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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2024-008529

1. REPORTABLE: NO

2. OF INTEREST TO OTHER JUDGES: NO

3. REVISED: NO

DATE: 03 September 2025

SIGNATURE

In the matter between:

TIMANI CC

Applicant

and

EMAKHAZENI LOCAL MUNICIPALITY

1ST Respondent

**THE MUNICIPAL MANAGER: EMAKHAZENI
LOCAL MUNICIPALITY**

2ND Respondent

THE MAYOR: EMAKHAZENI LOCAL MUNICIPALITY

3RD Respondent

THE MEMBER OF THE EXECUTIVE COUNCIL

JUDGMENT

COWEN J

Introduction

1. The applicant, Timani CC, has approached this Court for relief under this Court's civil contempt jurisdiction. The order allegedly breached is an order this Court granted on 12 December 2023¹ (the December 2023 order) regulating the relocation and eviction of persons residing on three properties the applicant owns (the properties).² The properties are situated within the area of jurisdiction of the first respondent, eMakhazeni Local Municipality (the Municipality).

2. The December 2023 order was granted by agreement between Timani CC, the Municipality,³ the Mayor of the Municipality (the Mayor), the Municipal Manager of the Municipality (the Municipal Manager) and the MEC for Human Settlements, Mpumalanga (the MEC). In these proceedings, the Municipal Manager, the Mayor and the MEC are the second, third and fourth respondents, respectively.⁴

3. The December 2023 order regulates the relocation and eviction from the properties of persons (to whom I refer as the occupiers)⁵ whose eviction was ordered

¹ Under case numbers 13432/2015 and 69085/2013. The terms of the order, which is lengthy, are dealt with below.

² The properties are described in the order and are Portions 4 and 20 (a Portion of Portion 4) of the Farm Schoonspruit 340 and Portion 3 of the Farm Kindergoed 322.

³ The Municipality was the first respondent under case numbers 13432/2015 and 69085/2013.

⁴ Under case numbers 13432/2015 and 69085/2013, the Municipal Manager was the seventh respondent, the Mayor, the eighth respondent and the MEC, the fifth respondent. To avoid confusion due to their different citations in different proceedings, I refer to them in this judgment simply as the Municipality, Mayor and Municipal Manager.

⁵ The occupiers are described in the order as the first to twenty-fourth respondents under case number 69085/2013 excluding certain persons in respect of whom the November 2014 eviction order was rescinded namely Ms Betty Maphosa, Mr S Mthombothi, Mr Langman Mkhathshwa, Mr Samson Madonsela, Ms Julia Mgomezulu and Ms Maria Mncube.

by this Court on 14 November 2014 (the November 2014 eviction order). The November 2014 eviction order is to be read with other orders granted by this Court including one on 21 April 2015 (the April 2015 order) granted at the request of the occupiers. The April 2015 order directed the Municipality, the MEC and other State functionaries⁶ to take steps required to provide alternative land to the occupiers for their provisional resettlement and to assist them and their households to resettle. Alternative land was ultimately provided by the MEC, being Portion 61 of the Farm Geluk 348 JT (the alternative land).

4. The December 2023 order was granted in circumstances where the occupiers were, on more than one occasion, notified that Timani CC was seeking to enforce the November 2014 eviction order and the MEC had undertaken to assist them to resettle on the alternative land as contemplated by the April 2015 order. It was ultimately ordered that the dates on which the MEC would assist with voluntary resettlement were 11 December to 14 December 2023 and 8 January to 10 January 2024 until completed. The assistance that would be provided was that their dwellings would be dismantled, loaded onto trucks and offloaded to the alternative land and occupying family members and their belongings would also be transported there. Should any occupier fail to relocate in this way, they were required immediately to vacate the properties failing which the November 2014 eviction order would be executed by the Sheriff from 17 January 2024 until completed. In executing the 2014 eviction order, the occupiers were to be relocated to the alternative land with the assistance of the fifth respondent and provision was made for how the eviction would ensue if they refused to do so.

5. The December 2023 order was not complied with. In the result, Timani CC instituted contempt proceedings against the Municipality, the Mayor, the Municipal Manager and the MEC. Notably, this is the second occasion on which Timani CC has instituted contempt proceedings, as appears below.

⁶ Specifically, the Minister of Rural Development and Land Reform, the DG of the Department of Rural Development and Land Reform, the Head of the Mpumalanga Provincial Office of the Department of Rural Development and Land Reform and the MEC for Agriculture, Rural Development and Land Administration, Mpumalanga.

6. The contempt application is opposed by the Municipality, its Municipal Manager and its Mayor. The MEC abides the Court's decision.

7. The matter came before me as a special motion on 30 April 2025. Shortly before the hearing, however, the attorneys for the Municipality, the Mayor and the Municipal Manager, Mmakola Matsimela Inc, filed a notice of withdrawal as attorneys of record 'owing to lack of financial instructions'. At the commencement of the hearing, Mr Potgieter SC, who appeared for the applicant, informed the Court that his attorney had learnt only the day before that there would be no appearance for these parties and was supplied with a telephone number for the Municipality's legal officer, a Mr Mkhonto. Mr Potgieter then confirmed that his client is not seeking any substantive relief against the MEC, who is abiding the decision and only seeks costs. I deal with costs below. In the absence of any appearance and any postponement request, Mr Potgieter proposed that he proceed to argue the matter. However, in circumstances where the Court was not sufficiently apprised of the circumstances of the attorneys' withdrawal and sanctions of a criminal nature are sought in the contempt proceedings, I considered it prudent to afford the Mayor, Municipality and Municipal Manager an opportunity to explain their position.

8. To that end, the Court sought to contact their erstwhile attorneys in respect of the last-minute withdrawal. The responsible attorney, Mr Matsimele was not available. The Court also sought to contact Mr Mkhonto, the Municipality's legal advisor, using the telephone number that Mr Matsimele had – the Court was told – given the applicant's attorney. That number did not exist. In circumstances where the Municipality, Mayor and Municipal Manager are based in Polokwane, have participated actively in the proceedings to date while being represented and where the legal issues raised, in my view, warranted debate in oral argument, I concluded that the interests of justice demanded that the matter be postponed for a brief period to afford them an opportunity to obtain new legal representation or to settle their financial matters with their erstwhile attorneys of record. The matter was accordingly postponed until 19 May 2025 by arrangement with the office of the Deputy Judge President.⁷

⁷ The postponement order was in the following terms:

9. On 19 May 2025, representatives from Mmakola Matsimela Inc appeared and explained the circumstances of their withdrawal. No affidavit was filed in accordance with paragraph 2.1 of the order of 30 April 2025.⁸ Moreover, on the strength of what the Court was informed, there is no basis for any costs order *de bonis propriis*. The Court was *inter alia* informed that Mmakola Matsimela Inc had cautioned their clients to appear in Court. They were thereafter excused. Mr Potgieter SC then proceeded to argue the merits of the contempt application.

Litigation history

10. As intimated above, this matter has a protracted litigation history, which requires some recounting.

11. The matter first came before the Court in early 2014 when this Court, per Jansen J granted an eviction order by default. The eviction application was apparently pursued in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act). In that application, Timani CC explained that it had become the owner of the properties in late 2012 by acquiring the legal entity that owned them from a deceased estate. It was alleged in that application that some of the respondents had unlawfully invaded the property during the course of the winding up of the deceased estate. Although the executor approached the South African Police Service (SAPS) on numerous occasions to

¹ The contempt application (in case number: 2024-008529) is postponed until the 19th May 2025 for purposes of enabling the first to third respondents to obtain new legal representation should they wish to, or to settle any financial dispute with their previous attorneys of record to enable them to appear.

