CONSTITUTIONAL COURT OF SOUTH AFRICA

Nokotyana and Others v Ekurhuleni Metropolitan Municipality and Others (CCT 31/09)
[2009] ZACC 33; 2010 (4) BCLR 312 (CC) (19 November 2009)

Case CCT 31/09
[2009] ZACC 33

In the matter between:

JOHNSON MATOTOBA NOKOTYANA AND OTHERS	Applicants
and	
EKURHULENI METROPOLITAN MUNICIPALITY	First Respondent
MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL GOVERNMENT AND HOUSING, GAUTENG	Second Respondent
NATIONAL MINISTER FOR HUMAN SETTLEMENTS	Third Respondent
DIRECTOR-GENERAL: NATIONAL DEPARTMENT OF HUMAN SETTLEMENTS	Fourth Respondent

Heard on : 15 September 2009

Decided on : 19 November 2009

JUDGMENT

VAN DER WESTHUIZEN J:

Introduction

[1] The Constitution explicitly recognises social and economic rights with regard to housing, as well as healthcare, food, water and social security. On several occasions this Court has been called on to decide difficult issues in connection with access to health care, housing and water, as well as the provision of electricity. This is understandable. Our history is one of land dispossession, institutionalised discrimination and systemic deprivation. The need for housing and basic services is still enormous and the differences between the wealthy and the poor are vast.

[2] This case is about sanitation and lighting. More specifically, it is about the quest of a community in an informal settlement to have toilets. They want one "ventilated improved pit latrine" (somewhat ironically referred to as "VIP" latrines) per household, instead of the one chemical toilet per ten families offered to them by the authorities, in the place of their existing pit latrines. The community also asks for high-mast lighting to enhance safety and access by emergency vehicles. They rely on their right of access to adequate housing, other constitutional rights and certain statutory provisions.

[3] The applicants, Mr Nokotyana and others, approached the South Gauteng

High Court (High Court) on behalf of residents of the Harry Gwala Informal Settlement (Settlement), located in the area of jurisdiction of the first respondent, the Ekurhuleni Metropolitan Municipality (Municipality). They sought an order against the Municipality to provide them with basic services, pending a decision on whether the Settlement would be upgraded to a formal township. After having achieved only partial success, they seek leave to appeal to this Court.

[4] The facts illustrate that the plight of the poor is desperate and that their patience is often tested to the limit by unfortunate and unjustified delays. The case shows that the role of courts in the achievement of socio-economic goals is an important but limited one and that bureaucratic efficiency and close co-operation between different spheres of government and communities are essential.

[5] It is perhaps ironic, but not coincidental, that the Settlement carries the name of a well-known icon of the struggle against the oppression and inequality of apartheid, who dedicated his life to the pursuance of social, political and economic equality through the socialist principles in which he believed and taught.

Parties

[6] Mr Nokotyana instituted these proceedings against the Municipality in terms of section 38 of the Constitution. As a result of directions issued by this Court, the Member of the Executive Council for Local Government and Housing of the Province of Gauteng (MEC), the national Minister for Human Settlements (Minister) and the Director-General of the national Department of Human Settlements (DG), whom the applicants did not cite as parties, were joined as second, third and fourth respondents respectively in the proceedings before this Court. These parties lodged affidavits, made written submissions and appeared at the hearing.

Factual background

[7] During the 1980s the residents of the Settlement occupied a piece of empty land on the eastern edge of Wattville Township. Some time ago, the South African Iron and Steel Industrial Corporation (ISCOR), one of the owners of the land, initiated a process of relocation and many of the occupiers voluntarily moved to an area called Chief Albert Luthuli Extension 4. There is a dispute between the applicants and the respondents about the existence of basic services at Extension 4. Mr Nokotyana and the other residents however refused

to move away from the Settlement, citing as reasons the absence of schools and the distance they would have to travel from the new development to their places of work.

[8] In August 2006 the Municipality submitted a proposal, in terms of Chapter 13 of the National Housing Code, to the MEC to upgrade the status of the Settlement to a formal township, which would entitle them to services they are not currently receiving. Some three years later a final decision on the proposal is still being awaited. The applicants submit that, pending the decision on whether the Settlement is going to be upgraded, the Municipality is required in terms of its obligations under the Constitution, legislation and the National Housing Code to provide the Settlement with certain basic services with immediate effect. The Municipality takes the view that, in terms of the National Housing Code, it may not provide basic services that require extensive capital outlay until the decision on whether to upgrade has been taken and that the obligation to provide certain services in the case of an emergency does not arise here.

