

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at **RANDBURG**

CASE NUMBER: LCC10R/98

In the review proceedings in the matter between:

CITY COUNCIL OF SPRINGS

Applicant

and

THE OCCUPANTS OF THE FARM KWA-THEMA 210

Respondents

JUDGMENT

GILDENHUYS J:

[1] An informal settlement came into existence on a portion of the Farm Kwa-Thema No 210, Registration Division IR, Transvaal. The portion originally belonged to the City Council of Kwa-Thema, and is now owned by the City Council of Springs (hereinafter referred to as **the Council**). The Council was established on 6 December 1994, and is the successor of the City Council of Kwa-Thema. As from 6 December 1994, it became responsible for the management and control of the area concerned, being part of its area of jurisdiction.

[2] The Council intends to establish a township to be known as Kwa-Thema Extension 3 on the portion occupied by the informal settlement (hereinafter referred to as **the property**). The proposed township was approved by the Administrator of the Province of Transvaal (as formerly known) in terms of Regulation 16(5) of the Townships Establishment and Land Use Regulations, 1986. Conditions of establishment for the proposed township were issued. In the course of establishing the township, the Council must install and provide services. The Council entered into contractual commitments for the installation of services on the property. The present occupiers of the informal settlement must vacate the property before the contractors can install the services. The Council made other land (hereinafter referred to as **the waiting area**) available to the occupiers, to which they can move. A substantial number of the occupiers refuse to move.

[3] The Council alleges that it is liable for penalties to the contractors for as long as it cannot give the contractors vacant occupation of the property. In order to proceed with the establishment of the township and to avoid the payment of penalties, the Council obtained a rule *nisi* in the Springs Magistrate's Court calling upon the occupiers of the property to show cause why they should not be evicted. The occupiers were cited as a group, not individually. The rule *nisi* was granted on an urgent basis, under section 15 of the Extension of Security of Tenure Act, Act No 62 of 1997 (hereinafter referred to as the Tenure Act). The Magistrate ordered the rule to be served on each occupier individually. This did not happen. According to a return of service filed by the Deputy Sheriff, service was effected on approximately seventy occupiers, whereafter further attempts to effect service were abandoned because of the threatening attitude adopted by some of the residents. The Sheriff feared for his safety. The Council then took other steps to bring the order to the notice of the occupiers, *inter alia* by using a loudhailer.

[4] Some occupiers decided to oppose the application for an eviction order. They instructed an attorney, Mr van Rensburg, to represent them. On the return date Mr van Rensburg appeared at the Magistrate's Court on their behalf, but withdrew for lack of instructions, in circumstances with which I shall deal later in this judgment. The Magistrate then granted a final order on an unopposed basis. Three days after the final order was granted in the Magistrate's Court, Mr David Mahlangu, one of the occupiers, applied to this Court on an urgent basis for the review of the proceedings in the Magistrate's Court, and for an order suspending the Magistrate's eviction order pending the outcome of the review. The eviction order granted by the Magistrate is subject to automatic review in terms of section 19(3) of the Tenure Act. I was of the opinion that automatic review under the Tenure Act is a quicker and more expedient procedure than common law review. Accordingly on 3 August 1998, I suspended the order of the Magistrate pending the outcome of the automatic review under section 19(3) of the Tenure Act. I ordered the cost of the review application to be decided simultaneously with the automatic review of the order of the Magistrate.

[5] The Magistrate transmitted the matter to this Court for automatic review, and motivated her final order in her reasons for judgment as follows. I quote her *ipsissima verba*:

I was of the opinion that Applicants met the criteria for an urgent application and set out sufficient grounds that is why Rule *Nisi* was issued and later without any response from the other side (except for the withdrawal from Mr van Rensburg) granted due to the fact that there was nothing else before the Court except the Applicants version which seem to have met the prerequisites.®

She added the following comments on the Tenure Act:

This is indeed a new and complicated act which still has to be studied intensively and will only be implemented correctly with the guidance of the Land Claims Court and the High Court itself.®

At the time when the Magistrate made her order, this Court had already given three judgments on the Tenure Act¹ which could have assisted the Magistrate, if the judgments were available to her. Although it must be conceded that the Tenure Act is a complicated piece of legislation, it would appear that the Magistrate made little attempt to study and interpret the Act. She gave an order which, as this judgment will show, cannot be sustained.