2. On 19 May 2025, the first to third respondents must show cause why the wasted costs occasioned by the postponement should not be paid to the Applicant on an attorney and client scale as follows:

2.1 By the First to Third Respondents, jointly and severally, subject only to the First to Third Respondents satisfying the Court by means of an affidavit to be filed in Court and served upon the Applicant and the First to Third Respondents' attorneys of record on or before 9 May 2025, that the said costs must be born *de bonis propriis* by the First to Third Respondents attorney of record, Mmakola Matsimela Incorporated.

2.2 In the event of the First to Third Respondent satisfying the Court that the First to Third Respondents' aforesaid attorneys of record are liable to pay, the said wasted costs are payable by the attorneys, Mmakola Matsimela Incorporated.

3. The First to Third Respondents' attorneys of record, Mmakola Matsimela Incorporated, are entitled to file an answering affidavit to the First to Third Respondents' affidavit, if any, and to appear on 19 May 2025 to contest any request for the granting of the said *de bonis propriis* costs order against them.'

⁸ Id.

assist to stop the invasions, the police had not assisted. During engagements with the Municipality, Timani CC had, moreover, ascertained that amongst the occupiers were undocumented immigrants. Further, Timani CC alleged that unlawful invasion of the property continued following engagements with the Municipality in late 2013. It was not possible for Timani CC to establish the identities of all occupiers at the time they instituted the eviction proceedings. Attempts by Timani CC to visit the property were allegedly met with aggression, and Timani CC considered it dangerous to visit that part of the property.

12. The occupiers (then identified as sixty-seven households), thereafter instituted a rescission application. The occupiers also sought and obtained an order suspending the execution of the eviction order pending the finalisation of the rescission application.⁹ In the rescission application, the occupiers pleaded *inter alia* that the eviction application should not have been instituted in terms of the PIE Act and was erroneously characterised as a case of land invasion. They pleaded that the Extension of Security of Tenure Act 62 of 1997 (ESTA) and the Land Reform (Labour Tenants) Act 3 of 1996 (the LTA) were applicable and that proceedings ought to have been instituted in the then Land Claims Court. In this regard, they pleaded that many of them had been born on the properties, which were rural properties, and they pleaded that they and their families were labour tenants protected by the LTA. They also took issue with the manner of citation of the respondents and a failure to comply even with the PIE Act.

13. The order of Jansen J was rescinded by a consent order of this Court dated 29 August 2014 and leave was granted to the occupiers to deliver answering affidavits within a set time period. However, they did not do so.

14. The matter then came before Judge Rossouw AJ on 14 November 2014, when this Court granted the November 2014 eviction order on an unopposed basis. The Municipality was a party to those proceedings and did not oppose them.¹⁰ The November 2014 eviction order was in the following terms, the 1st to 24th respondents being the cited occupiers:

⁹ The suspension order was granted by Judge Bam on 16 May 2014.

¹⁰ The Municipality was the 25th respondent in those proceedings.

1. The 1st to 24th respondents are evicted from [the properties].
2. The 1st to 24th respondents, and all persons and entities that occupy the properties by, through or under them, are ordered to vacate the properties referred to in prayer 1 above on or before 15 December 2014.
3. In the event that the 1st to 24th respondents do not vacate the property by the date in paragraph 2 above, the Sheriff of this Court or his lawfully appointed deputy or sub-contractor is authorised and directed to evict the respondents from the property.
4. The names of any of the 22nd to 24th respondents¹¹ established by the Sheriff or his lawfully appointed deputy, pursuant to the service of this application as contemplated in Part A hereof, be incorporated herein as the 27th (and further respondents).
5. Pursuant to the 1st to 24th respondents (and 27th and further respondents) having vacated the properties, or having been evicted therefrom, pursuant to the order contemplated in prayer 1 and 2 above, the Sheriff of this Court or his lawfully appointed deputy or sub-contractor is authorised and directed to demolish any structures on the properties formally occupied by the 1st to 24th respondents (and 27th and further respondents) and to retain the building materials of the demolished structures for a period of one month after the demolishing.
6. The Sheriff of this Court or his lawfully appointed deputy or sub-contractor is directed to inform the 1st to 24th respondents (and 27th and further respondents) where the building materials are retained as described in prayer 5 above.
7. The 1st to 24th respondents (and 27th and further respondents) are interdicted and restrained from being present at the properties, and from taking any steps to reoccupy the properties pursuant to their eviction.
8. In the event that any of the 1st to 24th respondents (and 27th and further respondents) endeavour/s to regain possession of properties pursuant to the demolition of any structures, the Sheriff of this Court is authorised and directed to remove such person from the property. For these purposes, the

¹¹ Which are cited as further unlawful occupiers on the three properties respectively.

Sheriff or his lawfully appointed deputy or sub-contractor is authorised to engage the services of the South African Police Service should it be necessary.

9. The 1st to 24th respondents (and 27th and further respondents) are to pay the costs of this application, including the costs of Part A of the notice of motion, jointly and severally, on the scale as between attorney and client.

15. There was a further rescission application, which Timani CC opposed in a lengthy answering affidavit. In the answering affidavit, Timani CC noted that as at December 2014, there were, in addition to the original 68 structures, an additional 15 completed structures. It referred to a new occupier who had just that month started ploughing fields. Timani CC persisted with its stance that the matter was correctly brought in the High Court referring to its knowledge of the occupiers. It persisted with its stance that the occupation was substantially an aggressive land invasion and put up facts to dispute the claims of labour tenancy under the LTA. It also disputed the application of ESTA. Timani CC again asserted that amongst the occupiers are undocumented immigrants. It pleaded *inter alia* that there was consent to the High Court's jurisdiction.

16. On 30 January 2015, Judge Tuchten granted an order by agreement. In material parts that order was in the following terms:¹²

‘1. The eviction order dated 14 November 2014 is rescinded in respect of the following occupiers only:

- 1.1 Betty Maphosa (first respondent)
- 1.2 Mr S Mthombothi (13th respondent)
- 1.3 Mr Langman Mkhathshwa (not cited by name)
- 1.4 Mr Samson Madonsela (not cited by name)
- 1.5 Ms Julia Mgomzulu (not cited by name)
- 1.6 Ms Maria Mncube (not cited by name).

¹² This was in respect of a parallel and related application instituted by Timani CC under Rule 49(11).

2. [Timani CC] undertakes to keep execution steps in respect of the eviction order dated 14 November 2014 in abeyance subject to the following conditions:

2.1 The [occupiers] shall bring an urgent application against [the Municipality] and the Minister of Rural Development and Land Reform within 15 days of the date of this order in which application they shall seek an order that alternative accommodation be provided in terms of the relevant provisions of the Housing Code.

2.2 The [occupiers] shall prosecute such application with the necessary diligence.

3. The parties to this agreement shall take all the necessary steps to ensure that the case, insofar as it relates to the rescinded part of the order, be transferred to the Land Claims Court.

4. ...'

17. The occupiers (then self-described as sixty-three heads of households)¹³ duly instituted an application for alternative accommodation. The application was instituted against the Municipality and the Minister of Rural Development and Land Reform. In that application, the occupiers pleaded that the manner and timing of the occupation of the properties is disputed but that it was common cause that there is evidence of a well settled community. They pleaded their entitlement to alternative accommodation given their imminent homelessness in view of the eviction order and recorded that the parties have agreed to settle all appeals and interlocutories to resolve the matter expeditiously.

