of the Companies Act 71 of 2008.

144. The applicant chooses not to include the relevant portions regarding the resolution delegating power to him to depose to the founding papers on behalf of the juristic Applicant, who is regulated by Companies Act 71 of 2008, and only give a selective of two pages in its papers.

145. The learned judge in *Nelson Mandela Bay Municipality and another v Premier of the Eastern Cape* went further and held as follow, [20] Locus standi for the purpose of instituting legal proceedings is a matter of law. It cannot be disregarded; 12 and it goes further than mere failure to prove authority to depose to an affidavit. In *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) at 624G-H, it was held that the deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit; it is the institution of the proceedings and the prosecution thereof which must be authorised.¹³ In *Gross & Others v Penz*, Harms JA pointed out:¹⁴"The general rule is that it is for the party instituting proceedings to allege and prove that he has locus standi the onus of establishing that issue rests upon the applicant. It is an onus in the true sense; the overall onus.... (*Mars Incorporated v Candy World (Pty) Ltd* 1991 (1) SA 567 (A) at 575H-1)."

The learned judge added: "I am unaware of a rule of law that allows a court to confer locus standi upon a party, who otherwise has none, on the ground of expediency and to obviate impractical and undesirable procedures."

146. The Court in the matter of *Mnquma Local Municipality v Mkhathshane & others* [2003] JOL 12195 (TK) held that that the central issue was whether or not the proceedings were instituted by the municipality or the deponent purporting to act on behalf of and on the authority of the municipality. While the town manager may have been delegated to institute action, he could not sub delegate those powers to the present deponent. It is not enough for a deponent to simply aver that he has been authorised to institute proceedings on behalf of a

legal persona without laying the factual foundation for such an averment.” This Court dismissed this application also based on the lack of locus standi of a Municipal official.

147. Also, in the matter of Plettenberg Bay Country Club v Bitou Municipality [2006] JOL 16339 (C) a matter decided in this Division the Court by Moosa J the Court held that; “a preliminary objection that the deponent to the applicant's founding affidavit was not authorised to depose thereto was dismissed. The court was satisfied that he not only had the necessary authority to initiate and prosecute the proceedings but also had the necessary authority to depose to the founding affidavit.”

148. The applicants' firstly did not make out a case in its founding papers to proof locus standi, secondly, when challenged in the respondents answering papers, the relevant documents in terms of the applicants own resolution in respect with the authorisation and institution of court proceedings was not disclosed to the Honourable Court. Applicants' functionaries, especially Mr Siddle, the Legal Compliance Officer, chose to bring his own interpretation to the applicants' systems of delegation of powers and even contradicted himself in respect of the applicants' legal instrument by which he was bound, in doing so he contradicted himself.

149. It is with respect submitted that the law is well settled in respect of the interpretation of documents or other legal instruments by the Supreme Court of Appeal ("the SCA"); Natal Joint Municipal Pension Fund v Endumeni Municipality [2012] JOL 28621 (SCA) , which judgment was followed with approval by the SCA in the matter of Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk [2014] JOL 31199 (SCA), in which the SCA held as follow,”Interpretation [10] In Natal Joint Municipal Pension Fund v Endumeni Municipality the current state of our law in regard to the interpretation of documents was summarised as follows:”Over the last century there have been significant developments in the law relating to the interpretation of documents, both in this country and in others that follow similar and some attempt had been made to adjust the notice of motion, but I am not so convinced that it was an issue of form over substance. The applicant simply did not make out a case on urgency, (Own emphasis)

150. It is respectfully submitted, that this matter brought before the Honourable Court, in respect of the alleged urgency and damages is on all four squares of both the Caledon Street Restaurants CC v D'Aviera and the National Ship Chandlers cases referred to herein before and stands to be dismissed due to a patent lack of urgency.

