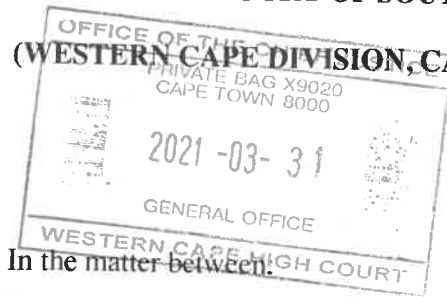


**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**



Case number:

5708/21

In the matter between:

CARIN THERESA RHOODE GELDERBLOEM

First Applicant

LAUREN FREDERICKS

Second Applicant

VUYO MBOZI

Third Applicant

NATASHA PERSENT

Fourth Applicant

JAYSEELAN PILLAY

Fifth Applicant

RICHARD MABEKO

Sixth Applicant

XOLANI SIBOXO

Seventh Applicant

VALENCIA NABELEMWINI

Eighth Applicant

JIMMY ENSIL

Ninth Applicant

TRACY DE VRIES

Tenth Applicant

JOHAN VAN DER POEL

Eleventh Applicant

And

THE CITY OF CAPE TOWN

Respondent

NOTICE IN TERMS OF RULE 16A

BE PLEASED TO TAKE NOTICE THAT the applicants in the above application raise constitutional issues:

1. The first constitutional issue that is whether sections 2 and 22(2) read with section 23 of the City of Cape Town (“**the City**”) By-law Relating to Streets, Public Places and the Prevention of Noise Nuisance, 2007 (“the impugned provisions of the Streets By-law”) violate sections 9, 10, 12(1)(a) and (e), 14, 21(1) and (3), 25(1), and 26(1) and (3) of the Constitution.
2. The impugned provisions of the Streets By-law prohibit and criminalise the following conduct of street people – that is people who for any reason use the outdoors as a place of abode for a lengthy period of time – in a public place:
 - 2.1. sleeping or camping overnight;
 - 2.2. erecting shelters;
 - 2.3. packing or unpacking material used for shelter;
 - 2.4. begging, standing, sitting or lying;
 - 2.5. bathing or washing themselves not in a bath or shower, and not as part of a cultural initiation ceremony; and
 - 2.6. leaving, storing, packing, or unpacking personal belongings or allowing personal belongings to be left, stored, packed or unpacked or accumulate or cause to be accumulated provided that the material

and belongings are neatly stored in a manner that does not cause an obstruction or danger to the public.

3. The second constitutional issue that the applicants raise is the correct interpretation and application, and in the alternative the constitutionality, of sections 1 and 15(1) of the City of Cape Town Integrated Waste Management By-law, 2009 (“the Waste By-law”):

3.1 The City’s law enforcement officers have routinely incorrectly interpreted the words “litter” or “waste” in the Waste By-Law to include the personal belongings of street people. The applicants allege that such interpretation and application of the provisions of the Waste By-Law is the incorrect as it violates sections 10, 12(1) (e), 14, 25(1), and 26(1) and (3) of the Constitution.

3.2 Therefore, the provisions of the Waste By-Law should be interpreted in a constitutionally compliant manner (as contemplated by section 39(2) of the Constitution) so that the words “litter” and “waste” as in the Waste By-law, and in particular sections 1 and 15(1) thereof, do not include the personal belongings of street people. The By-Law is capable of being interpreted in this manner, and it should be preferred over the interpretation of the City and its officials.

3.3 In the alternative, should the provisions of the Waste By-Law not be capable of being interpreted in the manner set out in paragraph 3.2, the provisions are unconstitutional and invalid and violate sections 10, 12(1) (e), 14, 25(1), and 26(1) and (3) of the Constitution to the extent

that they empower the City and its officials to deprive and confiscate the personal belongings of street people as “waste” or “litter” as defined.

4. The Street By-Law together with the incorrect interpretation and application of the Waste By-Law (together “the By-Laws”), affect street people in an adverse manner for performing ordinary activities while those who are not homeless can perform these activities in a private place. The By-Laws therefore infringe the applicants’ and other street peoples’ right to equality before the law.
5. The criminalisation of these activities amounts to indirect discrimination against street people on prohibited grounds in that it: perpetuates their systemic disadvantage as a vulnerable group in society; violates their human dignity; and adversely affects the equal enjoyment of their rights and freedoms in a serious manner which is comparable in nature to discrimination on any listed prohibited ground.
6. Making unlawful, and criminalising, normal behaviour associated with homelessness is a cruel, inhumane and harsh measure in response to the condition experienced by street people. The By-Laws and their enforcement result in a denial of human dignity and reinforce the further alienation of street people from mainstream society. The criminalisation reflects a deep-seated societal stigmatisation of street people as deviants and criminals. This is deeply humiliating, dehumanising and significantly impacts street peoples’ sense of self-respect and self-worth.
7. By making unlawful, and by criminalising, these normal human activities, the

right to freedom and security of the person is violated. Street peoples' physical and mental security is threatened by the By-Laws that authorise law enforcement officers to question their presence in public spaces, ask them to leave areas and confiscate their belongings. The By-Laws therefore violate the right to freedom of movement and residence and deprive street people of their property in an arbitrary manner when personal possessions are confiscated by the City's officials.

8. The criminalisation of homelessness is not justified. The issuing of fines to homeless people is not justifiable and is unreasonable as street people are already vulnerable and destitute members of society. The penal nature of the By-Laws compounds and exacerbates their systemic disadvantage and vulnerability.
9. Lastly, the criminalisation of homelessness imposes a legal barrier that impairs access to existing adequate housing. Taking away the materials that street people use to build their homes, in certain circumstances, permit what eviction without a court order.