18. This culminated in this Court granting the April 2015 order. The April 2015 order was in the following terms against six respondents, being the Municipality, the Minister of Rural Development and Land Reform, the DG of the Department, the Head of the Mpumalanga Provincial Office of the Department, the MEC and the MEC for Agriculture, Rural Development and Land Administration, Mpumalanga:

1. The [above-mentioned respondents] are ordered:

¹³ Each of whom was listed in an Annexure.

- 1.1 to take all steps required to provide alternative land to the [occupiers] and their households for their provisional resettlement;
 - 1.2 to assist the [occupiers] and their households to resettle from their present occupation of [the properties];
2. The [Municipality] is ordered to file a report on the implementation and / or planned implementation of this order within twenty days after service of this order on the municipal manager of [the Municipality], such report to be served on the respective attorneys of the [occupiers] and [Timani CC] at the address of their legal representatives.

19. The April 2015 order was not complied with. In an application instituted by the occupiers, on 5 November 2015, Msimeki J granted a consent order¹⁴ (the November 2015 order) in the following terms (in relevant part):

- ‘1. The [Municipality] undertakes, in compliance with the court order of 21 April 2015, to resettle [the occupiers] before the end of February 2016 to portion 38 of the Farm Geluk 348 JT or such other land as the parties may agree on or before such date (the new site);
2. The [Municipality] undertakes to take all necessary steps to ensure that any legal obstacles to such relocation to the new site are removed before end of February 2016, more particularly, the [Municipality] shall;
 - 2.1 Terminate any lease agreements in respect of the land.
 - 2.2 Consult with all relevant stakeholders in the town of Machadodorp or any other relevant community.
 - 2.3 Immediately give notice of this order as well as the order of 21 April 2015 to the affected residents of Machadodorp by placing same on the municipal notice board at Machadodorp.
 - 2.4 Immediately apply for the necessary emergency funding from the [MEC] and the [MEC, Agriculture, Rural Development and Land Administration, Mpumalanga] in terms of the Housing Code for the resettlement provided for herein. Such application shall include application for funding of the necessary transport, assistance to

¹⁴ The order was granted by consent between the occupiers, the Municipality and Timani CC.

relocate and rudimentary materials to re-establish the informal dwellings of the [occupiers] on the new site.

2.5 Endeavour, in terms of its inter-governmental co-operation obligations, to ensure that the [MEC] and the [MEC, Agriculture, Rural Development and Land Administration, Mpumalanga] facilitate the relocation and settlement of the [occupiers] as provided for herein.

3. The [Municipality] shall file reports on or before 14 December 2015 and again on 14 February 2016 in which [the Municipality] must set out in detail what steps have been taken, and which remain to be taken to give effect to this order and the order of 21 April 2015.

4. The [Municipality] shall give the [occupiers] two weeks' notice of any intended relocation. The parties shall co-operate in good faith to ensure that the relocation is implemented as best as circumstances permit.

5. The parties record that no occupier may be forced to relocate. Occupiers that do not wish to be relocated to the new site, shall be given two weeks after such relocation to relocate elsewhere at their own costs, after which such occupiers shall be liable to be evicted in terms of the court order of 14 November 2014, subject to the exclusions of paragraph 1 of the order of 30 January 2015.

6. In the event that the relocation does not take place prior to the end of February 2016, or the [Municipality] fails to comply with any of its obligations in this order, the Applicants shall be entitled to set the matter down, supplemented by further affidavits if necessary, for further appropriate relief.'

20. Further litigation ensued but ultimately, in 2017, Timani CC instituted contempt of court proceedings in respect of the April 2015 order and the order of Msimeki J. They sought the imposition of a fine suspended pending compliance with those orders. Importantly, they also sought an order that should the orders not be complied with, the Sheriff be authorised to assist Timani CC to evict the occupiers at the costs and expense of the State respondents.¹⁵ The Mayor and the Municipal Manager were subsequently joined to those proceedings. The contempt application

¹⁵ The State respondents included the Municipality, the Minister of Rural Development of Land Reform, the DG of the Department of Rural Development and Land Reform, the Head of the Mpumalanga Department of Rural Development and Land Reform, the MEC, the MEC, Agriculture Rural Development and Land Administration, Mpumalanga, the Municipal Manager and the Mayor.

was referred to case management initially in October 2018, before Mabuse J, Ledwaba DJP and, finally, before me. The case management process – which ensued over a five-year period – was centrally directed at pragmatically ensuring the relocation and eviction of the occupiers from the properties in accordance with the orders of this Court and the law.

21. Through this process, the Municipality, the Mayor and Municipal Manager, and the MEC raised challenges. However, all these parties indicated an intention to comply with the orders and secure their enforcement. This ultimately culminated in the grant of the December 2023 order. That order, however, was preceded by prior orders aimed at ensuring, amongst other things, that provision was made to allow the challenges raised to be overcome and to ensure that the occupiers were aware – after the lapse of time – of the attempts to secure compliance with the orders and of remedies should they wish to take issue with the implementation process. Moreover, new time-frames were set and extended for the relocation and eviction of the occupiers.

22. On 17 November 2022, this Court granted an order by agreement between Timani CC, the Municipality, the Mayor and the Municipal Manager (the said respondents) in the following terms, with order no 5 granted by agreement of the MEC:

1. The Municipality, the Mayor and the Municipal Manager must ensure the removal of the [occupiers] who are referred to in the eviction order dated 14 November 2014 ... from [the properties] and must commence with the taking of all such steps as are necessary to achieve same within five days of date of this order.

2. It is determined that the only steps required to be taken by the said respondents to ensure the removal of the [occupiers] by 31 March 2023 are the following:

- 2.1 an application to [the MEC] for financing in respect of only the physical removal and relocation of the [occupiers] (and not the purchasing of alternative property, such alternative property already being available *viz* [the alternative land];

2.2 an application to National Treasury for approval of a deviation from normal procurement policy in respect of the appointing of contractors to remove and relocate the [occupiers];

2.3 the appointment of appropriate contractors to take the necessary steps to implement the removal and relocation of the illegal occupiers.

3. The said respondents must appoint a Task Team consisting of no more than three members whose task shall be the ensuring of the achievement of the aforementioned eviction date of the [occupiers] from [the properties], which task Team must be appointed within four days from the date of this order and which Task Team's members' names and contact particulars (e-mail addresses and telephone numbers), must be provided to the [Timani CC]'s attorney of record as soon as the Task Team has been appointed.

4. The said respondents must ensure (albeit by means of the said 'Task Team', that the following steps are taken within 5 (five) days from the date of this Court order;

4.1 an application must be made to the [MEC] for financing necessary to remove and relocate the [occupiers] from [the properties] to [the alternative land];

4.2 Proof that such an application has been made must be provided to [Timani CC's] attorneys of record simultaneously with the furnishing of the said application to the MEC;

4.3 An application must be prepared for submission to National Treasury for an approval of deviation by the Said Respondents from normal procurement policy in order to ensure the appointment of contractors to undertake the necessary steps to remove and relocate the [occupiers] from [the properties] to the said Portion and proof of such an application to National Treasury must be provided to [Timani CC's] attorneys of record as soon as the said application is made to National Treasury.

4.4 A copy of this order must be provided to National Treasury.

5. The [MEC] will, within 14 (fourteen) days from receipt of the application for financing, provide the Said Respondents, (albeit by virtue of the said Task Team), with an answer to the said Respondents' request for financing

necessary to relocate the [occupiers] from the Applicant's property to [the alternative land].

6. If it transpires that the [Municipality, Mayor and Municipal Manager] will not be able to achieve the eviction date of the [occupiers], viz 31 March 2023, the Said Respondents:

6.1 must immediately upon becoming aware of same, apply by means of an affidavit, to Court for an extension of the said eviction date, which application must be fully motivated with the reasons why the said eviction date cannot be achieved and with a proposed new eviction date together with reasons as to why the said new eviction date is alleged to be appropriate.