151. The respondents challenged Siddle's authority to depose to the founding affidavit of the applicant, which was based simply on an unsigned letter dated 29th November 2019, on the attached page 16 to the founding affidavit of the court bundle, wherein the company secretary namely Nazli Wagner delegates authority to Faaieda Jacobs, the Property Manager. This letter also refers to the Delegation Framework as approved by the Board of Directors, yet proof of this Board Resolution is not attached, then the court noted, in the court bundle, filed at page 241 to 253, the replying affidavit by the Property Manager, and a signed letter, which is now dated 11 August 2021, and the company secretary is now another person, namely, Elsabe Marx who now delegates and transfers authority from Faaieda Jacobs to Mapule Maragela, this affidavit in my view was nothing more than a verifying affidavit in respect on the contents of the Third Respondent's affidavit and further averring that Robert Siddle is authorized to act as he has been duly authorised to do so.

152. For this very reason as noted in the aforementioned paragraph the court requested the discovery of the Board Resolution as clearly several changes are evident without any supportive evidence. I reiterate that referring to a Delegation of Framework authority, is not a Company/ Board/ Directors Resolution, and in the absence of the said resolution these letters and replying affidavit carries no weight. I am still wondering as to the reasons Communicare choose to hide the resolution, I can only conclude that in the absence of no Resolution, that there are none.

153. The respondents in their answering affidavit took issue with it, in limine, stating more was needed¹⁷. In addition, the applicant was duty bound to make out a proper case in its founding affidavit, regarding locus standi. In this regard the respondent unambiguously averred that they were not favoured with the applicants' 'Systems of Delegation of Powers and Authority Framework', which ought to have been in the founding papers with Siddle's purported authorisation affidavit and a resolution, however, the applicant in respect of their

locus standi before the Honourable Court is grossly economically with the truth before this Honourable Court. Further, the applicant only in its replying affidavit refer to only to unsigned pages, ostensibly authorising now Maragela to basically instruct Siddle or anybody to depose to an affidavit. The applicant in this respect, is grossly disingenuous with the Honourable Court, and effectively deprived the respondents to have dealt comprehensible and fully with issue of the arbitrary authority granted to Siddle. The applicant, deliberately choose not to make full disclosure to this Honourable Court in the founding papers or even in the replying papers and, in doing so, deprived the respondents and the Court to deal with same. The Resolution as an important piece of evidence is currently not before the Honourable Court. I find that the Applicant's conduct in dealing with the application before the Honourable is tantamount to a trial by ambush. The Applicant's treatment towards the Respondents before this Honourable Court, is a stark reminder of the brutal dark days during the Apartheid days in our country.

154. In the Nelson Mandela Bay Municipality and another v Premier of the Eastern Cape and others [2020] JOL 48673 (ECG), Rugunanan J in limine dismissed the matter on the aspect of lack of authority alone. The Judge at paragraph [10] of the judgment held as follow, "Where the question of authority is challenged, the onus is on the applicant to show on a balance of probabilities that the application has been authorized."

155. In Occupiers of Erven 87 and 88 Berea v De Wet N.O. and Another (CCT108/16) [2017] ZACC 18; 2017 (8) BCLR 1015 (CC); 2017 (5) SA 346 (CC) (8 June 2017)the court defines the nature of the enquiry under section 4 of PIE and that there are two separate enquiries that must be undertaken by a court:

"First, it must decide whether it is just and equitable to grant an eviction order having regard to all relevant factors. Under section 4(7) those factors include the availability of alternative land or accommodation. The weight to be attached to that factor must be assessed in the light of the property owner's protected rights under section 25 of the Constitution, and on the footing that a limitation of those rights in favour of the occupiers will ordinarily be limited in duration. Once the court decides that there is no defence to the claim for eviction and that it would be just and equitable to grant an eviction order, it is obliged to grant that order."

The second enquiry, which the court must undertake before granting an eviction order, is to consider - what justice and equity demand in relation to the date of implementation of that order and consider what conditions must be attached to that order."