[6] Before deciding the automatic review, we gave the parties an opportunity to make oral submissions in terms of the proviso to section 19(3) of the Tenure Act. Both Mr Mahlangu (acting for a group of occupiers) and the Council availed themselves of this opportunity. This judgment deals with the review of the Magistrate's order, and the reasons for my conclusion.

[7] It is common cause that the occupiers of the property are *occupiers*® within the meaning given to that term in the Tenure Act (section 1), and that the Tenure Act applies. The Magistrate issued her order under section 15 of the Tenure Act. Section 15 reads as follows :

¹ *Lategan v Koopman and Four Others* 1998 (3) SA 457 (LCC); *Karabo and 64 Others v Kok and Two Others*, LCC5/98, 20 February 1998, to be reported in [1998] 3 All SA; *M P du Toit v Lewak Le Kay alias Lewak Langtrety*, LCC9R/98, 1 July 1998, as yet unreported

Notwithstanding any other provision of this Act, the owner or person in charge may make urgent application for the removal of any occupier from land pending the outcome of proceedings for a final order, and the court may grant an order for the removal of that occupier if it is satisfied that -
@

Section 15 then lists four factors of which the court must be satisfied. These factors are not relevant for purposes of this judgment. During argument, the parties were *ad idem* that the final order made by the Magistrate could not have been made under section 15. Section 15 only permits a temporary order, pending the outcome of proceedings for a final order. The requirements for a final eviction order are contained in section 9(2) of the Tenure Act.

[8] Mr Grobler, appearing for the Council, submitted that all the jurisdictional facts which would have enabled the Magistrate to make a final eviction order under section 9(2) of the Tenure Act are present. He argued that the order of the Magistrate should not be set aside just because it was made under the wrong section of the Tenure Act.² An eviction order under section 9(2) may be granted on an urgent basis if the requirements of the section and the procedural requirements of the Court are met. Section 15 of the Tenure Act allows a court to dispense with the requirements of the Act when granting an eviction order, provided the order is a temporary order and provided further that certain factors are present which necessitate the urgent removal of an occupier from land. In cases where it is not necessary to dispense with any requirements of the Tenure Act, it is not necessary to rely on section 15 for an urgent eviction order.

[9] Before deciding whether the proceedings in the Magistrate's Court can be salvaged on the basis that there is evidence upon which a final eviction order under section 9(2) of the Tenure Act could have been made, it is necessary to determine what the requirements of section 9(2) are, and to scrutinize the evidence which might support those requirements. Section 9(2) reads as follows:

² For this submission, he relied on the decisions in :
Latib v The Administrator, Transvaal 1969 (3) SA 186 (T) at 190E-191A; *Avenue Delicatessen and Others v Natal Technikon*, 1986 (1) SA 853 (A) at 870I; *Klerkdorpse Stadsraad v Renswyk Slaghuis (Edms) Bpk* 1988 (3) SA 850 (A) at 873E-874A; and *Executive Council, Western Cape Legislature v President of RSA* 1995 (4) SA 877 (CC) at 860H and 966A

- A(2) A Court may make an order for the eviction of an occupier if -
- (a) the occupier's right of residence has been terminated in terms of section 8;
 - (b) the occupier has not vacated the land within the period of notice given by the owner or person in charge;
 - (c) the conditions for an order for eviction in terms of section 10 or 11 have been complied with; and
 - (d) the owner or person in charge has, after the termination of the right of residence, given -
 - (i) the occupier;
 - (ii) the municipality in whose jurisdiction the land in question is situated; and
 - (iii) the head of the relevant provincial office of the Department of Land Affairs, for information purposes,

not less than two calendar months' written notice of the intention to obtain an order for eviction, which notice shall contain the prescribed particulars and set out the grounds on which the eviction is based: Provided that if a notice of application to a court has, after the termination of the right of residence, been given to the occupier, the municipality and the head of the relevant provincial office of the Department of Land Affairs not less than two months before the date of the commencement of the hearing of the application, this paragraph shall be deemed to have been complied with.@

A person applying for an eviction order must show that all four prerequisites of section 9(2) have been fulfilled before a final eviction order can be granted. I will deal with these prerequisites separately hereunder.