6.2 The aforementioned application for an extension of the eviction date need not be launched in the normal course and her Ladyship may be approached to deal with same and if her Ladyship is not available the Deputy Judge President may be approached for the allocation of another Judge.

7. Should the Said Respondents not take the necessary steps set out in paragraph 4 *supra* and / or not provide [Timani CC's] attorneys of record with the necessary documentary proof that such steps had been taken as and when same are taken, [Timani CC] shall be entitled to re-enrol the contempt application duly supplemented at which time the contempt application which is herewith postponed *sine die* in accordance with paragraph 8 *infra* pending compliance with the steps and eviction orders contained *supra* may also be adjudicated.

8. The contempt application is postponed *sine die* (inclusive of the [Municipality, Municipal Manager and MEC's] conduct to date hereof) and should it become necessary to re-enrol same such precedent conduct together with any subsequent conduct after the granting of this order shall form the subject matter of the contempt application.

9. The costs of the contempt application against all the Respondents thereto are reserved.'

23. As matters transpired, on 20 June 2023 it was necessary to grant a further order, which I did after hearing the legal representatives for Timani CC, the

Municipality, the Mayor, the Municipal Manager and the MEC. I did so in circumstances where these respondents had indicated their revised intended process to comply with the orders:¹⁶

‘1. The [MEC] must provide the [Municipality, the Mayor and the Municipal Manager] with a decision by no later than 30 June 2023 pertaining to their application for funding in order to enable the [Municipality, the Mayor and the Municipal Manager] to evict the illegal occupiers from [Timani CC’s] property and relocate same, which application by the [Municipality, the Mayor and Municipal Manager] is accepted by the [MEC Human Settlements Mpumalanga] as fully compliant.

2. The [Municipality, Mayor and Municipal Manager] must do the following:

2.1 Immediately commence preparing an application to National Treasury for approval of an expedited procurement process pertaining to the appointment of the necessary contractors / service providers needed to remove the illegal occupiers from [Timani CC’s] property and to re-house them in temporary accommodation on alternative property.

2.2 Submit the aforementioned application to National Treasury by no later than 4 July 2023.

2.3 Evict the illegal occupants on the Applicant’s property by no later than 31 August 2023, subject only thereto that the necessary funding to enable the [Municipality, Mayor and Municipal Manager] to undertake the said eviction and relocation is timeously provided by the [MEC] to the [Municipality, Mayor and Municipal Manager].

3. The present application is postponed to 7 August 2023 at 13h15 for a virtual case management appearance before Her Ladyship to ensure that the deadline for eviction is achievable and the costs are reserved.

4. The contempt application is postponed *sine die* and the costs thereof are reserved.’

¹⁶ Under Case no 13432/2015 and 69085/2013

24. On 7 August 2023, I granted the following order after hearing the legal representative of the aforesaid respondents.

‘1. Paragraph 2.3 of the order dated 20 June 2023 (signed on 5 July 2023) remains operative as far as the eviction date of the illegal occupiers from [Timani CC’s] property is concerned *viz 31 August 2023* but the qualification to the last-mentioned eviction date viz that the necessary funding to undertake the eviction be obtained, is no longer applicable in the light of the indication by the [MEC] that [the MEC] will undertake the eviction, [the MEC] will use its Panel – Service Providers and foresees no difficulty in achieving the eviction date of 31 August 2023.

2. This case management is postponed to 13h00 on 28 August 2023 to ascertain whether or not the aforementioned eviction date of 31 August 2023 is still attainable and, if not, for the issuing of directives to achieve the eviction at the earliest possible date.

3. The parties will file and update a document, similar to a practice note, on or before 13h00 on 28 August 2023 and ensure that same is uploaded onto Caselines.

4. It will be determined at the case management meeting on 28 August 2023 when and how the question of the costs of the contempt application and the case management meetings will be dealt with.

5. Paragraph 3 of the order dated 20 June 2023 stands in amended form *viz* the postponement date is 28 August 2023 at 13h00.

6. Paragraph 4 of the order dated 20 June 2023 *viz* that the contempt application is postponed *sine die* and the costs thereof are reserved, stands.’

25. On 12 October 2023, I granted an order by agreement between Timani CC, the Municipality, the Mayor, the Municipal Manager and the MEC in the following terms:

1. In this order:

1.1 ‘the November eviction order’ means the eviction order granted by this Court on 14 November 2014 against the first to twenty-fourth respondents

under case number 69085/2013 of which a true copy is attached as Annexure 'X' hereto.

1.2 'unlawful occupiers' refers to the first to twenty-fourth respondents cited in Annexure X but excludes the following persons in respect of whom the eviction order was rescinded namely Betty Maphose, Mr S Mthombothi, Mr Langman Mkhathshwa, Mr Samson Madonsela, MS Julia Mgonezulu and Ms Maria Mncube.

1.3 'the applicant's properties' means the properties of the applicant (ie Timani CC) on which the unlawful occupiers currently reside being Portions 4 and 20, (a Portion of Portion 4), of the Farm Schoonspruit 340 and Portion 3 of the Farm Kindergoed 322, situated within the areas of jurisdiction of the [Municipality].

1.4 'the April 2015 order' means the order granted by this Court on 21 April 2015 under case number 13432/2015 at the request of the aforesaid unlawful occupiers, that the First to Sixth Respondents had to take all steps required to provide alternative land to the unlawful occupiers for their provisional resettlement and to assist the illegal occupiers and their households to resettle from their present occupation, a true copy of which Court order is attached as Annexure "Y" hereto.

1.5 'the alternative land' means Portion 61 of the Farm Geluk 348 JT depicted on the map annexed as Annexure 'Z' hereto.

2. The [Municipality, Mayor and Municipal Manager] are ordered on or before Saturday 14 October 2023 to take such steps as are necessary to inform the unlawful occupiers:

2.1 That the alternative land has been provided by the [MEC] to the Municipality for the provisional resettlement of the unlawful occupiers on the applicant's land.

2.2 That the [MEC] has undertaken to assist the unlawful occupiers on [Timani CC's] land and their households to resettle from their present occupation to the alternative land for their provisional resettlement as contemplated by the April 2015 order.

2.3 The dates on which the [MEC] intend to assist with the resettlement are from the 13th of November 2023 to 16th November 2023 or until completed.

The assistance that will be provided is that the dwellings / shacks will be dismantled, loaded to trucks and off loaded to [the alternative land] and occupying family members will also be transported.

2.4 In the event that any unlawful occupier fails to relocate as foresaid, they are to immediately vacate [Timani CC's] properties failing which it is intended that the eviction order will be executed by the Sheriff as from the 20th day of November 2023.

2.5 That on 6 November 2023, any unlawful occupier who objects to the above process for implementation and execution of the eviction order and April 2015 order must show cause why the above process for the implementation and execution of the eviction order and April 2015 order should not be authorised by the court.

3. Any unlawful occupier wishing to object to the above process must deliver a notice of intention to do so and deliver any affidavit setting out the basis of their objection on or before 28 October 2023 and the applicant or any other respondent may reply thereto.

4. Any notice of intention to objection and any objection affidavit must be delivered to [Timani CC's] attorneys EYS Inc Pretoria by email to e[...].

5. The right to object is limited to the process of implementation and execution of the eviction order and April 2015 order, such as in respect of time frames.

6. In complying with this order the [Municipality, the Mayor and the Municipality] are authorised to take any and all steps necessary to bring the contents of this order and Annexures "X", "Y" and "Z" hereto to the attention of the unlawful occupiers bound thereto on the three aforementioned properties inclusive of e.g. the use megaphones (sic) or other forms of loudspeakers and leaving copies with the unlawful occupiers provided that such steps will ensure that all households and persons present on the aforementioned three properties of [Timani CC] are adequately informed.