"The nature of the enquiry, the court will need to be informed of all the relevant circumstances in each case in order to satisfy itself that it is just and equitable to evict and, if so, when and under what conditions"

156. It is therefore that the court directed the attorney of the Respondents to take instructions as he alleged that his clients will be rendered homeless should this court evict as I was not satisfied with the information provided, and subsequently requested a further affidavit substantiating the personal circumstances surrounding the respondents, which was so provided to the court on the 20th of May 2022, supported by the Social Workers report as well as the Second Respondents report.

157. Having regard to the abovementioned, I am of the view that the eviction will impact negatively on the lives of the Third Respondent and her minor children, should she have to relocate to another area outside of her ordinary surroundings where she build a trust relationship with others.

158. I do not gist the reason for the Applicant's reluctance to enter into meaningful engagements with Respondents before resorting to the extreme step of court processes, which are an impediment to a vast majority of citizens, as accessing the courts remain a mammoth obstacle.

159. I would've thought in light of the unprecedented world-wide pandemic, such as COVID, that more attorneys and or parties to contracts, would've resolved matters through commercial Ubuntu, finding common grounds to resolve their disputes amicably instead of merely resorting to the courts without having due regard to these unprecedented times, therefore the courts are compelled to scrutinise each judgement, based on the merits before it, and decide impartially, bearing in mind all relevant circumstances. No case law have been recognized to align itself with these

unprecedented times and it seems many courts are merely placing a rubber stamp on cases before it.

160. In case no : CCT 53/03, Port Elizabeth Municipality versus Various Occupiers Sacks J elaborated from paragraph 32 to 38 various important factors which courts need to consider:

“[32] The obligation on the court is to 'have regard to the circumstances, that is, to give them due weight in making its judgment as to what is just and equitable. The court cannot fulfil its responsibilities in this respect if it does not have the requisite information at its disposal. It needs to be fully apprised of the circumstances before it can have to them. It follows that although it is incumbent on the interested parties to make all relevant information available, technical questions relating to onus of proof should not play an unduly significant role in its enquiry. The court is not resolving a civil dispute as to who has rights under land law; the existence of unlawfulness is the foundation for the enquiry, not its subject matter. What the court is called upon to do is to decide whether, bearing in mind the values of the Constitution, in upholding and enforcing land rights it is appropriate to issue an order which has the effect of depriving people of their homes." Of equal concern, it is determining the conditions under which, if it is just and equitable to grant such an order, the eviction should take place." Both the language of the section and the purpose of the statute require the court to ensure that it is fully informed before undertaking the onerous and delicate task entrusted to it. In securing the necessary information, the court would therefore be entitled to go beyond the facts established in the papers before it. Indeed when the evidence submitted by the parties leaves important questions of fact obscure, contested or uncertain, the court might be obliged to procure ways of establishing the true state of affairs, so as to enable it properly to 'have regard to relevant circumstances.

³¹For the purposes of this case it is not necessary to go into the question which divided the SCA in *Ndlovu and Bekker* above, namely, whether the operation of PIE is restricted to poor, homeless persons who out of necessity arising from past laws have occupied the land of others without consent.³¹12 Section 6(6) read with sections 4(8), (9) and (12).

Just and equitable

[33] In *Port Elizabeth Municipality v Peoples Dialogue on Land and Shelter and Others*, a case with some similarities to the present, section 6 was helpfully analysed by Hom AJ. He pointed out that in matters brought under PIE one is dealing with two diametrically opposed fundamental interests. On the one hand there is the traditional real right inherent in ownership reserving exclusive use and protection of property by the landowner. On the other hand there is the genuine despair of people in dire need of adequate accommodation. It was with this regard that the legislature had by virtue of its provisions of PIE set about implementing a procedure which envisaged the orderly and controlled removal of informal settlements. It is the duty of the court in applying the requirements of the Act to balance these opposing interests and bring out a decision that is just and equitable. He went on to say that the use of the term 'just and equitable' relates to both interests, that is what is just and equitable not only to the persons who occupied the land illegally but to the landowner as well. He held that the term also implies that a court, when deciding on a matter of this nature, would be obliged to break away from a purely legalistic approach and have regard to extraneous factors such as morality, fairness, social values and implications and circumstances which would necessitate bringing out an equitably principled judgment.