[9] From the papers it appears that the number of households in the Settlement has been increasing substantially. It is estimated that at present there are

approximately 1 000 households in the Settlement. There are 110 informal settlements within the area of jurisdiction of the Municipality, comprising some 140 000 households. Countrywide, an estimated 1,8 million households in informal settlements currently reside in squalid conditions. This represents probably 7 to 8 million people. Currently 502 informal settlement upgrading projects are being implemented nationally. Most of the informal settlements in South Africa are situated in the bigger urban areas.

In the High Court

[10] The applicants sought an order against the Municipality, pending the decision to upgrade the Settlement, to provide the Settlement with (1) communal water taps, (2) temporary sanitation facilities, (3) refuse removal and (4) high-mast lighting in key areas. The claim was essentially based on sections 26 and 27 of the Constitution and Chapters 12 and 13 of the National Housing Code.

[11] In the High Court, the Municipality accepted its obligation to provide water taps and refuse removal services. Based on the Municipality's attitude, the Court ordered it to provide these basic interim services immediately.

[12] The High Court found that Chapter 12 of the National Housing Code did not apply, because the emergency housing requirements as defined therein were not present. It furthermore held that Chapter 13 of the Housing Code was only of application once a decision had been taken to upgrade an informal settlement, which had not yet happened in this case. It therefore found that a case had not been made out for the provision of temporary sanitation facilities and high-mast lighting.

[13] The High Court also found no suggestion that the Municipality was not carrying out its obligations to take all reasonable and necessary steps, within the framework of national and provincial housing legislation and policy, to ensure that services are provided in a manner which is economically efficient.

[14] The applicants now approach this Court seeking the provision of temporary basic sanitation services and high-mast lighting.

Preliminary issues

[15] A few preliminary issues have to be decided. These are whether this application raises a constitutional matter, whether it is in the interests of justice for this Court to hear the matter without the benefit of a judgment by the

Supreme Court of Appeal, whether condonation should be granted for the late filing of the Municipality's written argument and whether the considerable volume of documents filed in this Court, which did not form part of the record in the High Court, should be admitted.

[16] As to the first, the applicants raise questions relating to the applicability of several constitutional and statutory provisions (especially section 26 of the Constitution, which provides for the right of access to adequate housing) as well as what the content of the rights is. These are constitutional matters, which are important to communities all over the country and to all spheres of government.

[17] It is generally preferable for a litigant to exhaust all appeal remedies and especially not to by-pass the Supreme Court of Appeal. However, a decision by the Supreme Court of Appeal would most likely not finally dispose of this matter, as a further appeal to this Court is highly probable. As the residents of the Settlement have already been subjected to long delays, it is in the interests of justice for this Court to hear the matter directly.

[18] The reasons provided by the Municipality for filing its written argument

one day late are sufficient to justify condonation. No prejudice was caused and the application was not opposed. Condonation should be granted.

[19] In this Court, both the applicants and the Municipality sought to tender new evidence. This Court has expressed itself strongly on the filing of new evidence on appeal. There are two problems with the submission of new evidence on appeal. First, it tends to change the issues that were before the court below, or even introduce new issues, thus rendering this Court a court of first and final instance. Second, the submission of new evidence – and especially large volumes – in an appeal is generally highly undesirable and cumbersome. The documentation in this case includes policy instruments and some 307 pages of articles and other documents filed together with the applicants' written argument. The Municipality also tendered evidence of a new policy on the provision of temporary sanitation services which was adopted on 16 April 2009, after the delivery of the High Court judgment.

[20] The applicants sought to challenge this new policy too, on the basis that it is irrational and cannot be regarded as a reasonable measure to achieve the right of access to adequate housing in terms of section 26(1) and (2) of the Constitution. However, it is not appropriate on appeal to consider a case so

fundamentally changed. In the circumstances, it is not necessary to consider the new evidence lodged by either the applicants or the Municipality and the rationality and reasonableness, or lack thereof, of the policy embodied in the evidence.