7. The Municipality, Mayor and Municipal Manager are furthermore ordered to file an affidavit with the Court and to upload same onto CaseLines as soon as this order has been complied with but, in any event, no later than 20 October 2023.

8. Subject to the right of any person, including any unlawful occupier to request a hearing in open Court at the Pretoria High Court, the proceedings of 6 November 2023 will ensue by way of a virtual hearing using the following link at 13h00 and costs are reserved. [Link supplied.]

9. Any request for a hearing in open Court, for assistance with the virtual link or other queries in respect of the hearing must be directed to the Registrar of the High Court of South Africa, Gauteng Division, Pretoria.

10. The contempt application is further postponed *sine die* and the costs thereof are reserved.'

26. On 6 November 2023, there was no appearance for any occupier. Mr Mkhonto, a Legal Manager at the Municipality, delivered an affidavit confirming that there had been compliance with the order on its part. Various occupiers, however, had delivered brief affidavits objecting to their eviction for various reasons including that they were born on the properties and the properties have always been their home, these are their only homes and they grow vegetables to sustain themselves. Further issues were raised including status as a pensioner or employment status, proximity of work and that family are buried.

27. Following the hearing on 6 November 2023 and on 9 November 2023, I granted a further order in similar terms to the order of 12 October 2023. In that order, I extended the dates for resettlement. A further opportunity was given to the occupiers to show cause why the process and timeline for implementation of the orders should not be authorised. In the order, specific attention was drawn to the possible impact on children, child and women headed households, persons with disabilities and elderly persons.¹⁷ It was also emphasised that 'the Court is not seized with a reconsideration of the eviction order and the April 2015 order and that accordingly, the right to object is limited to the process and timeline of implementation and execution of these orders.'¹⁸ Furthermore, attention was drawn to the ability to access the South African Legal Aid Board and the *pro bono* section of the South African Legal Practice Council. A further link was provided for a hearing on 28 November 2023 with a right to request an in-person hearing.

¹⁷ Paragraph 2.5.

¹⁸ Paragraph 2.7.

28. On that day, the date for the hearing was again extended, until 12 December 2023, when the order in issue in this application was granted. Prayer 1 of the 12 December 2023 order is in the same terms as the October 2023 order and defines, in turn, the November 2014 eviction order, the unlawful occupiers, the Applicants' properties, the April 2015 order and the alternative land. It then reads, from prayer 2:

'2. Noting that:

2.1 the unlawful occupiers have been notified of the order of 30 November 2023 and noting that the alternative land (Annexure Z) has been provided by the [MEC] to the [Municipality] for the provisional resettlement of the unlawful occupiers on the Applicants' land.

2.2 The [MEC] has undertaken to assist the unlawful occupiers on the Applicant's land and their households to resettle from their present occupation to the alternative land for their provisional resettlement as contemplated by the April 2015 order.

2.3 The dates on which the [MEC] will assist with the voluntary resettlement are from 11 December to 14 December 2023 and 8 January to 10 January 2024 until completed. The assistance that will be provided is that the dwellings/ shacks will be dismantled, loaded onto trucks and offloaded to Portion 61 of the Farm Geluk and occupying family members and their belongings will also be transported to Portion 61.

3. In the event that any unlawful occupier fails to relocate on any of the dates or in the manner as aforesaid, they are to immediately vacate the Applicant's properties failing which the eviction order will be executed by the Sheriff as from the 17 January 2024 until completed. In executing the eviction order (Annexure X) the unlawful occupiers shall, with the assistance of the [MEC] be relocated to the alternative land, and if they refuse to do so, the eviction order shall be executed in accordance with paragraphs 5 to 9 of that order.

4. The [Municipality, Mayor and Municipal Manager] shall, on or before 15 December 2023 serve a copy of this order on the Sheriff and thereafter immediately commence engagement with the Sheriff and the [MEC] to ensure

that all necessary arrangements are timeously in place should it be necessary to execute the eviction order. The [Municipality, Mayor and Municipal Manager] shall inform the applicant of service on the Sheriff, as soon as it is effected, and all arrangements.

5. Any unlawful occupier who has good cause to apply for any variation or extension of time for the implementation of this order must do so on reasonable notice and on affidavit and any respondent may reply thereto. In the event that any unlawful occupier requires assistance to apply for a variation or extension of time but cannot afford or obtain such assistance such objector is entitled to approach any branch of, *inter alia*, the following entities for assistance:

5.1 The South African Legal Aid Board.

5.2 The *pro bono* section of the South African Legal Practitioners Council.

6. Any application as aforesaid must be delivered to the Applicant's attorneys EYS Attorneys Inc Pretoria by e-mail to e[...] who shall ensure that same are uploaded to CaseLines and the abovementioned Judge and / or her Registrar is informed of such uploading.

7. The [Municipality, Mayor and Municipal Manager] are directed without delay, and by no later than 13 December 2023, to draw this order to the attention of the unlawful occupiers and in doing they are authorised to e.g. utilise the assistance of the South African Police Services, the holding of a meeting, the use of megaphones or other forms of loudspeakers and leaving copies with the unlawful occupiers provided that such steps will ensure that all households and persons present on the aforementioned three properties of the Applicant are adequately informed.

8. The [Municipality, Mayor and Municipal Manager] are furthermore ordered to file an affidavit with the Court and to upload same onto CaseLines as soon as this order has been served in accordance with paragraph 4 and 7, by no later than 18 December 2023.

9. The contempt application is further postponed *sine die* and the costs thereof are reserved.'

29. On 12 January 2024, Timani CC's attorneys wrote to the attorneys of the Municipality, Municipal Manager and Mayor (Mmakola Matsimela Inc) and to the

attorneys of the MEC (Lubisi Attorneys). They enquired whether any occupier had voluntarily resettled with the assistance of the MEC as envisaged by the order. They recorded that according to the records of Timani CC, the Municipality, Mayor and Municipal Manager had failed to file an affidavit to report on their obligations as set out in paragraphs 4 and 7 of the order. They enquired whether arrangements are in place for the eviction of the occupiers and that their enquiries with the Sheriff suggested no requests had been made to the Sheriff. It was recorded that if the eviction does not occur as from 17 January 2024 a contempt application would be launched. There was no response.

30. On 18 January 2024, Timani CC's attorneys wrote again to the same attorneys. They recorded that they had received no response to the previous letter. They recorded that the occupiers had not been evicted in terms of the December 2023 order. They enquired as to the progress of the eviction or the intention of the MEC and mentioned that the MEC was obliged to execute the eviction in co-operation with the Mayor, the Municipality and the Municipal Manager. There was no response.

31. In short, there was no compliance with the December 2023 order.

Key elements of the MEC's response to the application and Timani CC's reply.

32. On 5 March 2024, the MEC delivered an answering affidavit deposed to by Ms Hazel Zitha, Acting Head of the Mpumalanga Provincial Department of Human Settlements (the Department) and its accounting officer. In her affidavit, Ms Zitha contended that in its contempt application, Timani CC was seeking to place on the MEC responsibilities to evict that reside with Timani CC itself as the party who obtained an eviction order in its favour. Ms Zitha complained about the fact that there had at that stage been three contempt applications. In the second one, which led to the December 2023 order, no relief was sought against the MEC but the Department had offered to assist them as far as needed. However, Ms Zitha insisted that at no stage has the MEC been ordered to conduct an eviction. Their function, she contends, is limited to assisting with voluntary relocation. The Department was and remains ready to assist with these relocations. In providing its explanation, Ms

Zitha referred to the logic of the order of Msimeki J which drew the distinction contended for between voluntary location and eviction.¹⁹ Moreover, and in any event, it was pleaded that the MEC could only perform duties under the court order once the Municipality had performed its own duties.