[34] Finally Hom AJ went on to emphasise that each case would have to be decided on its own facts. Hopefully once the housing shortage had been overcome incidents of unlawful invasion of property by desperate communities in search of accommodation would disappear. In the interim the courts would do the best they could and apply criteria that were just and equitable and acceptable to all concerned. What remained essential, he concluded, was that removals be done in a fair and orderly manner and preferably with a specific plan of resettlement in mind.

³³*Port Elizabeth Municipality* above n 7.

[35] The approach by Horn AJ has been described both judicially and academically as sensitive and balanced. I agree with that description. The phrase 'just and equitable' makes it plain that the criteria to be applied are not purely of the technical kind that flow ordinarily from the provisions of land law. The emphasis on justice and equity underlines the central philosophical and strategic objective of PIE. Rather than envisage the foundational values of the rule of law and the achievement of equality as being distinct from and in tension with each other, PIE treats these values as interactive, complementary and mutually reinforcing.

The necessary reconciliation can only be attempted by a close analysis of the actual specifics of each case.

[36] The court is thus called upon to go beyond its normal functions, and to engage in active judicial management according to equitable principles of an ongoing, stressful and law-governed social process. This has major implications for the manner in which it must deal with the issues before it, how it should approach questions of evidence, the procedures it may adopt, the way in which it exercises its powers and the orders it might make.³⁵ The Constitution and PIE require that in addition to considering the lawfulness of the occupation the court must have regard to the interests and circumstances of the occupier and pay due regard to broader considerations of fairness and other constitutional values, so as to produce a just and equitable result.

³⁴Olivier J in *Ndlovu and Bekker* above n 6 at para 56.

[37] Thus, PIE expressly requires the court to infuse elements of grace and compassion into the formal structures of the law. It is called upon to balance competing interests in a principled way and promote the constitutional vision of a caring society based on good neighbourliness and shared concern. The Constitution and PIE confirm that we are not islands unto ourselves. The spirit of ubuntu, part of the deep cultural heritage of the majority of the population, suffuses the whole constitutional order.³⁶ It combines individual rights with a communitarian philosophy.

³⁵A perusal of the orders made in the many cases brought under PIE in the different divisions of the High Court indicates a great variety of responses. Innovative orders have been made both in the High Court as a court of first instance, and the SCA as a court of appeal.

Thus, Browde AJ in *Transnet La Spoornet v Informal Settlers of Good Hope and Others* 2001 (4) All SA 16 (WLD) concludes his judgment as follows at 524:

It is a unifying motif of the Bill of Rights, which is nothing if not a structured, institutionalised and operational declaration in our evolving new society of the need for human interdependence, respect and concern.

[38] The inherited injustices at the macro level will inevitably make it difficult for the courts to ensure immediate present-day equity at the micro level. The judiciary cannot of itself correct all the systemic unfairness to be found in our society. Yet it can at least soften and minimise the degree of injustice and inequity which the eviction of the weaker parties in conditions of inequality of necessity entails. As the authors of the minority judgment in the second abortion case in the German Federal Constitutional Court pointed out, there are some problems based on contradictory values that are so intrinsic to the way our society functions that neither legislation nor the courts can 'solve them with 'correct' answers.'" When dealing with the dilemmas.