[10] Firstly, the Council must establish that the rights of residence of the occupiers have been terminated in terms of section 8 of the Tenure Act. Section 8 requires that a termination must be just and equitable, having regard to all relevant factors. A number of factors which must be considered are listed in the section. It is clear from the papers that attempts by the Council to obtain the removal of the occupiers from the property stretch over a long period of time. Many meetings were held, at which it was made clear to the occupiers that they had to move because the property was required for the installation of services prior to the establishment of a township.

Alternative property to which the occupiers could move, was offered. In my view there are sufficient allegations in the papers before the Magistrate which would enable a court (in the absence of evidence to the contrary) to conclude that the occupiers' right of residence was terminated in a manner which was lawful, just and equitable.

[11] Secondly, the Council must establish that the occupiers did not vacate the property within the period of notice given to them. According to papers filed by the Council, notice was given to the occupiers that they had to vacate the property at several community meetings, and also between 20 and 22 May 1998 through a document distributed amongst the occupiers, the relevant portions of which read as follows:

AURGENT NOTICE

- 1 **KINDLY TAKE NOTICE THAT** you are hereby requested either to:
 - 1.1 move to the erf allocated to you if you were an successful applicant in terms of the Housing Subsidy Scheme; or
 - 1.2 to move to the designated area in the event of you not having applied/having been successful in your application.

- 2 The designated area (previously referred to as the transfer area) is East of the Eskom power line and south-west of the cemetery in Kwa-Thema Extension 3. The Chief Liaison Officer of CIVEC, Mr N Mazibuko, will allocate the stands at the designated area and can be contacted as CIVEC's office on site at Kwa-Thema Extension 3.

- 3 **FURTHER TAKE NOTICE** that Springs City Council is prepared to assist you in the transfer of your property from your existing erf to the designated area or to your allocated erf in the event of your having been successful in your application for housing subsidy.

- 4 **FURTHER TAKE NOTICE** that you are given seven days from receipt of this notice to act as aforesaid, as you have received numerous instructions previously to move to the aforesaid area (in order that the construction of the water and sewerage in Kwa-Thema Extension 3 could be executed properly),

- 5 **YOUR FAILURE** to act in accordance with notice, will result in a court order to remove you to / evict you from the area.®

It is common cause that the occupiers are still on the property.

[12] Thirdly, the conditions for an order for eviction in terms of section 10 or 11 of the Tenure Act must have been complied with. Section 10 applies to persons who were occupiers on 4 February 1997, while section 11 applies to persons who only became occupiers after 4 February 1997. In this case it is likely that section 10 will apply to some of the occupiers, while section 11 will apply to others. Section 10(2) permits a Court to grant an order for eviction if it is satisfied that suitable alternative accommodation is available to the occupiers concerned. It is clear from the affidavits filed on behalf of the Council that the waiting area is available to the occupiers, where they can re-erect their structures. The Council alleges that the waiting area is suitable for such purposes. I was told from the bar that the suitability of the waiting area is denied by the occupiers. Section 11 of the Tenure Act authorises a court to grant an eviction order in respect of a person who became an occupier after 4 February 1997, if it is of the opinion that it is just and equitable to do so. The Council submits that their development plans for the property together with their offer of alternative land makes the grant of an eviction order just and equitable. This will, of course, depend on the suitability of the alternative accommodation, which has not been conclusively established. Mr Grobler submitted that the third requirement of section 9(2) of the Tenure Act has been complied with because, irrespective of whether section 10 or section 11 applies to a particular occupier, there is sufficient *prima facie* evidence to establish that the requirements of both sections were met.