33. In reply, Timani CC referred to the history of the litigation, the history of efforts to secure compliance with the orders, and the case management process to assert that the MEC does, in this case, have responsibility for the eviction process. Timani CC also reiterated that the process of enforcement had taken place against the backdrop where, they had contended that it was from the outset the Municipality's duty to terminate the occupation of the occupiers. Moreover, it reiterated that the occupiers themselves had obtained an order against *inter alia* the MEC. Noting the contention that the MEC's duties could only be effected once there had been compliance by the Municipality Timani CC rejected this but contended, if that were the case, they should have answered the letters of January 2024 accordingly.

Key elements of the answering affidavit of the Municipality, Mayor and Municipal Manager

34. The Municipality, Mayor and Municipal Manager also delivered an answering affidavit. Their affidavit is deposed to by Mr Jabulani Wonderboy Shabangu, who describes himself as 'a Municipal Manager' at the Municipality. He speaks for the first to third respondents. The affidavit is also intended to serve as a founding affidavit for an application to vary the order of 12 December 2023, which has not been prosecuted. There are several legs to their defence.

35. The first is a contention that one of the key requirements for demonstrating contempt has not been met, being that the order of 12 December 2023 had not been served on the Mayor or Municipal Manager for purposes of contempt. They accept in this regard, however that Mr Mkhonto of the legal division of the Municipality was

¹⁹ The part of the order relied upon reads:

'7. The parties record that no occupier may be forced to relocate. Occupiers that do not wish to be relocated to the new site, shall be given two weeks after such relocation to relocate elsewhere at their own costs, after which such occupiers shall be liable to be evicted in terms of the court order of 14 November 2014, subject to the exclusions of paragraph 1 of the order of 30 January 2015.'

‘made aware of the order’. However, only the legal division, they say, will know of the order. The participation of ‘legal teams representing the Municipality as an entity cannot transmogrify into personal service for purposes of contempt proceedings ...’

36. The second is that they say that the Municipality is not responsible for the unlawful settlement on the property and cannot be expected to engage the eviction process being the responsibility of the landowner, Timani CC.

37. The third is that they say that though cited in the eviction proceedings, at no stage did the Municipality participate in them and its participation in relocation plans should not be ‘transmogrified’ into participating into the eviction proceedings. The Municipality’s duty, they say, is to provide alternative accommodation for persons affected by eviction proceedings. They have no duty to evict any person from land that is not Municipal land. That duty, they say, resides with Timani CC. They say that the order of 12 December 2023 should be interpreted accordingly.

38. They say further that Mr Mkhonto implemented the order, as understood by the Municipality, by making the occupiers aware of it and its import including ‘of the relevant land they must move in terms of the previous orders issued by this Honourable Court.’ Beyond that the order only requires them to engage the Sheriff to provide undertakings that all arrangements have been done for the eviction, which must be facilitated and carried out by Timani CC. They dispute Timani CC’s interpretation of the order to the effect that the Municipality must carry out the eviction and contend that there was apparently no meeting of minds in this regard. Rather, it was Timani CC that should advise the Municipality of the date it would carry out the eviction order at which point the Municipality would engage the sheriff to the extent necessary, in other words, regarding the alternative land where they are to be accommodated. They at no stage did so. Had they done so, they say, the Municipality would have engaged the Sheriff. The eviction process, they say, must be contrasted with the duties of the MEC to resettle from the present occupation to the alternative land.

39. Ultimately, they say that the December 2023 order should be varied to clarify its import as to what needs to be done and by whom, in other words in respect of the

arrangements regarding the eviction process itself. The ambiguity in the order, they say, must be attributed to the Court itself.

40. In reply, Timani CC contended that the Municipality, Mayor and Municipal Manager ignored the history that culminated in the grant of the December 2023 order and ignored its own By-Laws. With reference to the litigation history while the matter was under case management, and affidavits filed in that process, Timani CC contended that it has always been clear that the eviction obligation resides with the Municipality and indeed, the Municipality has accepted this duty through the process. Timani CC, moreover, opposed the variation application.

Legal principles governing contempt proceedings

41. The Constitutional Court has recently restated the legal principles that arise in dealing with this contempt application in *Zuma*.²⁰

‘As set out by the Supreme Court of Appeal in *Fakie*, and approved by this Court in *Pheko II*, it is trite that an applicant who alleges contempt of court must establish that (a) an order was granted against the alleged contemnor; (b) the alleged contemnor was served with the order or had knowledge of it; and (c) the alleged contemnor failed to comply with the order. Once these elements are established, wilfulness and *mala fides* are presumed and the respondent bears an evidentiary burden to establish a reasonable doubt. Should the respondent fail to discharge this burden, contempt will have been established.’²¹

42. The Constitutional Court held further (footnotes omitted):²²

²⁰ *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* [2021] ZACC 18; 2021 (9) BCLR 992 (CC); 2021 (5) SA 327 (CC) (*Zuma*).

²¹ The Constitutional Court restated these principles referring, amongst others, to *Pheko v Ekurhuleni City* [2015] ZACC 10; 2015 (5) SA 600 (CC); 2015 (6) BCLR 711 (CC) (*Pheko II*) at paras 32 and 36, *Fakie N.O. v CCII Systems (Pty) Ltd* [2006] ZASCA 52; 2006 (4) SA 326 (SCA) (*Fakie*) at paras 22 and 41-42, *Consolidated Fish Distributors (Pty) Ltd v Zive* 1968 (2) SA 517 (C) at 522E-H and *Victoria Park Ratepayers' Association v Greyvenouw CC* 2004 JDR 0498 (SE) at para 17.

²² At para 59.

‘It cannot be gainsaid that orders of court bind all to whom they apply. In fact, all orders of court, whether correctly or incorrectly granted, have to be obeyed unless they are properly set aside. This, in addition to typifying common sense, the Constitution itself enjoins. Section 165(5) of the Constitution itself provides that an order or decision binds all persons to whom it applies. The reason being that ensuring the effectiveness of the Judiciary is an imperative. This has been confirmed in multiple cases, including *Mjeni*, in which the Court stated that “there is no doubt, I venture to say, that [complying with court orders] constitutes the most important and fundamental duty imposed upon the State by the Constitution”. ...’

43. A court vested with civil contempt jurisdiction has wide powers to grant appropriate relief via the civil contempt process. To the extent that Timani CC seek a criminal sanction, the standard of proof applicable to the proceedings is proof beyond a reasonable doubt,²³ whereas proof on a balance of probabilities suffices where the remedies sought ‘do not have the consequence of depriving an individual of their right to freedom and security of the person.’ should a court find that contempt is established on a balance of probabilities, the court may impose civil contempt remedies other than committal such as declaratory relief, a mandamus that a contemnor behave in a particular manner, a structural interdict, a fine or another order that would have the effect of co-ercing compliance.

44. It is important to bear in mind the purpose of contempt orders, and in doing so to distinguish between their coercive and punitive purposes:²⁴

‘A coercive order gives the respondent the opportunity to avoid imprisonment by complying with the original order and desisting from the offensive conduct. Such an order is made primarily to ensure the effectiveness of the original order by bringing about compliance. A final characteristic is that it only incidentally vindicates the authority of the court that has been

²³ *Matjhabeng Local Municipality v Eskom Holdings Limited and Others; Mkhonto and Others v Compensation Solutions (Pty) Limited* (CCT 217/15, CCT 99/16) [2017] ZACC 35; 2017 (11) BCLR 1408 (CC); 2018 (1) SA 1 (CC) (26 September 2017) (*Matjhabeng Local Municipality*) at para 67 in which the preceding paragraphs are summed up.