"Generally, ubuntu translates as 'humaneness' In its most fundamental sense it translates as personhood and morality" Metaphorically, it expresses itself in umuntu ngumuntu ngabantu, describing the significance of group solidarity on survival issues so central to the survival of communities. While it envelops the key values of group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity, in its fundamental sense it denotes humanity and morality. Its spirit emphasises a respect for human dignity, marking a shift from confrontation to conciliation. In South Africa ubuntu has become a notion with particular resonance in the building of a democracy. It is part of our rainbow heritage, though it might have operated and still operates differently in diverse community settings. In the Western cultural heritage, respect and the value for life, manifested in the all-embracing concepts of 'humanity' and 'menswaardigheid', are also highly prized. It is values like these that [s 39(1Xa)] requires to be promoted. They give meaning and texture to the principles of a society based on freedom and equality." [Footnotes omitted.] See *Sv Makwanyane and Another* 1995 (3) SA 391 (CC); 1995 (6) BCLR (CC) at para 308.

At all times and in all cultures, including those with different moral and religious value systems, they have sought and found ways out of the crisis posed by PIE, the courts **must** accordingly do as well as they can with the evidential and procedural resources at their disposal.

Mediation

[39] In seeking to resolve the above contradictions, the procedural and substantive aspects of justice and equity cannot always be separated. The managerial role of the courts may need to find expression in innovative ways. Thus one potentially dignified and effective mode of achieving sustainable reconciliations of the different interests involved is to encourage and

require the parties to engage with each other in a proactive and endeavour to find mutually acceptable solutions.

See; "Die Entscheidung des Bundesverfassungsgerichts zum Schwangerschaftsabbruch vom 28 Mai 1993 reported in full in a special issue of Juristenzeitung (JZ) of 7 June 1993 at 43. Translated and quoted by Va Zyl Smit in "Reconciling the irreconcilable. Here the problem is not one of competing values but of competing interests with historical roots,

161. I took the liberty to research whether Communicare as argued by the Applicant is not a social housing entity or whether it is as argued by the attorney for the Respondents, and remarkably noted on the Website of the Western Cape Government that Communicare the following " Communicare –finding social affordable housing in Cape Town, Western Cape Government" [http://www.westerncape.gov.za/general-publication/communicare-finding-affordable-housing-cape town](http://www.westerncape.gov.za/general-publication/communicare-finding-affordable-housing-cape-town)

161.1 I noted the following, "Communcare makes affordable housing possible and the NPC was established in 1929 by a group of citizens to address the housing shortage in our province."

161.2 Furthermore also noted "Why rent from Communicare?"

- They are an established social housing company with more than 80years of experience in the rental business
- They manage 3600 rental units and are the largest owner of rental stock in the Western Cape
- Their rental charge is the cheapest per square metre for persons/ households earning between R1500.00 and R15000.00"

161.3 This prompted the court to do further online research of Communcare which I found the following

161.3.1 “Communicare - ONLINE RESEARCH:-By Communicare’s own admission on their website, they used to be called the Citizens Housing League Utility Company (CHL) and, in 1938, the township of Ruyterwacht (formerly called Epping Garden Village) was built in response to “die Arme Blanke vraagstuk” which loosely translates to “the Poor White question”.

161.3.2 “In a thesis by Annika Björnsdotter Teppo titled “The making of a good white” (page 48); she writes: “A few weeks later, the selection committee invited the ‘Mulders’ to a personal interview, a further verification of the respectability that the CHL wanted to foster in the area. After a successful interview, the officials granted the Mulders a house, and they moved to Epping Garden Village in July 1947. The social housing scheme served several purposes of upliftment simultaneously. Cheap rent gave people a chance to save money to buy their own homes. The spatial layout and social services in Epping Garden Village were particularly designed to further the upliftment and surveillance of the population that was chosen to live in the suburb. Three days after the Mulders had moved in, a social worker visited them to explain the rules of the suburb and see that everything was in order. The Mulders were young, in their early twenties, and did not mind the social worker popping in occasionally. In the first years the social workers dealt mainly with poverty. Many of the residents came from impoverished backgrounds in the countryside, and were first generation city-dwellers”. [Full citation: - THE MAKING OF A GOOD WHITE by Annika Björnsdotter Teppo - A Historical Ethnography of the Rehabilitation of Poor Whites in a Suburb of Cape Town - Academic Dissertation Research Series in Anthropology University of Helsinki, Finland - Copyright © 2004 Annika Teppo].”