[13] Fourthly, the owner or person in charge of the property must, after the termination of the right of residence, have given written notice of not less than two calendar months to the occupier, the municipality in whose area of jurisdiction the land in question is situated and the head of the relevant provincial office of the Department of Land Affairs of their intention to obtain an order for eviction. The section contains a proviso that if a notice of an application to a court has, after the termination of the right of residence, been given to the occupier, the municipality and the head of the relevant provincial office of the Department of Land Affairs not less than two calendar months before the date of the commencement of the hearing of the application, this requirement shall be deemed to have been complied with. The Council relies on the Urgent Notice which I have quoted in paragraph [11] as constituting the notice required under section 9(2)(d). Whether this document can constitute both the notice terminating the occupiers' right of residence and the

notice informing the occupiers of the Council's intention to apply for an eviction order, is questionable. The notice of intention to apply for an eviction order can only be given after the right of residence has been terminated. It is also doubtful whether the contents of the notice constitutes sufficient compliance with section 9(2)(d).

[14] The object of section 9(2)(d) is twofold. Firstly, it ensures adequate notice to persons who may want to object or otherwise protect their rights. Secondly, it gives the municipality and the provincial office of the Department of Land Affairs sufficient time to take the steps which they may consider necessary to deal with the situation. Notice of at least two calendar months is required. If the objective of adequate notice is met, there might well be sufficient compliance with the section, despite the absence of exact compliance.³ If the required notice can be achieved in some other manner, such as by the issue of a rule *nisi*, the purpose of section 9(2)(d) will also be met. In this connection the Court ought to adopt a robust approach, as was suggested by Hoberman AJ in *Msoki v Minister of Law and Order and Others*:⁴

I am mindful of the fact that, as stated by Holmes JA, in *Commercial Union Assurance Company of South Africa Ltd v Clarke* 1972 (3) SA 508 (A) at 516B-C, 'a robust and practical approach as distinct from a legal one' is to be adopted in dealing with legislative provisions which require a claimant to give due notice prior to the institution of proceedings.@

[15] On the view which I take of the matter, any deficiency in the notice to the occupiers of the Council's intention to apply for an eviction order can be cured by the issue of a rule *nisi* with a return date more than two calendar months later, and by requiring the Council to serve the rule *nisi* on the occupiers. This approach is in line with the proviso to section 9(2)(d), which recognises that the eviction litigation may commence during the notice period.

[16] Section 9(2)(d) also requires notice of the intention to obtain an eviction order to be given to the municipality in whose area of jurisdiction the property is situated, and to the head of the

³ *J E M Motors Ltd v Boutle and Another* 1961 (2) SA 320 (N) at 327G-H

⁴ 1990 (3) SA 245 (C) at 248G-H

relevant provincial office of the Department of Land Affairs. Because the Council itself is the applicant for the eviction order, it is obviously not necessary for the Council to give notice of the application to itself. The Council does, however, admit that no notice of the intended application was given to the relevant provincial office of the Department of Land Affairs. Mr Grobler invited the Court to remedy this by substituting the order issued by the Magistrate by a rule *nisi*, with a return date of more than two calendar months after the issue, calling upon the head of the relevant provincial office to show cause why the order should not be made final. In my view, this is a practical way to remedy the absence of notice to the relevant provincial office.

[17] It appears to me that, but for the deficiencies in the content and service of the notice of intention to obtain an eviction order, the papers before the Magistrate contain sufficient allegations to establish, on a *prima facie* basis, the facts necessary for a final eviction order under section 9(2). Service of a rule *nisi* on the occupiers and the Department will address the deficiencies relating to the notice of intention to obtain an eviction order.⁵ I am mindful of the fact that the occupiers have not responded to the affidavits filed on behalf of the Council, and that after such response, a court may well come to a different conclusion as to whether or not the requirements of section 9(2) have been met.

[18] Mr Mahlangu explained, in his affidavit in the review application lodged with this Court, why the occupiers were not present when the final order was granted by the Magistrate and why their attorney withdrew. Mr Grobler originally submitted that I could not have regard to that explanation because the review is restricted to the four corners of the record of the Magistrate's Court proceedings. Later Mr Grobler conceded that it would be permissible for the Court to go beyond the record in deciding whether or not to interfere with the Magistrate's order. This concession was properly made, as will appear from the authorities examined below.

