

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

Case no. 3852/2022

In the matter between:

VACATION IMPORT (PTY) LTD

Applicant

and

**DOUDOU M BUMINA
and three other respondents**

First Respondent
Second, Third and Fourth Respondents

and

Case no. 3855/2022

In the matter between:

VACATION IMPORT (PTY) LTD

Applicant

and

**ALAIN KALAMBAYI NGALEKA
and three other respondents**

First Respondent
Second, Third and Fourth Respondents

JUDGMENT

Delivered by email on 10 July 2023

BINNS-WARD J:

[1] Judgment was delivered in these two applications on 3 March 2023, at which stage an order was made in each matter in the following terms:

1. To the extent necessary, the respondents' non-compliance with the timetable set out in the orders made by Saldanha J on 14 June 2022 is condoned.
2. The counterapplications in case no. 3852/22 and case no. 3855/22 are dismissed.
3. The applications for eviction in case no.s 3852/22 and 3855/22 are postponed for later determination in terms of the framework set out below, in paragraphs 4 to 9 of this order.
4. The City of Cape Town is directed to investigate the apparent rights and needs of the unlawful occupiers of the properties in issue in case no.s 3852/22 and 3855/22 with special reference to those of any of the occupiers who are elderly, children, disabled persons, or women heading households and to report thereon to this court before **Wednesday, 26 April 2023**. Without derogation from the generality of the foregoing, the report must address whether land can reasonably be made available by the municipality for the relocation of any the unlawful occupiers who cannot reasonably provide for their own alternative accommodation.
5. The applicant is directed to procure the service of this order together with a copy of this judgment on the City of Cape Town at the office of the City Manager by no later than **13 March 2023** and thereafter to promptly file proof of service at the office of the presiding Judge's registrar.
6. The applicant is afforded until **4 May 2023** to deliver any written submissions it may wish to on the content of the City's report.

7. The occupier-respondents are afforded until **11 May 2023** to deliver any written submissions they may wish to on the content of the City's report.
8. The written submissions referred to in paragraph 6 and 7 shall be served at the addresses of respective parties' attorneys of record and at the office of the presiding Judge's registrar.
9. Determinative orders in respect of the applications for eviction and the incidence of costs in those applications and the counterapplications will be made on a date to be advised after the court has considered the City's report and any written submissions delivered in terms of paragraphs 6 and 7.

The judgment is listed on SAFLII *sub nom. Vacation Import (Pty) Ltd v Bumina and Others; Vacation Import (Pty) Ltd v Ngaleka and Others* [2023] ZAWCHC 44 (3 March 2023).

[2] The City of Cape Town has filed reports in both matters. It is evident from those reports, which, apart from the particularity provided therein about the occupants of the respective properties, are in identical terms, that it is unlikely that the respondents or the persons occupying the properties under them would be able to afford to rent alternative accommodation. The City has indicated that in each case the heads of the respective households can be provided with emergency shelter material, which allows for a structure to be constructed that would be in compliance with the local authority's Emergency Housing Code.

[3] It is evident that the City will provide assistance in the form described only after the respective heads of households have secured a site for the construction of the emergency shelter and obtained an affidavit from the owner thereof, whose identity must be vouched by a title deed or rates account, confirming that it consents to the erection of the structure and that the

‘owner will comply with the City’s building and planning by-laws in the construction of the structure’.

[4] Neither the applicant nor the occupier-respondents have availed of the opportunity afforded in terms of paragraphs 6 and 7 of the order made on 3 March 2023 to make written submissions on the content of the reports rendered by the City. There is moreover nothing before the court to confirm that a copy of the City’s reports were provided to the respective respondents or their legal representatives.

[5] The City’s reports in any event fall short of giving the court the information it requires for the purposes of s 4(7) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998. In particular, notwithstanding the express direction contained in paragraph 4 of the orders made on 3 March 2023, the reports do not give any indication whether land can reasonably be made available by the municipality or other organ of state for the relocation of the unlawful occupiers; cf. *Grobler v Phillips and Others* [2022] ZACC 32 (20 September 2022); 2023 (1) SA 321 (CC) at para. 33 and 37. It seems to me that this is an especially important question in circumstances where it is apparent that there is real danger that an eviction order without a realistic prospect of alternative accommodation would render the unlawful occupiers homeless.

[6] It must be said that the terms of the City’s offer of alternative accommodation appear to me, prima facie, not to offer a realistic solution to the potential of the respondents being rendered homeless by an eviction order. It is not clear to me how the construction of emergency shelters could be effected on privately owned land in a manner consistent with the City’s building and planning laws. Which parts of the municipal area, if any, I ask myself, are appropriately zoned for such purposes? What evidence is there that there are property owners agreeable to the erection of emergency shelters on their land, and free of consideration too?

The report gives no indication of the feasibility of anyone being able to effectively avail of the assistance that the City has indicated it is willing to provide.

[7] The inadequacy of the information provided in the City's reports and the unanswered questions raised by the terms of the assistance it has indicated that it is able to offer have left me unable at this stage, without more, to form the required opinion that it would be just and equitable to grant an order for the respondents' eviction. If the applicant is unable to obtain suitably improved reports from the City, it seems to me that it may become necessary for it to subpoena the head of the relevant department to give oral evidence.

[8] I am unfortunately unavailable for the rest of this year to continue with the matters, being on vacation leave until the end of September, and thereafter sitting in a different court until the end of the fourth term. I shall thereafter be available for hearings in this court only on a very limited basis at the beginning of the first term of 2024 prior to my retirement in mid-February. In the circumstances, I propose to further postpone the applications to enable the concerns identified in this judgment to be addressed ahead of a hearing in open court on Monday, 29 January 2024.

[9] An order will issue in the following terms:

1. The applications are postponed for further hearing on Monday, **29 January 2024** at 10h00 or so soon thereafter as the matters may be called.
2. The City of Cape Town is directed by no later than **30 September 2023** to furnish the applicant's attorneys of record with supplementary reports in both matters, which supplementary reports must comprehensively address the issues identified in this judgment concerning the insufficiency of information in the reports rendered by the

City in terms of paragraph 4 of the orders made in terms of the judgment of this court delivered on 3 March 2023.

3. The applicant's attorneys of record are directed to procure the service of this order together with a copy of this judgment on the City of Cape Town at the office of the City Manager by no later than **31 July 2023**, and thereafter to promptly file proof of service at the office of the presiding Judge's registrar.
4. The applicant's attorneys of record are directed, within 5 days of receiving the City's supplementary report, to provide a copy thereof to the occupier-respondents or their legal representatives in each matter and thereafter to promptly file proof of service at the office of the presiding Judge's registrar.
5. In the event that it appears to the applicant's attorneys that the City's supplementary reports do not adequately address the concerns raised in this judgment, or in the event that the City fails to comply with the provisions of paragraph 2 of this order, they are directed, by no later than **31 October 2023**, to subpoena the responsible official of the City of Cape Town, or, if such cannot be identified, the City Manager, to appear in person at the hearing on 29 January 2024 and to provide such functionary with a letter of notice succinctly setting forth the reasons why he or she has been subpoenaed in terms of this order.
6. Any issues as to costs shall further stand over for determination pursuant to the hearing on 29 January 2024.

A.G. BINNS-WARD
Judge of the High Court