²⁴ *Zuma* at para 47.

disobeyed. Conversely, the following are the characteristics of a punitive order: a sentence of imprisonment cannot be avoided by any action on the part of the respondent to comply with the original order; the sentence is unsuspended; it is related both to the seriousness of the default and the contumacy of the respondent; and the order is influenced by the need to assert the authority and dignity of the court, to set an example for others.’²⁵

45. In this case, the relief sought is that the Municipality, the MEC and Mayor are found guilty of contempt of the December 2023 order, that the Municipality be ordered to pay a fine in such amount as the Court deems meet and that the Mayor and Municipal Manager be incarcerated for 90 days or such period as the Court deems meet. Costs are sought on an attorney and own client scale.

The meaning of the order

46. The December 2023 order has various components, mostly uncontroversial. What is allegedly controversial is whether the order places any duty on the Municipality to evict the occupiers or whether this duty resides with Timani CC.

47. The law relating to the interpretation of orders is well-established:

“The starting point is to determine the manifest purpose of the order. In interpreting a judgment or order, the court’s intention is to be ascertained primarily from the language of the judgment or order in accordance with the usual well-known rules relating to the interpretation of documents. As in the case of a document, the judgment or order and the court’s reasons for giving it must be read as a whole in order to ascertain its intention.”²⁶

²⁵ *Id.*

²⁶ *Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Ltd and Others* [2012] ZASCA 49; 2013 (2) SA 204 (SCA) at para 13 which the Constitutional Court affirmed in *Eke v Parsons* [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 (CC) at para 29. On the rules relating to interpretation of documents see *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012(4) SA 593 (SCA) at para 18 where the present state of the law on interpretation of documents was expressed as follows (footnotes omitted): ‘... Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the

48. In many instances, the duty to evict will reside with the land-owner in whose favour an eviction order is granted. However, this is not such a case.

49. Firstly, it is in my view clear from the language, purpose and context of the December 2023 order that the Municipality and MEC were to play an active role in executing the eviction if the occupiers did not voluntarily resettle. Their role was not limited to facilitating access to alternative accommodation or voluntary relocation. This is clear from prayers 3 and 4 which regulated what was to happen if the occupiers did not voluntarily relocate, specifically that the eviction would be executed by the Sheriff as from 17 January 2024. Under prayer 4, '[t]he [Municipality, Mayor and Municipal Manager] shall, on or before 15 December 2023 serve a copy of this order on the Sheriff and thereafter immediately commence engagement with the Sheriff and the [MEC] to ensure that all necessary arrangements are timeously in place should it be necessary to execute the eviction order. The [Municipality, Mayor and Municipal Manager] shall inform the applicant of service on the Sheriff, as soon as it is effected, and all arrangements.' There can be no question that the arrangements to execute the eviction were to be made as between the Municipality, Mayor and Municipal Manager and the Sheriff. That is so even assuming Timani CC's involvement was required. Moreover, what is clear from prayer 3 is that the process of *eviction*, if required, would entail the relocation of the occupiers *with the assistance of the MEC* to the alternative land, or if they refuse to do so, the eviction order would 'be executed in accordance with paragraphs 5 to 9 of [the 2014 eviction order].'

circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.'

50. Secondly, the suggestion that the eviction was to be executed by Timani CC without any involvement of the Municipality or MEC similarly does not comport with the terms of the previous orders granted which led to the December 2023 order. The origin of the orders, granted by consent, was a contempt application instituted by Timani CC in which they specifically sought relief *inter alia* that the Municipality carry the costs of the eviction. Timani CC sought this relief relying on the Municipal By-Laws.²⁷ The first order granted on 17 November 2022 is underpinned by an acceptance by the Municipality of its duty to fund and effect the eviction order.²⁸ It is premised on the Municipality, through its officers, achieving an eviction date, and if need be applying for a variation.²⁹ That order sets out what is required to achieve the 'removal and relocation' of the occupiers from the property including financing for this purpose entailing *inter alia* the appointment of a suitable contractor.³⁰ The same may be said of the order of 20 June 2023 which included revised implementation plans.³¹ For example, Order 2.3 thereof imposed the duty on the Municipality, Mayor and Municipal manager to '(e)vict the illegal occupants on the Applicant's property by no later than 31 August 2023, subject only thereto that the necessary funding to enable the [Municipality, Mayor and Municipal Manager] to undertake the said eviction and relocation is timeously provided by the [MEC] to the [Municipality, Mayor and Municipal Manager].'

51. That order was amended in the order of 7 August 2023³² in the following terms:

'1. Paragraph 2.3 of the order dated 20 June 2023 (signed on 5 July 2023) remains operative as far as the eviction date of the illegal occupiers from [Timani CC's] property is concerned *viz* 31 August 2023 but the qualification to the last-mentioned eviction date viz that the necessary funding to undertake the eviction be obtained, is no longer applicable in the light of the indication by the [MEC] that [the MEC] will undertake the eviction, [the MEC] will use its

²⁷ Dealt with below at para 54.

²⁸ See above para 22.

²⁹ Para 6.

³⁰ See orders 2 and 4.1.

³¹ See above para 23 especially Order 1 and 2.

³² See above para 24.

Panel – Service Providers and foresees no difficulty in achieving the eviction date of 31 August 2023.’

52. When regard is had to this background and context, it cannot reasonably be maintained in this case that the duty to fund and ultimately execute the eviction order resides with Timani CC. Rather, responsibility for both the voluntary relocation process and the execution of the eviction resides with the Municipality, the Mayor, the Municipal Manager and the MEC.

53. Thirdly, and as indicated above, the Municipality’s own by-laws are apposite, specifically the Municipal Management and Control of Informal Settlements By-Law (the By-Law),³³ which regulates, amongst other things, the Municipality’s role in dealing with a ‘land invasion’³⁴ and an ‘unauthorised informal settlement.’³⁵ Under the By-Law, the Municipal Manager or representative must, amongst other things ‘monitor and control all informal settlements and take the necessary steps to prevent land invasion within the area of jurisdiction of the Municipality.’³⁶ Once aware of a land invasion or the existence of a newly established informal settlement, irrespective of whether the settlement was established as a consequence of an incident of land invasion, the Municipal Manager must make a determination of the status of the informal settlement as an authorised or unauthorised informal settlement. If unauthorised, the Municipal Manager must deal with the matter in accordance with the provisions of section 7. Section 7 is titled ‘Procedures relating to the termination of unauthorised informal settlements’ and entails a process whereby the Municipality is obliged ultimately to obtain an eviction order against the relevant unlawful occupiers and to execute the eviction by deploying its Land Invasion Reaction Unit. The costs incurred doing so are to be borne by the Municipality.³⁷ Mr Potgieter contended that the case centrally concerned a land

³³ Local Authority Notice 46 of 2020 published in Provincial Gazette No 3173 of 17 July 2020.

³⁴ A land invasion is defined in section 1 to mean ‘the illegal occupation of land or any settlement or occupation of people on land without the express or tacit consent of the owner of the land or the person in charge of the land, or without any other right to settle on or occupy such land’.

³⁵ Defined in section 1 to mean: ‘any settlement which is not recognized by the Municipality as an authorized informal settlement which will be demolished and removed in terms of these By-laws.’

³⁶ Section 3(2).

