

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

Case Number: **13946/15**

13947/15

13951/15

13952/15

In the matter between:

CHARNELL COMMANDO	First Applicant
GERALDINE STHEPHANIE CUPIDO	Second Applicant
NORMAN ANDREW CUPIDO	Third Applicant
GICILLE VANNESSA COMMANDO	Fourth Applicant
WILLEM NEL	Fifth Applicant
MEESHADÉ JACOBA NEL	Sixth Applicant
DAPHNE NEL	Seventh Applicant
PRISCILLA NEL	Eighth Applicant
DYLAN NEL	Ninth Applicant
MA AIDA ABELS	Tenth Applicant
SULAIMAN GOLIATH	Eleventh Applicant
FAIZA FISHER	Twelfth Applicant
GEORGE FARIA RODRIGUES	Thirteenth Applicant
NASHIET ABELS	Fourteenth Applicant
CHRASHANNA SMITH	Fifteenth Applicant
DELIA SMITH	Sixteenth Applicant
BRENDA SARAH SMITH	Seventeenth Applicant
MACHAL SMITH	Eighteenth Applicant
MEGAN SMITH	Nineteenth Applicant
ROSELINE SMITH	Twentieth Applicant
CHESLYN SMITH	Twenty-First Applicant
RASHIEDA SMITH	Twenty-Second Applicant
MARK NEIL SMITH	Twenty-Third Applicant
MOGAMAT TAURIQ SMITH	Twenty-Fourth Applicant
GRAHAM BEUKES	Twenty-Fifth Applicant
SOFIE MASILO	Twenty-Sixth Applicant

and

WOODSTOCK HUB (PTY) LTD

First Respondent

CITY OF CAPE TOWN

Second Respondent

FIRST RESPONDENT'S HEADS OF ARGUMENT

1. The relief sought by the Applicants¹ are the following²:

1.1. A declarator that the Second Respondent (the City) is under a constitutional duty to provide the Applicants and their dependants with temporary emergency accommodation in a location as near as possible to the property in which they currently reside (erf 10626, Bromwell Street, Woodstock (the property))³; and

¹ A number of the initial Applicants have vacated the property. The remaining Applicants are the
1 (First and Fourth Applicants)
3 (Eighth and Ninth Applicants)
5 (Tenth and Eleventh Applicants)
7 (Twenty-Second Twenty-Third and Twenty-Fourth Applicants)
8A (Seventeenth, Twentieth and Twenty-First Applicants)
8B (Eighteenth and Nineteenth Applicants)

² Part A of the notice of motion has become moot and it is only Part B that remains applicable. For this reason all references herein to the notice of motion pertain only to Part B thereof.

³ Paragraph 2 of the notice of motion - Page 4 (vol1).

- 1.2. An order compelling the City make available such accommodation available within three months of the granting of this order⁴; and
- 1.3. A declaratory that the Applicants be permitted to remain in the property until the City has complied with in paragraph 4 of the notice of motion.⁵
2. It is only the relief sought in in paragraph 4 of the notice of motion⁶ that is of relevance to the Woodstock Hub.
3. It stands to reason that in the event that the Applicants do not succeed with the relief contained in paragraphs 2 and 3 of the notice of motion, the relief sought in paragraph 4 must also fail and the Order of eviction must be given effect to.
4. In the event that the Applicant's are successful in achieving relief under paragraphs 2 and 3 of the notice of motion, then the basis of the Woodstock Hub's opposition to the relief sought in paragraph 4 of the notice of motion is simply that the continued deprivation of its rights to utilise and access its own property ought not to be permitted when alternative accommodation has been made available to all of the Applicants.
5. Save for issues pertaining to transportation, the Applicants have not advanced any evidence that suggests that their relocation to Wolwerivier, pending a determination of the relief sought in paragraphs 2 and 3 of the notice of motion is wholly untenable.

⁴ Paragraph 3 of the notice of motion - Page 4 (vol1).

⁵ Paragraph 4 of the notice of motion - Page 4 (vol1).

⁶ Page 4 (vol1).

6. It is submitted that, apart from the fact that the Applicants have alternative accommodation available to them, the following common cause facts also favour of the refusal of the relief sought by the Applicants in paragraph 4:
- 6.1. The Applicants do not challenge the validity of the order requiring their eviction from the property;
- 6.2. The Applicants have been aware of the unlawfulness of their occupation from as early as June/July 2014;
- 6.3. The Applicants have continued to occupy the property rent free since approximately June 2014⁷ to date and have made no tender of payment to the Woodstock Hub for the historical debt nor for the period in which they will continue to occupy the property should the relief sought in paragraph 4 be granted. As such, not only has the Woodstock Hub already endured substantial patrimonial loss, it will continue to do so for each month that the Applicant's remain unlawfully in occupation of the property;
- 6.4. The relief sought by the Applicants in this application was raised for the first time more than two years after they were notified of their unlawful occupation of the property and made aware that they were required to find alternative accommodation;

⁷ Page 767, para 13 (Vol 2)

6.5. The Woodstock Hub has (apart from granting numerous and lengthy extensions of the eviction date) put a number of measures in place aimed at facilitating the Applicant's procurement of alternative accommodation and also ameliorating any hardships that they may have endured as a result their relocation.

7. In respect of the prejudice that it continues to suffer as a result of the inability to take possession/occupation of its property, the Woodstock Hub makes clear that:

7.1. Its primary business is the acquisition and development of land and that its inability to take occupation of the property places the viability of the proposed development in jeopardy;⁸

7.2. It has (and continues) to endure prejudice by:

7.2.1. Not being able utilise and access its own property;

7.2.2. Suffering the following patrimonial losses (which have accrued since having acquired ownership):⁹

7.2.2.1. Approximately R 23 000.00 per month for the monthly repayment of the loan used to acquire

⁸ pg 733 (Vol 3)

⁹ Pg 733 – 735 (Vol 3)

the property;

7.2.2.2. Approximately R 24 000.00 per month in respect of consumables utilised by the Applicants in the property (including electricity, water and refuse removal) and security for the property; and

7.2.2.3. Approximately R 2 000.00 per month in respect of rates and taxes.

8. Despite the continued unlawful occupation of the Applicants and absence of any patrimonial tender by the Applicants, the Woodstock Hub has taken the following steps to assist the Applicants in procuring alternative accommodation:

8.1. Initiating a fund-raising campaign;

8.2. Sponsoring the enrollment of any unemployed Applicants in the *Straatwerk Campaign*; and

8.3. Tendering the reasonable transport costs of the Applicants for a period of four months from 3 March 2017, being around the date that the City calculated the estimated traveling costs.¹⁰

9. On a conspectus of the evidence, it is clear that the not only has the Woodstock Hub, as a private land owner, has been liberal with its patience and wholly

¹⁰ Page 2150 par 8.6 (Vol 6)

reasonable in its approach to the matter at hand.

10. In light of all of the above, it is submitted that the continued infringement of the Woodstock Hub's proprietary rights should not be permitted and the relief sought in paragraph 4 of the notice of motion should be refused with costs.

R. Randall

First Respondent's counsel

Huguenot Chambers

8 September 2016