⁵ The requirement contained in section 9(2)(d) of the Tenure Act

[19] It was held in *Johannesburg Consolidated Investment Co v Johannesburg Town Council*⁶ that review is capable of three distinct and separate meanings. These are set out in the headnote as follows :

- A(a) Review by summons. The process by which, apart from appeal, the proceedings of inferior Courts of Justice both civil and criminal, are brought before the Supreme Court in respect of grave irregularities or illegalities occurring during the course of such proceedings.
- (b) Review by motion. The process by which where a public body has a duty imposed on it by statute, or is guilty of gross irregularity or clear illegality in the performance of that duty, its proceedings may be set aside or corrected.
- (c) A wider power specially given under particular statutes (e g, Insolvency Law, No 13 of 1895, secs 98, 105; Administration of Justice Proclamation, No 14 of 1902; Transfer Duty Proclamation, No 8 of 1902, sec 4 par 8) to the Court or a Judge, and enabling such Court or Judge, in respect of the matter referred to them, to exercise the powers of a Court of Appeal or Review, or even a Court of first instance.®

In the present instance, we are dealing with a review of the third category. This is a form of review unique to South Africa.⁷ Innes CJ described it in the *Johannesburg Consolidated Investment* case⁸ as follows:

A... the Legislature meant to use the word review in its widest and in what may be called its popular sense. So employed the expression `review' seems to mean `examine' or `take into consideration'. And when a Court of law is charged with the duty of examining or considering a matter already dealt with by an inferior Court, and no restrictions are placed upon it in so doing, it would appear to me that the powers intended to be conferred upon it are unlimited. In other words it may enter upon and decide the matter *de novo*. It possesses not only the powers of a Court of review in the legal sense, but it has the functions of a Court of Appeal with the additional privileges of being able, after setting aside the decision arrived at by the lower Tribunal, to deal with the whole matter upon fresh evidence as a Court of first instance.®

In my view the Court cannot adequately fulfil its review function if it cannot have regard to matters or circumstances not evident from the record of the case. This Court has been given Aall the

⁶ 1903 TS 111

⁷ See *Lategan v Koopman and Others* 1998 (3) SA 457 (LCC) in par [11] at 463H-464C

⁸ Supra n6, at 117

ancillary powers necessary or reasonably incidental to the performance of its functions⁹ Consequently, I consider myself entitled to have regard to the explanation given by Mr Mahlangu in the review application lodged with this Court as to the circumstances which led to the final Magistrate's order being granted on 31 July 1998 by default. The explanation, in brief, is that the occupiers received a message that they should go to the police station on 31 July 1998. They went to the police station, and not to the Magistrate's Court. At the Magistrate's Court, Mr van Rensburg could not obtain instructions, and consequently withdrew from the matter.

[20] It is clear to me from the contents of the review application brought before this Court and also from the fact that the occupiers were represented in these proceedings, that they never acquiesced in the order granted by the Magistrate. They gave a satisfactory reason why they were absent when the Magistrate's order was granted. It is also important to remember that the rule *nisi* issued by the Magistrate was not served on all the occupiers, as was required. I am consequently of the view that the occupiers should be given an opportunity to put their case before the Court. This can best be done by having the rule *nisi* which the Council suggested be served on the Department of Land Affairs, also served on the occupiers, allowing them to contest the granting of a final order.

[21] An alternative approach would be to quash the order made by the Magistrate. This would compel the Council to commence proceedings afresh. Mr Botha urged me to adopt this approach. In my view, this would constitute an unnecessary waste of time and money. It would be preferable to substitute the order made by the Magistrate with a rule *nisi*, calling not only upon the head of the regional office of the Department of Land Affairs (as suggested by Mr Grobler) but also upon the occupiers to show cause why a final eviction order under section 9(2) of the Tenure Act should not be granted.

[22] The next problem is to identify the occupiers on whom such a rule *nisi* must be served, and to whom a final order will apply. Mr Botha submitted that each occupier against whom an order

⁹ Section 20(1) of the Tenure Act

is sought, must be identified individually and service upon him or her must be effected individually. In my view, this is impractical. We have been informed from the bar that the occupiers have organised themselves to resist the eviction application jointly. Whether this organisation includes every individual occupier, I do not know. There is ample precedent for serving legal process which will affect a group of persons, on the representatives of such a group. Each member of the group must, however, have an opportunity to decide for himself or herself whether he or she will oppose the relief sought (either through a representative, or personally).