The applicants' case

[21] It is not easy to describe the applicants' case accurately, because of the way it was presented. While they claimed temporary sanitation facilities and high-mast lighting in key areas to enhance community safety and access by emergency vehicles in the High Court, they insist before this Court on one VIP latrine per household with immediate effect, or alternatively one VIP latrine per two households. They still insist on the high-mast lighting. According to them, these constitute basic sanitation and electricity.

[22] The policy adopted by the Municipality in April 2009 provides for one chemical toilet per ten families. As stated above, the applicants contend in this Court that this policy is irrational and unreasonable. The applicants furthermore submit that some of the stands fall into Wattville Township, where an electricity grid is available and which could be extended to provide the basic minimum core electricity services.

[23] The applicants rely on the right of access to adequate housing, guaranteed in section 26 of the Constitution. They also rely on sections 2, 7, 10, 39 and 173 of the Constitution and on Chapters 12 and 13 of the National Housing Code.

[24] They submit that the High Court erred in finding that the applicants were not entitled to relief in terms of Chapters 12 and 13 of the National Housing Code. The High Court furthermore failed to find that the right of access to adequate housing, read with the Housing Act, the National Housing Code and the Water Services Act, imposes a mandatory minimum core content as far as free basic sanitation is concerned. The mandatory minimum obligation to provide free basic sanitation cannot be defeated by budgetary constraints, they argue. The High Court also erroneously found that the Municipality was carrying out its obligation to take all reasonable steps to ensure that services are provided in an economically efficient manner, according to the applicants.

[25] Some of the above contentions and the statutory provisions on which they are based require a brief exposition. The main legislative and policy instruments enacted to give effect to the state's constitutional obligation in

relation to housing are the Housing Act and the National Housing Code.

[26] Chapter 12 of the National Housing Code was introduced after the decision of this Court in *Grootboom* and provides for housing assistance in emergency circumstances. It provides for assistance to people who, for reasons beyond their control, find themselves in an emergency housing situation such as their existing shelter being destroyed or damaged; their prevailing situation posing an immediate threat to their lives, health and safety; or eviction, or the threat of imminent eviction. Assistance is rendered "only in emergency situations of exceptional housing need".

[27] Chapter 13 of the National Housing Code provides for the upgrading of informal settlements. It relates to the provision of grants to a municipality to enable it to upgrade informal settlements in its jurisdiction in a structured way and on the basis of a phased development approach. Counsel for the applicants relied specifically on paragraph 13.7.1 of the chapter. This paragraph provides that municipalities are responsible for considering whether a matter merits the submission of an application for assistance under this chapter. If the matter merits the submission of an application, the paragraph provides for a municipality to take certain action.

[28] Paragraph 13.7.1 is based on section 9(1) of the Housing Act. Section 9(1) provides that every municipality, as part of its process of integrated development planning, must take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to ensure that the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis; that conditions not conducive to the health and safety of the inhabitants of its area of jurisdiction are prevented or removed; and that services in respect of water, sanitation, electricity, roads, storm water drainage and transport are provided in a manner which is economically efficient.

[29] Section 3 of the Water Services Act provides that everyone has a right of access to basic water supply and basic sanitation. Every water services authority is prompted to take reasonable measures to realise these rights. The section furthermore requires every water services authority to provide for measures to realise these rights in its water services development plan.

[30] Regulation 2 of the Regulations Relating to Compulsory National Standards and Measures to Conserve Water (promulgated in terms of the Water Services Act) describes the minimum standard for basic sanitation services as a

toilet which is safe, reliable, environmentally sound, easy to keep clean, provides privacy and protection against weather, well ventilated, keeps smells to the minimum and prevents the entry and exit of flies and other disease-carrying pests.

[31] In this Court the applicants further sought to rely on policy instruments and related statutory provisions which were not part of their case before the High Court. As stated above, these cannot be considered by the Court.

The respondents' case

[32] The Municipality's position in the High Court was that it had no obligation to provide temporary sanitation services and high-mast lighting in key areas. Resolution 5 of the policy adopted by the Municipality in April 2009, in order to deal with the problem of the interim provision of services to all informal settlements within its area of jurisdiction, provides that—

> "the maximum amount of R100 million on the Operational Budget for the 2009/2010 financial year [will be approved] and thereafter on a yearly basis until the need cease to exist, for the provision of interim sanitation to informal settlements in the form of chemical toilets, provided at one toilet per ten families, only in areas where health problems are associated with community based pit latrines."