TAKE NOTICE FURTHER that the applicants seek the following relief in their notice of motion:

1. Declaring that the City of Cape Town ("**the City**") By-law Relating to Streets, Public Places and the Prevention of Noise Nuisance, 2007 ("**the Streets By-law**") violates sections 9, 10, 12(1)(a) and (e), 14, 21(1) and (3), 25(1), and 26(1) and (3) of the Constitution, and is unconstitutional and invalid, to the extent that sections 2 and 22(2) read with section 23 of the Streets By-law

prohibit and criminalise the following conduct of street people (defined in prayer 3.1 below) in a public place:

- 1.1 sleeping or camping overnight;
 - 1.2 erecting shelters;
 - 1.3 packing or unpacking material used for shelter;
 - 1.4 begging, standing, sitting or lying;
 - 1.5 bathing or washing themselves not in a bath or shower, and not as part of a cultural initiation ceremony; and
 - 1.6 leaving, storing, packing, or unpacking personal belongings or allowing personal belongings to be left, stored, packed or unpacked or accumulate or cause to be accumulated provided that the material and belongings are neatly stored in a manner that does not cause an obstruction or danger to the public,
2. The declaration of invalidity in prayer 1 is suspended for a period of 12 months to afford the City an opportunity to correct the defects giving rise to the constitutional invalidity.
 3. During the period of suspension referred to in prayer 2:
 - 3.1 the following definition is read into section 1 of the Streets By-Law after the definition of “**heavy motor vehicle**”:

“street people” means people who for any reason use the outdoors as a place of abode for a lengthy period of time”;

3.2 the following subsection is read into section 2:

“(4) Sub-sections 2(2), (3)(d) and (m) shall not apply to street people.”

3.3 the following words are read into section 10(a)(i) after the word “scaffolding”:

“, provided that this provision shall not apply to street people .”

4. Should the City fail to correct the constitutional defects within the period of suspension referred to in prayer 2, the orders in prayer 3 will become final.

5. Declaring that:

5.1 The words “litter” and “waste” as contemplated in the City of Cape Town Integrated Waste Management By-law, 2009 (“the Waste By-law”), and in particular sections 1 and 15(1) thereof, do not include the personal belongings of street people including, but not limited to, all personal effects, utensils, consumables (such as matches, candles and oil), food, items used for personal cleaning, hygiene and cooking, any materials to create shelter and warmth (such as cardboard, plastic sheeting, tents, mattresses and blankets), and personal documents (such as identity documents).

5.2 For the purposes of this paragraph, “street people” means people who for any reason use the outdoors as a place of abode for a lengthy period of time;

6. In the alternative to paragraph 4 above, declaring that:

6.1 Sections 1 and 15(1) of the Waste By-Law violate sections 10, 12(1) (e), 14, 25(1), and 26(1) and (3) of the Constitution, and are unconstitutional and invalid, to the extent that the provisions empower the City to deprive and confiscate the personal belongings of street people (as defined in prayer 6.3.1) as “waste” or “litter” as defined;

6.2 The declaration of invalidity in prayer 6.1 is suspended for a period of 12 months to afford the City an opportunity to correct the defects giving rise to the constitutional invalidity.

6.3 During the period of suspension referred to in prayer 6.2:

6.3.1 the following definitions are read-in to section 1 after the definition “storage”:

“*street people*” means people, who for any reason use the outdoors as a place of abode for a lengthy period of time.

“*street people personal belongings*” includes, but not limited to, all personal effects, utensils, consumables (such as matches, candles and oil), food, items used for

personal cleaning, hygiene and cooking, any materials to create shelter and warmth (such as cardboard, plastic sheeting, tents, mattresses and blankets), and personal documents (such as identity documents).

6.3.2 the following subsection is read into section 15:

“(8) Subsection (1) shall not apply to the street people personal belongings.”

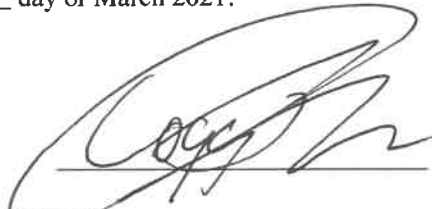
6.4 Should the City fail to correct the constitutional defects within the period of suspension referred to in prayer 6.2, the orders in prayer 6.3 will become final.

7. Ordering the City to pay the applicants’ costs, including the costs of two counsel.
8. Granting the applicants further and/or alternative relief.

TAKE NOTICE FURTHER that any party interested in the aforementioned constitutional issues may, with the written consent of all parties to the proceedings, given by no later than 10 (ten) days after the posting of this notice, be admitted as *amicus curiae*, upon such terms and conditions as may be agreed upon in writing by the parties.

TO THE REGISTRAR: KINDLY place this notice on a board designated for the purpose recorded in Rule16A(1)(c), and place your date stamp upon the notice to indicate the date upon which it is placed on the notice board in accordance with Rule16(1)(d).

DATED at Cape Town on this 30th day of March 2021.



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CAPE TOWN

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**TO: THE REGISTRAR OF THE EQUALITY COURT
WESTERN CAPE DIVISION, CAPE TOWN**

AND TO: CITY OF CAPE TOWN

Respondent

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Tower Block

Civic Centre

12 Hertzog Boulevard

CAPE TOWN