[23] Mr Grobler has drawn my attention to a practice adopted by the High Court in applications for the removal of restrictive title conditions. In such applications, a rule *nisi* is served on the persons affected (who may be many) through some form of substituted service as authorised by the Court. Each individual person is then given an opportunity to join in the proceedings and to oppose the final order. Mr Grobler has also submitted, by way of example, an order which was granted by the Witwatersrand Local Division of the High Court¹⁰ in an eviction case, not under the Tenure Act, a few days ago. In that case, a rule *nisi* was issued against a group of people against whom an ejection order was sought, without naming each of them individually. Substituted service of the rule *nisi* was authorised. A similar procedure would be apposite in this case.

[24] Finally, I come to the question of costs. Mr Mahlangu was successful in obtaining a suspension of the Magistrate's order in the review application which he brought before this Court, and in having the Magistrate's order set aside on automatic review. The costs of the review application, which I reserved on 3 August 1998, must therefore be awarded in favour of Mr Mahlangu. Mr Grobler submitted that the submissions made on 27 and 28 August 1998 during the hearing of the automatic review were made at the invitation of the Court, there being no *lis* between the parties. The appearance of counsel, so he argued, is akin to the role of an *amicus curiae*. Appearance as *amicus curiae* does not necessarily afford a safe shield against the sting

¹⁰ In the matter of *Samson Kataka and Others v The Roma Squatters and Others*, WLD98/21174, 25 August 1998, unreported.

of costs¹¹ In any event, automatic review of an eviction order granted by a Magistrate seems to me to be a necessary continuation of the proceedings which served before the Magistrate. Mr Mahlangu was substantially successful in the automatic review proceedings in that the final order made by the Magistrate will be set aside. In my view, he should get his costs. In so deciding, I am mindful of the fact that the Tenure Act is social legislation, in respect of which it is not always advisable to make cost orders.¹² In this case, the order applied for and made by the Magistrate was so obviously inappropriate that a costs order is justified.¹³

[25] For the above reasons, the Court orders that:

A The Order given by the additional Magistrate, in the Magistrate's Court for the district of Springs, held at Springs, case number 6535/98 on 31 July 1998 is hereby set aside and substituted with the rule *nisi* set out in B hereunder.

B A rule *nisi* is hereby issued returnable on 1 December 1998, calling upon -

- (i) every occupier of land forming part of the land proposed for the establishment of a township to be known as Kwa-Thema Extension 3 on the farm Kwa-Thema No 210, Registration Division IR, Transvaal, as shown on a map attached to Applicant's founding affidavit and marked Annexure AE@ (hereinafter referred to as Athe property@); and
- (ii) the head of the provincial office of the Department of Land Affairs, Gauteng,

to appear at the Magistrate's Court for the district of Springs, at Springs, on 1 December 1998 at 09:00, personally or by counsel or attorney, to object if they (or any of them) choose to do so, to the granting of orders as set out below:

¹¹ *Annamalai v Newcastle Town Council* 1960 (1) SA 550 (N) at 559E. Compare also *Marendaz v Smuts* 1966 (4) SA 66 (T) at 75A-D.

¹² See the judgments of Dodson J in *Mahlangu v De Jager* 1996 (3) SA 235 (LCC) at 246 and in *Hlatshwayo and Others v Hein* [1998] 1 All SA 123, par [18] to [26] at 134H to 139A

¹³ This accords with the approach adopted by this Court in *Farjas (Pty) Ltd v Regional Land Claims Commissioner, KwaZulu Natal* 1998 (2) SA 900 (LCC) at 930H to 931B

