

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

Case No. 7908/17

In the matter between:

THOZAMA ANGELA ADONISI	First Applicant
PHUMZA NTUTELA	Second Applicant
SHARONE DANIELS	Third Applicant
SELINA LA HANE	Fourth Applicant
RECLAIM THE CITY	Fifth Applicant
TRUSTEES OF THE NDFUNA UKWAZI TRUST	Sixth Applicant



and

MINISTER FOR TRANSPORT AND PUBLIC WORKS: WESTERN CAPE	First Respondent
PREMIER OF THE WESTERN CAPE PROVINCE	Second Respondent
THE PHYLLIS JOWELL JEWISH DAY SCHOOL (NPC)	Third Respondent
CITY OF CAPE TOWN	Fourth Respondent
MINISTER OF HUMAN SETTLEMENTS	Fifth Respondent
THE PROVINCIAL GOVERNMENT OF THE WESTERN CAPE	Sixth Respondent
MINISTER OF PUBLIC WORKS	Seventh Respondent
MINISTER OF HUMAN SETTLEMENTS: WESTERN CAPE	Eighth Respondent
SOCIAL HOUSING REGULATORY AUTHORITY	Ninth Respondent
MINISTER OF RURAL DEVELOPMENT & LAND REFORM	Tenth Respondent
MINISTER OF FINANCE	Eleventh Respondent
GARY FISHER	Twelfth 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 the applicants raise is that the first, second, fourth, sixth and eighth respondents have failed to comply with their obligations, in terms of sections 25(5), 26(1) and 26(2) of the Constitution, and the legislation enacted to give effect to these rights, to redress spatial apartheid in central Cape Town.
2. Section 25(5) of the Constitution provides that *“the state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis”*.
3. Section 26(1) of the Constitution provides for the right of access to adequate housing and section 26(2) obliges the state to *“take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.*
4. The Constitutional Court in *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC) made it clear that the state’s duty to take reasonable legislative and other measures to achieve the progressive realisation of the right of access to housing entails both the

obligation to: (i) formulate reasonable programmes designed to achieve the objective; and (ii) implement those programmes reasonably. The same principles must apply to the right to gain access to land on an equitable basis.

5. Legislation has been enacted to give effect to those constitutional rights. Of particular importance for this application is the Spatial Planning and Land Use Management Act, 16 of 2013 ("SPLUMA") and the Social Housing Act 16 of 2008.

6. The evidence of the Applicants' expert witnesses is that:

6.1.apartheid urban planning was particularly effective in Cape Town, resulting in an unjust, inefficient and unsustainably segregated urban environment;

6.2.none of the developments in terms of the Social Housing Programme in Cape Town since 1994 were undertaken in the inner-city and only the City's proposed Woodstock development is near the inner-city.

6.3.a significant reason for the failure to implement the Social Housing Programme in Cape Town's inner-city and surrounds can be attributed to how government in the Western Cape has conceived and implemented its "urban regeneration" objective;

6.4.from the late 1990's the approach to urban regeneration spearheaded by the City, the province and the Cape Town Partnership, while highly

successful in generating investment, has tended to force lower income households out of the centre of the city and has not provided new housing opportunities for those wanting to live closer to the CBD. It has also resulted in a developed inner-city where residential accommodation is only affordable to households in the top 20 per cent of South African income earners;

6.5. since the late 1990's neither the City nor the province has allocated land or buildings in the inner-city and surrounds for Social Housing, save that the City recently made 4 sites available in the Salt River/Woodstock area and is presently providing support to the SHIs responsible for developing these sites;

6.6. since 1994 the City and province have failed to take reasonable steps to redress spatial apartheid in central Cape Town. Suitable land for affordable housing is extremely scarce in the central and inner-city areas and will only become more so in the future.

6.7. The implication of the above findings is that the longer the province and the City defer giving effect to their obligations with regard to redressing spatial apartheid in central Cape Town, the more difficult it will become to comply with them, and the less likely it will be that their programmes will have any meaningful impact.