161.3.3 To all intents and purposes, the entire suburb of Ruyterwacht was a social housing scheme that was administered under the previous New National Party government and its predecessors. So, in the absence of any other proof to the contrary, it is common cause that the whole suburb of Ruyterwacht was part of a special government social housing scheme.

161.3.4 Now, also having read Act 200 of 1993, The Interim Constitution, section 239 effectively deals with the handing over of power from the old regime to the new government

after our first democratic elections, i.e. this section deals with the “Transitional arrangements of Assets and Liabilities” as described in the Act.

161.3.5 The Applicant before Court is silent about whether it has complied with the prescripts of the Interim Constitution of 1993 which was in place prior to 27 April 1994 and there is also no evidence before this Court about whether they completed any asset registers and if these were ever audited by the new incoming government after 27 April 1994.

161.3.6 It was also reported online via the Cape Argus/IOL website on 23 July 2019 that the Social Housing Regulatory Authority was going to probe Communicare after receiving complaints from residents about financial disbursements and the transfer of properties. The status of this important investigation is unclear and unknown despite Government’s announcement of it, through SHRA, more than three years ago.

161.6.7 The Applicant should also have taken this Court into its confidence by stating in its papers filed on record that it was the subject of an unresolved current land claim still pending before the Land Claims Court in Randburg (to wit Case No. LCC 100/2019) as all interesting parties of Communicare have a constitutional right to enquire why eviction proceedings are being brought before lower Magistrates Courts while there is an unresolved land claim still pending against the Applicant in the higher Land Claims Court, yet the replying affidavit to the Third Respondent’s averments, the Property Manager, Mapule Maragela, who was not deposing of the founding affidavit, denies that it is the First Respondent to the Land Claims court case LCC100/2019.

Sources are:

s239: Constitution of the Republic of South Africa Act, 200 of 1993: “Transitional arrangements: Assets and liabilities”:

(1) All assets, including funds and administrative records, which immediately before the commencement of this Constitution vested in an authority referred to in section 235 (1) (a),

(b) or (c), or in a government, administration or force under the control of such an authority, shall be allocated as follows:

(a) Where any asset is applied or intended to be applied for or in connection with a matter which -

(i) does not fall within a functional area specified in Schedule 6; or

(ii) does fall within such a functional area but is a matter referred to in paragraphs (a) to (e) of section 126 (3) (which shall be deemed to include a police asset), such asset shall vest in the national government.

(b) Where any asset is applied or intended to be applied for or in connection with a matter which is not a matter referred to in paragraphs (a) to (e) of section 126 (3), such asset shall, subject to paragraph(c), vest in the relevant provincial government.

(c) Where any asset referred to in paragraph (b) is applied or intended to be applied for or in connection with the administration of a particular law or the performance of a particular function in a particular area, such asset shall vest in the government to which the administration of that law is assigned, or is assigned in that particular area, in terms of section 235 (6), (8) or (9), or to which the performance of that function is entrusted, or entrusted in the particular area, in terms of section 237.

(d) Where any asset cannot in terms of the foregoing rules be classified with reference to a particular matter, law or function, or where there is disagreement between two or more governments, the advice of the Commission on Provincial Government shall be obtained, and any dispute shall be resolved with due regard to such advice.

(e) Parliament shall be competent to enact a law to facilitate the application of this section and to prescribe guidelines for the resolution of disputes arising from such application.

(f) All assets under the control of a police force shall vest in the South African Police Service.

(2) (a) A registrar of deeds shall upon the production of a certificate by a competent authority that immovable property described in the certificate is vested in a particular government in terms of this section, make such entries or endorsements in or on any relevant register, title deed or other document to register such immovable property in the name of such government.

(b) No duty, fee or other charge shall be payable in respect of a registration in terms of paragraph (a).