[33] During the hearing the Municipality emphasised the development of this

policy and made an offer of one chemical toilet per ten families. Counsel indicated that the toilets could be installed by the end of October 2009 and said that the Municipality would not object to its offer being concretised in an order of this Court.

[34] The Municipality is unable to offer immediate relief as to the high-mast lighting. Resolution 2 provides that "where infrastructure exists, [efforts will be made] to provide electricity and lighting (high-mast lighting) to informal settlements." The Municipality points out problems which actually render it beyond its control, such as that permission has to be granted to connect to the national electricity grid. It is also unlikely that high-mast lighting will be provided to an area that has not yet been upgraded.

[35] The Municipality contends that the true difference between the parties is the practical implementation of measures to achieve the applicants' constitutional rights, not their entitlement to these rights. Thus, it is contended, the real question for consideration is whether the Municipality has been unreasonable in declining to provide the services claimed within the time-frame and to the extent that they are claimed. The measures taken cannot be said not to be reasonable, the Municipality submits.

[36] In the provincial and national spheres, the MEC, Minister and DG undertake to supplement the funds of the Municipality in the amount of R1,1 million, to enable it to provide one chemical toilet per four households in the Settlement (instead of per ten households, as provided for in the Municipality's new policy). They stress that this relief should be granted to the Harry Gwala Informal Settlement only, on the basis that the inordinate delay to finalise the application for the upgrading of the Settlement constitutes an exceptional circumstance. They emphasise that they are not in a position to provide the same relief to other similarly situated informal settlements. They furthermore offer to assist the Municipality and to facilitate the process.

Analysis

[37] The first question is whether the Municipality is obliged under Chapter 12 of the National Housing Code to provide the services the applicants seek. The second is whether it is obliged to do so under Chapter 13. The third question is whether, if the Municipality is not obliged under either of these Chapters, the applicants are entitled to rely directly on section 26 of the Constitution. The fourth relates to the relevance of the Municipality's new policy. The fifth question is whether it would be appropriate to address the delay by the Gauteng

Province in deciding whether the Settlement should be upgraded in an order of this Court.

[38] The High Court found that the applicants could not rely on Chapter 12 of the National Housing Code, because a state of emergency as contemplated did not exist. Counsel for the applicants contends that this was wrong, because the applicants indeed live in conditions that pose an immediate threat to their lives, health and safety and are accordingly in need of emergency assistance, as provided for in Chapter 12.

[39] This argument is misconceived. As argued by the Municipality, Chapter 12 can only find application where an emergency has been determined to exist by the MEC. This did not happen in this case, nor have the applicants applied for a declaration to that effect.

[40] The Municipality furthermore points out that Chapter 12 clearly states that assistance "will be limited to absolute essentials", that the programme does not allow "queue jumping" or deviation from priorities in planning and that it does not permit the provision of street lighting "except that the provision of high mast lighting could be considered in special circumstances".

[41] The High Court cannot be said to have erred in finding that the applicants' reliance on Chapter 12 must fail.

[42] Chapter 13 deals with the *in situ* upgrading of informal settlements. After analysing the criteria contained in Chapter 13, as well as taking section 9(1) of the Housing Act into account, the High Court concluded that the applicants would only be entitled to rely on Chapter 13 once the decision has been taken to upgrade the Settlement. It is clear from the wording of the chapter that township development must under no circumstances be compromised and that the approval of the general plan of the areas, the approval of the service design and standards and the actual proclamation of the township must be pursued. The principle on which Chapter 13 is thus based is that capital-intensive services will not be provided until a decision has been made on whether to upgrade a settlement. The Municipality reinforced this by referring to the provisions of the Municipal Finance Management Act, which prohibits "fruitless and wasteful expenditure". Only once the layout of a township has been established, can the infrastructure for the installation of engineering services be provided. As pointed out by the Municipality, if this is done earlier, the cost incurred in providing interim services would be wasted.

[43] It seems that the Municipality complied with the provisions of paragraph 13.7.1, as it did submit an application for assistance under this chapter to the MEC. The Chapter 13 phased development process provides for four phases; the provision of services only come into play in the second phase, after a decision to upgrade the settlement has already been taken by the MEC.

[44] As the Municipality complied with its duties under Chapter 13 and the decision of the MEC is still awaited, the applicants' reliance on Chapter 13 must fail. The High Court's conclusion on this point cannot be faulted.