- 1 ordering each occupier and every person holding title under an occupier to vacate the property and to remove every informal structure (other than a permanent structure) occupied by him or her on the property, within fourteen days from service of the final order in a manner of service as ordered by the Court;
- 2 interdicting and restraining each occupier and every person holding title under an occupier from thereafter depriving the Applicant or its agents or employees of the possession, use and enjoyment of the property;
- 3 ordering the Applicant to make available free of charge to each occupier vacating the property in terms of 1:
 - (a) land to be used for the erection of a temporary structure or structures for the occupiers' accommodation at the waiting area as described in Annexure AF@ to the Applicant's founding affidavit; and
 - (b) transport of the occupiers' belongings, including the materials salvaged from any structure to be removed in terms of 1;
- 4 in the event of any occupier failing to vacate the property within the time limit set in 1, authorising and directing the Sheriff -
 - (a) to evict all persons occupying the property, provided that such eviction shall not be carried out earlier than three days after the expiry of the thirty day period in 1;
 - (b) to ascertain and note the identity of each person so evicted;
 - (c) to demolish all informal structures found on the property and to move all material salvaged therefrom to the waiting area as indicated on Annexure AF@ to the Applicant's founding affidavit;
- 5 granting the Applicant such further or alternative relief as the Honourable Court may deem appropriate;
- 6 ordering -
 - (a) those occupiers who oppose this order; and
 - (b) any other person who opposes this order,

to pay the Applicant's costs.

C The Applicant is ordered -

- 1 to serve a copy of the rule *nisi* (in B) on Mr David Mahlangu, and to provide Mr Mahlangu with 500 copies thereof for distribution amongst the occupiers of the property by no later than 11 September 1998;
- 2 to annex to each of the 500 copies of the Order provided to Mr Mahlangu -
 - (a) a copy of Form 9 of Schedule 1 to the Land Claims Court Rules; and
 - (b) a notice informing the occupiers that -
 - (i) the Land Claims Court has substituted the eviction order issued by the Magistrate's Court on 31 July 1998 by the rule *nisi*; and
 - (ii) copies of the papers filed in the matter (and, in particular, Annexure AE@ and Annexure AF@ to the Founding Affidavit) may be obtained free of charge from the Applicant at its offices at an address and applicable room number to be stated in the notice.
- 3 to exhibit a copy of the rule *nisi* with its annexures (as in C 2) at a conspicuous place -
 - (a) on a suitable notice board at the offices of the Applicant; and
 - (b) on suitable notice boards to be erected by the Applicant on Sibolayi Street, on Ndlela Street and on Madiba Street, within the property,and continue to exhibit these copies up until and including 25 September 1998;
- 4 to have available at its offices up until and including 25 September 1998, a copy of all the papers filed in the matter for inspection by any occupier, and to give to every occupier, on request and free of charge, a copy of such papers;
- 5 to serve a copy of this Order and of all papers filed with the Magistrate's Court in the matter, on the head of the provincial office of the Department of Land Affairs, Gauteng, by no later than 11 September 1998; and
- 6 to file with the Clerk of the Magistrates' Court at Springs by no later than 30 September 1998, proof (by way of affidavit or otherwise) that the provisions of C1 to C5 of this Order have been complied with.

D The Magistrate -

- 1 may upon the return date of the rule *nisi*, discharge or change the terms of the order as may be appropriate in the light of evidence presented and submissions made to her;
- 2 is directed to give consideration to and make suitable orders in respect of the matters referred to in section 13 of the Extension of Security of Tenure Act, 1997 (Act No 62 of 1997), if and when an eviction order is made;
- 3 is directed to include in any eviction order which he or she may grant, directions in respect of the persons on whom and the manner in which such order must be served, such service to be effected only after the automatic review of the order by this Court; and
- 4 is directed to forward any eviction order which may be made against an occupier forthwith to the Land Claims Court for automatic review under section 19(3) of the Extension of Security of Tenure Act, 1997.

E the City Council of Springs is ordered to pay the costs of Mr David Mahlangu -

- 1 in the review application which served before this Court in case number 83/98; and
- 2 in the automatic review of the Magistrate's order under section 19(3) of the Extension of Security of Tenure Act, 1997, which served before this Court on 27 and 28 August 1998.

JUDGE A GILDENHUYS

I agree

JUDGE J MOLOTO

Heard on: 27 and 28 August 1998

Handed down on: 3 September 1998

For the applicant:

S J Grobler and L G F Putter instructed by *Ivan Davies Theunissen*

For the respondent:

J J Botha instructed by *Nico van Rensburg and Associates*