




**IN THE HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, PRETORIA
[FUNCTIONING AS MPUMALANGA CIRCUIT COURT, MBOMBELA]**

(1)	REPORTABLE: YES/ NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
<u>20 / 10 / 2017</u> DATE	
 SIGNATURE	

CASE NUMBER 719/2017

NKOMAZI LOCAL MUNICIPALITY

1ST APPLICANT

**THE MEMBER OF THE EXECUTIVE COUNCIL
MPUMALANGA DEPARTMENT OF HUMAN SETTLEMENT**

2ND APPLICANT

And

LINDIWE MKHABELA

1ST RESPONDENT

LIZZY MHLONGO

2ND RESPONDENT

SARAH MKHABELA

3RD RESPONDENT

LEWIS MADONSELA

4TH RESPONDENT

BETTY MADONSELA

5TH RESPONDENT

ANGELINA PHANGISA

6TH RESPONDENT

**THE SEVENTH AND FURTHER RESPONDENTS
APPEARING IN THE LIST ATTACHED AS ANNEXURE "A"**

JUDGMENT

LEGODI J.

[1] On 15 September 2017 I made an order evicting the respondents and certain persons for unlawful occupation of 32 housing units built and approved for certain beneficiaries in Mjejane, a land situated on Remaining Extent of the Farm Symington No 165, Registration Division J.U District Barberton.

[2] I did not give reasons for the eviction order. I now do so. The first applicant, Nkomazi Local Municipality in conjunction with The Member of the Executive Council Mpumalanga Department of Human Settlement (the second applicant) who are responsible for making housing accessible to the poor in accordance with the constitutional imperative invited people around the area to submit applications for housing to be considered by the relevant officials of the Department.

[3] In consideration of the applications priorities were given to the following categories of people namely, those living with disability, the elderly, vulnerable persons, the destitute and child headed households and orphans. Several applications were received, considered and some approved which approval resulted in the building and completion of 32 housing units referred to in paragraph [1] above.

[4] Subsequent to completion thereof and before approved beneficiaries can take occupation, the respondents and or other persons cited as unlawful occupiers took occupation of the 32 housing units. This rendered the approved beneficiaries helpless and all efforts taken by the applicants to properly provide housing where necessary and possible were rendered an exercise in futility.

[5] The respondents in their answering affidavit and also as argued by their attorney, Mr Singh from the Legal Aid of South Africa do not seem to contend that they are not in occupation of the housing units built by the applicants but, rather that they are entitled to take occupation thereof by virtue of the fact that they have obtained rights and purchased properties from the trust (apparently from the chief in the area). Furthermore, they contend that these rights under the administration of the trust are totally disregarded by the applicants.



[6] In the same breath, they contend that they followed same process for housing subsidy, 'but the low costs house currently built on the previously Mjejane Trust property has already been allocated to beneficiaries' and that the process for subsidy approval was conducted to the specific exclusion of the Mjejane Traditional Community members as there are no applications with a supporting documents to confirm applications by the nominated beneficiaries, and that the applicants are in a haste without first verifying the existence of the nominated beneficiaries to transfer ownership of the properties. (My emphasis)

[7] It is clear that the respondents decided to resort to self-help because their applications have not been approved for reasons which are not clear. Self-help cannot be acceptable in a constitutional state. The fact that the respondents applied for low costs houses and their applications are still pending or have not been approved does not entitle any of them to take occupation of the 32 housing units and by so doing deny those whose applications have been approved to take occupation.

[8] The suggestion that they could be the owners of the land upon which the low costs having units have been erected has no substance. The land in question is a state land and therefore the applicants identified it as an appropriate land or part thereof to erect low costs housing units. On the respondents's own version, this does not seem to be in a serious contestation.

[9] The applicants in their reply attempted to clarify the discontent by the respondents. Annexure "ILM11" to the founding affidavit contains a list of people who had submitted applications to become beneficiaries under housing programme updated to 10 February 2017 and the respondents were found not to have applied for housing under the scheme. It is further averred in the replying affidavit that even if any of the respondents had applied such applications would not have been in relation to the properties that they currently occupy.

[10] Two things can be deduced. One, the respondents do not form part of those who applied for housing on the property where the 32 housing units have been built. Two, if their applications have been submitted, then it must be in respect of other areas, in which event it cannot be said their applications have been declined. It



therefore looks like, the respondents should revert to the applicants to verify the status of their applications. Such pending applications if any, do not entitle respondents to take the law into their own hands by occupying the units not allocated to them.

[11] Consequently, I repeat the order which was made on 15 September 2017 as follows:

- "1 *That the respondents who are the unlawful occupiers of the 32 housing units (the properties / premises) built for approved beneficiaries in MJEJANE and on first applicants' land situated on REMAINING EXTENT OF THE FARM SYMINGTON NO. 165, REGISTRATION DIVISION J.U DISTRICT BARBERTON, are hereby evicted from the housing units, which properties are listed in annexure "ILM3" to this application; and*
- 2 *That any other person who may be occupying the housing units with or under the care and control of the unlawful occupiers / respondents from the housing units mentioned in paragraph 1 above, is hereby evicted from the housing units; and*
3. *That the respondents are ordered to pay the costs of the application."*


M F LEGODI
JUDGE OF THE HIGH COURT

DATE OF HEARING:
DATE OF JUDGMENT:

15 SEPTEMBER 2017
20 OCTOBER 2017

ATTORNEYS FOR THE APPLICANT: MADONSELA MTHUNXI INC ATTORNEYS
32 BELL STREET, CALTEX BUILDING
MEZZIME FLOOR
MBOMBELA
TEL: 013 752 7927
REF: Mr Madonsela/201/17/LTN

ATTORNEY FOR THE RESPONDENT: NELSPRUIT JUSTICE CENTRE
8TH FLOOR, NEDBANK CENTRE
30 BROWN STREET
NELSPRUIT
TEL: 013 753 2154
REF: Mr Singh/P29/X682873717