[45] The applicants' earlier mentioned reliance on provisions of the Water Services Act in the High Court as well as in this Court deals with their original claim for water taps (which was agreed to in the High Court and ordered by the Court), as well as with their claim for basic sanitation services. In so far as the applicants attempt to rely on Regulation 2 to support their attack on the Municipality's newly adopted policy and their claim for one VIP latrine per household (or two households), their submissions cannot be considered, because – as set out in paragraph 20 above – this attack is a new attack raised on appeal. It would be inappropriate for this Court to adjudicate it now. To the

extent that they rely on Regulation 2 to bolster the claim made in their notice of motion that the Municipality must furnish them with temporary sanitation facilities, pending the decision whether to upgrade the Settlement, the Municipality's response is that Chapter 13 precludes capital intensive service provision until the decision to upgrade has been taken. This principle seeks to ensure that public funds are expended effectively. It cannot be said, in the absence of a challenge to Chapter 13, that the approach of the Municipality to the claim for temporary sanitation services is unreasonable. The applicants' submissions in this regard cannot be upheld.

[46] Next, the applicants' reliance on the Constitution must be addressed. Section 26 states that everyone has the right of access to adequate housing. It also states that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. This provision is repeated in respect of the right of access to health care services, sufficient food and water and social security, provided for in section 27 of the Constitution. As stated earlier, this Court has dealt with the right of access to adequate housing, to health care services and to water. Its jurisprudence on social and economic rights was recently summarised in *Mazibuko* and a detailed analysis is not required in the circumstances of this

application.

[47] It was argued on behalf of the applicants that the right of access to adequate housing, recognised in section 26 of the Constitution, must be interpreted to include basic sanitation and electricity. Counsel for the applicants also urged this Court to find that its previous decisions on section 26 were wrong in as much as the right of access to adequate housing was not given content and to find that the right in fact has a minimum content. It is not necessary to make a finding on these submissions. Chapters 12 and 13 were promulgated to give effect to the rights conferred by section 26 of the Constitution. They do not purport to establish minimum standards. Their manifest purpose is to regulate the provision of services pending a decision on upgrade, as in this case.

[48] The applicants have not sought to challenge either chapter of the National Housing Code. This Court has repeatedly held that where legislation has been enacted to give effect to a right, a litigant should rely on that legislation or alternatively challenge the legislation as inconsistent with the Constitution.

[49] The applicants recognised this by relying primarily on Chapters 12 and 13. They also tried to rely directly on the Constitution though. They cannot be

permitted to do so. It would not be appropriate for this Court in these proceedings to consider whether the Municipality's new policy complies with the Constitution, for this reason, as well as in view of the above-mentioned inadmissibility of the new documentary evidence in which the policy is embodied.

[50] The applicants furthermore relied on several other constitutional provisions. Their reliance was however vague and insufficiently specified. Where the Constitution contains both a specific right, and a more general right, it is appropriate first to invoke the specific right. Section 39 of the Constitution requires courts when interpreting the Bill of Rights to promote the values that underlie an open and democratic society based on human dignity, equality and freedom. It is incontestable that access to housing and basic services is important and relates to human dignity. It remains most appropriate though to rely directly on the right of access to adequate housing, rather than on the more general right to human dignity.

[51] The fourth above-mentioned question is how this Court should treat the Municipality's new policy to supply the Settlement with one chemical toilet per every ten families and its express intention to do this in the near future.

Counsel for the Municipality presented this policy as an offer to the applicants and agreed that it be incorporated into any order this Court may make. Counsel for the applicants urged the Court to find the policy to be unreasonable and irrational.

[52] All that this Court should do with regard to the Municipality's new policy is to note it and record the Municipality's intention and undertaking to act speedily. For the reasons mentioned earlier in this judgment it is neither necessary nor proper to pronounce on the reasonableness or rationality of the policy, or to include the policy in the order of this Court.

[53] The offer from the MEC, the Minister and DG to assist the Municipality with the necessary finances to provide one chemical toilet per four families requires attention, for it may alleviate the desperate situation of those living in the Settlement, even if only to a limited degree. It was made clear that this could only be done on the basis that the circumstances of the applicants are exceptional and unique. There are no funds available to extend the same offer to other communities. The Municipality is strongly opposed to accepting the offer, or being obliged to implement it, as it is of the view that it would amount to discrimination against the many other similarly situated communities under

its jurisdiction.