7. It follows from the above that the province and the City have failed to comply with their constitutional and statutory obligations to redress the effects of

spatial apartheid in central Cape Town. The Applicants accordingly seek a declaratory order to this effect together with: (i) an order compelling them to comply with their obligations; and (ii) a process of reporting to this Court to ensure that they do so.

8. The further constitutional issue is whether:

8.1. the designation by the sixth respondent in June 2010 of Erf 1675, an unregistered portion of Erf 1424 Sea Point, and remainder of Erf 1424 Sea Point (collectively, “the Tafelberg Properties”) as “*surplus*” in terms of the Government Immovable Asset Management Act, 19 of 2007;

8.2. the November 2015 decision of the Premier of the Western Cape Province, acting together with the other members of the Provincial Cabinet, to sell the Tafelberg Properties to the third respondent; and

8.3. the 3 April 2017 decision of the of the Premier of the Western Cape Province, acting together with the other members of the Provincial Cabinet Western Cape Cabinet, not to resile from the contract of sale concluded with the third respondent,

should be reviewed and set aside in terms of the Promotion of Administrative Justice Act, 3 of 2000 (“**PAJA**”), alternatively, in terms of the principle of legality.

9. The application is brought on an urgent basis. The notice of motion does not stipulate a date for the hearing but does include a timetable for the filing

of the Rule 53 record and further affidavits by the parties.

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 THE 5th **DAY OF MAY 2017**

NDIFUNA UKWAZI LAW CENTRE

PER:


MANDISA SHANDU
Applicants' Attorneys
18 Roeland Street
CAPE TOWN

TO: THE REGISTRAR
Western Cape High Court
Keerom Street
CAPE TOWN

**AND TO: MINISTER FOR TRANSPORT & PUBLIC
WORKS: WESTERN CAPE**
First Respondent
9 Dorp Street
CAPE TOWN

AND TO: PREMIER OF THE WESTERN CAPE PROVINCE
Second Respondent
c/o THE STATE ATTORNEY
22 Long Street
CAPE TOWN

AND TO: PHYLLIS JOWELL JEWISH DAY SCHOOL (NPC)
Third Respondent
c/o: ENSAfrica
1 North Wharf Square
Loop Street
Foreshore
Cape Town
8001
Per: Stephen Levetan

AND TO: CITY OF CAPE TOWN
Fourth Respondent
Civic Centre
12 Hertzog Boulevard
CAPE TOWN

AND TO: MINISTER OF HUMAN SETTLEMENTS
Fifth Respondent
c/o THE STATE ATTORNEY
22 Long Street
CAPE TOWN

AND TO: PROVINCIAL GOVERNMENT OF THE WESTERN CAPE PROVINCE
Sixth Respondent
c/o THE STATE ATTORNEY
22 Long Street
CAPE TOWN

AND TO: MINISTER OF PUBLIC WORKS
Seventh Respondent
c/o THE STATE ATTORNEY
22 Long Street
CAPE TOWN

AND TO: MINISTER OF HUMAN SETTLEMENTS: WESTERN CAPE
Eighth Respondent
27 Wale Street (fourth floor)
CAPE TOWN

AND TO: THE SOCIAL HOUSING REGULATORY BODY
Ninth Respondent
Sunnyside Ridge Office Complex
Building B, Ground Floor
32 Princess of Wales Terrace
Parktown
Johannesburg

AND TO: MINISTER OF RURAL DEVELOPMENT AND LAND REFORM
Tenth Respondent
c/o THE STATE ATTORNEY
22 Long Street
CAPE TOWN

AND TO: MINISTER OF FINANCE
Eleventh Respondent
c/o THE STATE ATTORNEY
22 Long Street
CAPE TOWN

AND TO: GARY FISHER
Twelfth Respondent
c/o the Provincial Legislature Building,
1st Floor, 15 Wale Street
CAPE TOWN