(3) (a) Subject to paragraph (b), all debts and liabilities -

(i) directly linked to an asset vesting in terms of subsection (1) in a provincial government, shall be assumed by such provincial government; and

(ii) other than those referred to in subparagraph (i) shall be assumed by the national government: Provided that the servicing of all state debts and liabilities not provided for in this Constitution shall be undertaken by the national government until allocated to the relevant level of government.

(b) Parliament shall be competent to pass a law regulating the re-allocation of debts and liabilities to the national government and the respective provincial governments, but no such law shall be passed unless a report and recommendations of the Financial and Fiscal Commission has been tabled in and considered by Parliament.

(4) Subject to and in accordance with any applicable law, the assets, rights, duties and liabilities of all forces referred to in section 224(2) shall devolve upon the National Defence Force.

(5) Anything done in terms of this section shall be subject to audit by the Auditor-General.

History

1929 – Citizens, concerned about the housing conditions in Cape Town form the Citizens Housing League Utility Company

1930 – First housing development built – Crawford

1931 – First large scale ‘model village’ – Brooklyn

1938 – Ruyterwacht township established in response to Arm Blanke vraagstuk

1941 – 1500 homes built after 12 years

1944 – Second World War

1950 – Introduction of Group Areas Act

1951 – First Coloured residential township built – Bishop Lavis

1976 – Developed Creswell House for Seniors

1976 – Soweto uprisings

1980 – Shell SA becomes first corporate sponsor (R15,000)

1983 – First Life Rights Village built – Berghof

1989 – First market rental development – Ascot Square

1989 – First bonded housing project targeting black people – Mfuleni

1990 – Name changed to Communicare

1994 – National Democratic Elections

2009 – Communicare celebrates its 80th Anniversary by publicly accepting responsibility for the role it played in treating people inequitably in the past and committing to never again be party to unfair discrimination. The Communicare Foundation is formed to promote transformation in society

<https://communicare.co.za/history/>

Ruling

It is trite law that in civil proceedings the test is based on a balance of probabilities.

The Applicant have to this day not filed any Board/Directors Resolution to support its founding affidavit.

Furthermore there is not even a Memorandum of Incorporation nor Special resolution supporting the Applicant's delegation of authority.

I cannot be expected to turn a blind eye to this vital evidence omitted by the Applicant, and be expected to follow blindly the normal procedure by other district courts in the Western Cape, as was put to the court by the attorney of the Applicant, that it is normally accepted to only proof the delegation and no resolution is required, as all companies are regulated by company law and Act 71 of 2008 clearly sets out the legalities applicable.

As a creature of statute Magistrates must also confine themselves to the law but we also have to be open to the evolvement of times as laws are not written in permanent ink as it is ever changing.

There is nothing before this court as proof that the Applicant, have possibly resolved any dispute, by means of either, Alternative dispute resolution, or Mediation process, or referred it to the Housing Rental Tribunal, before resorting to the court for eviction

In my view it seemed from the state organ's (Western Cape Government's) website as listed in my judgement that the Applicant acts as an agent to provide social housing to the most vulnerable, therefore in my view have a statutory obligation to act in the best interest of the citizens, which are its clients and not exploit the situation with timeous long winded court proceedings.

Given the circumstances and extensive explanation in my judgement concerning lack of authority, locus standi amongst other issues, I am not satisfied that the Applicant, who deposed of the founding affidavit, have the necessary locus standi to act.

I am satisfied that on a balance of probabilities, that the interest of the Respondents , outweighs that of the Applicant.

Order

The Application brought by the Applicant in terms of Section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation Act 19 of 1998 against the Respondents is dismissed

As to costs, the application was opposed, and costs should follow the outcome, therefore the court orders In respect of costs, costs are awarded in favour of the Respondent on a party-party scale to be taxed.

Delivered on the 03rd day of August 2022 at Cape Town Magistrate's Court

By Add.Acting Magistrate Venice Burgins

And a copy hereof was handed to the attorney for the Applicant, Ms Sutton

And a copy hereof was handed to the attorney for the Respondents, Mr Dlova