[54] It is tempting to order the Municipality to accept the assistance offered in order to improve the lives of at least the applicants before this Court, by describing their situation as exceptional and unique. Unfortunately though, it is not so exceptional or unique. According to the Municipality, there are 110 other similar informal settlements within its area of jurisdiction. In another 16 cases, the Municipality informs the Court, the Province has also delayed taking a decision on applications for upgrading. Elsewhere in the province and the country there are thousands more in similarly unsatisfactory circumstances. It would not be just and equitable to make an order that would benefit only those who approached a court and caused sufficient embarrassment to provincial and national authorities to motivate them to make a once-off offer of this kind.

[55] The remaining question that requires the attention of this Court is the delay of more than three years on the part of the Gauteng provincial government in reaching a decision on the Municipality's application to upgrade the Settlement to a township. The rights of residents under Chapter 13 are dependent on a decision being taken. The provincial government should take decisions for which it is constitutionally responsible, without delay. A delay of this length is

unjustified and unacceptable. It complies neither with section 237 of the Constitution, nor with the requirement of reasonableness imposed on the government by section 26(2) of the Constitution with regard to access to adequate housing.

[56] This is conceded by the MEC. In open court, packed with residents of the Settlement, counsel for the MEC stood up and offered an apology on behalf of the provincial government – firstly to the Court and then, after being prompted by the bench – to the residents of the Settlement, in isiXhosa, a language they understand.

[57] It is necessary though to incorporate the need for a speedy decision in an order of this Court. The delay by the Province is the most immediate reason for the dilemma and desperate plight of the residents. As long as the status of the Settlement is in limbo, little can be done to improve their situation regarding sanitation, sufficient lighting to enhance community safety and access by emergency vehicles, as well as a range of other services. Counsel for the MEC indicated that a period of 12 months would be sufficient to finalise specialist feasibility studies and that a one month period would thereafter be required to decide whether to upgrade. It is just and equitable to order the MEC to reach a

decision within 14 months.

Costs

[58] Counsel for the applicants asked for costs from the launch of the application in the High Court, which should include costs for disbursements incurred. This is sought regardless of whether the applicants are successful or not. The applicants contend that the three year delay by the provincial government in processing the application for upgrading should be taken into account in the determination of costs.

[59] The Municipality contended that this is not a matter in which a costs order should be made. Counsel for the MEC submitted that the Court should bear in mind that the provincial government was not a party in the proceedings in the High Court and should therefore not be penalised with costs of the whole suit.

[60] The High Court made no order as to costs in that court. There is no reason to interfere with that order.

[61] In this Court the applicants should not be ordered to pay the costs of any of the respondents, even though they were largely unsuccessful. They raised

important constitutional issues, although their case was not properly conceived in law. The delay in the decision on the part of the Province being one of the root causes of the applicants' plight, the MEC should pay the applicants' costs in this Court.

Order

[62] In view of the above, the following order is made:

1. Condonation for the late filing of the Ekurhuleni Metropolitan Municipality's written argument is granted.
2. The application for leave to appeal is granted.
3. The appeal is dismissed.
4. The Member of the Executive Council for Local Government and Housing, Gauteng, is ordered to take a final decision on the Ekurhuleni Metropolitan Municipality's application in terms of Chapter 13 of the National Housing Code, published in terms of section 4 of the Housing Act 107 of 1997, to upgrade the status of the Harry Gwala Informal Settlement, within 14 months of the date of this order.
5. The Member of the Executive Council for Local Government and Housing, Gauteng, is ordered to pay the costs of the applicants in this Court.

Moseneke DCJ, Cameron J, Mokgoro J, Ngcobo J, Nkabinde J, O'Regan J, Sachs J and Skweyiya J concur in the judgment of Van der Westhuizen J.

Counsel for the Applicants:

Counsel for the First Respondent:

Counsel for the Second Respondent:

Counsel for the Third and Fourth Respondents:

Advocate URD Mansingh instructed by
Webber Wentzel.

Advocate J Campbell SC and Advocate MA Kruger instructed by Bham & Dahya.

Advocate MR Madlanga SC and Advocate N Rajab-Budlender instructed by the State Attorney.

Advocate GJ Marcus SC and Advocate N Mji instructed by the State Attorney.