³⁷ Section 7 reads in full:

invasion. That the settlement is at least partly the result of invasion is pleaded in the founding affidavits in the eviction application. In any event, on the strength of the eviction order and its history, set out above, the settlement cannot be said to be authorised. In these circumstances, the Municipality's assumption of responsibility for funding and executing the eviction order is consistent with its own By-Law. In this case, Timani CC obtained the initial eviction order, but that cannot without more relieve Municipality of its duties under the By-Law. In any event, it assumed the duty to evict by consent and in the result by Court order.

54. Mr Potgieter also relied on the Constitutional Court's decision in *President of the RSA v Modderklip Boerdery (Pty) Ltd*³⁸ to contend that there was a duty on the Municipality (and its functionaries) to execute the eviction order. However, the facts in that case are distinguishable for various reasons, including the sheer scale of the

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- (1) As soon as a determination of the status of an unauthorized informal settlement has been made and within the period contemplated in section 4(1), the Municipal Manager or his representative must, personally or through an official designated –
 - (a) Inform residents of a shack in the unauthorized informal settlement that their occupation of the check and the site or stand on which it is situated is illegal; and
 - (b) Request the Municipal Manager to assist him or her for that purpose, visit the informal settlement and notify the residents of the status of the unauthorized settlement by means of a written notice hand-delivered to each shack in the informal settlement.
 - (2) The written notice contemplated in subsection (1) must notify the residents of the shack to vacate the shack and remove any building materials and other personal property from the unauthorized informal settlement within a period of 24 hours after receipt of the written notice.
 - (3) If the residents notified in terms of subsection (1) cooperate and vacate their shacks and remove their building materials and other personal property from the site or stand in the unauthorized informal settlement, the Municipal Manager or his representative must take such steps as he or she may deem appropriate to prevent a recurrence of any incident of land invasion or illegal land occupation on that site, stand or unauthorized informal settlement and must regularly monitor the situation to ensure the non-recurrence of such land invasion or illegal land occupation.
 - (4) If the residents notified in terms of subsection (1) fail to cooperate and vacate their shacks and remove their building materials and other personal property from the site or stand in the unauthorized informal settlement, the Municipal Manager or his representative must immediately institute the necessary legal procedures to obtain an eviction order contemplated in subsection (5).
 - (5) Within a period of 24 hours after the expiry of the period stipulated in the written notice contemplated in subsection (1), the Municipal Manager or his representative must lodge an application in a competent court to obtain an Eviction Order contemplated in section 4, 5 or 6 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998), against any person or persons jointly or severally, occupying or residing in a shack or on a site or stand in the unauthorized informal settlement.
 - (6) The Municipal Manager or his representative must, within a period of 24 hours after obtaining the eviction order referred to in subsection (5) deploy the Land Invasion Reaction Unit to execute the eviction order and to terminate the unauthorized informal settlement.
 - (7) Any costs incurred by the Municipal Manager or his representative for the purposes of executing the provisions of these By-laws be borne by the Municipality in accordance with its approved budget.'

³⁸ 2005(5) SA 3 (CC) (*Modderklip*).

invasion, and in turn eviction, in issue in that case, involving tens of thousands of people. Moreover, the occupiers in that case had nowhere to go and Modderklip faced a scenario where it would have had to expend far more than the value of the land to evict the occupiers which in turn would have created mass upheaval and social disruption. The Constitutional Court itself described the circumstances of the case as 'extraordinary in that it is not possible to rely on mechanisms normally employed to execute eviction orders.'³⁹

55. Nonetheless, this is a case where the duty to fund and execute the eviction order does reside with the Municipality, with the assistance of the MEC. This is due to the terms of the Court orders sought to be enforced, the context in which they were made and their purpose as set out above.

56. What underlies the apparent reluctance on the part of both the Municipality and the MEC to implement the December 2023 order is a reluctance to engage in the coercive as opposed to the voluntary movement of the occupiers. That such a reluctance exists is perhaps not surprising. That the occupiers may resist the eviction may be expected and throughout the hearing and papers, there are indications that the eviction will be politically sensitive due to political allegiances of the occupiers and the fact that they include undocumented foreign nationals. While the reluctance is understandable, it cannot however justify non-compliance with Court orders. Indeed, that is so whether or not a Court order is correctly granted and absent its rescission or reversal. The execution of an eviction order will almost invariably be sensitive in this country. However, our Constitution demands that eviction orders are humanely executed and there is no reason why this should not be done in this case. This is a case where alternative land has been supplied following an application to that end brought successfully by the occupiers themselves, arrangements have been made to fund the removal and relocation of the occupiers and there has been an extended process to ensure that the eviction will be humanely executed with due notice.

³⁹ See para 47.

57. Under the December 2023 order, neither the Municipality nor the MEC can avoid participating in a coerced eviction if the occupiers refuse voluntarily to relocate. Precisely what would be required to be done coercively would, in the nature of things, depend on how the process unfolded.

58. Under paragraph 4 of the order, the MEC has assumed the duty to fund and effect relocation to the alternative land *in executing the eviction order* in other words even if this is to be done coercively. To give effect to the purpose of the orders, this must include demolition of all houses where there has been no voluntary relocation, whether or not an occupier refuses to be moved to the alternative land on eviction. Under the November 2022 order, the duty to source a contractor for this purpose resided with the Municipality. It was transferred to the MEC under the August 2023 order where it still resides. In this regard, I accept that that there is a level of tension between paragraph 4 of the December 2023 order⁴⁰ and paragraph 5 of the November 2014⁴¹ eviction order as far as the MEC's duties to demolish are concerned. This arises because paragraph 5 of the November 2014 order on its own terms places the order to demolish on the Sheriff whereas that duty has been assumed by the MEC (initially the Municipality) under the December 2023 order and those that preceded it. Paragraph 5 of the November 2014 order still has relevance, however, in that where an occupier, on eviction, still refuses to be taken to the alternative land, their belongings are to be retained by the Sheriff as set out therein.

59. Whatever transpires on eviction, however, the duty to ensure the necessary arrangements for an eviction are timeously in place, should it be required, remains with the Municipality. This includes liaising with the Sheriff and the MEC in that regard. Precisely what arrangements would need to be made would depend on how

⁴⁰ The paragraph reads: 'In the event that any unlawful occupier fails to relocate on any of the dates or in the manner as aforesaid, they are to immediately vacate the Applicant's properties failing which the eviction order will be executed by the Sheriff as from the 17 January 2024 until completed. In executing the eviction order (Annexure X) the unlawful occupiers shall, with the assistance of the [MEC] be relocated to the alternative land, and if they refuse to do so, the eviction order shall be executed in accordance with paragraphs 5 to 9 of that order.'

⁴¹ The paragraph reads: 'Pursuant to the 1st to 24th respondents (and 27th and further respondents) having vacated the properties, or having been evicted therefrom, pursuant to the order contemplated in prayer 1 and 2 above, the Sheriff of this Court or his lawfully appointed deputy or sub-contractor is authorised and directed to demolish any structures on the properties formally occupied by the 1st to 24th respondents (and 27th and further respondents) and to retain the building materials of the demolished structures for a period of one month after the demolishing.'

matters unfold. Indeed, the Sheriff would presumably play an important role guiding the process, mindful that the MEC is responsible under the order for the contractor who would demolish the housing and, absent ongoing refusal, relocate the occupiers to the alternative land. On the face of it, the remaining arrangements would appear to relate to the process of storing the property of those who still refuse to relocate to the alternative land. If additional contracting services are required for that purpose, arrangements for this purpose would have to be made through the Sheriff.

The order and its breach

60. There is no dispute that the December 2023 order was granted. In my view, it is plain that the Court order has not been enforced and has been breached. Relief is sought only against the Municipality, the Mayor and the Municipality. As regards their duties, there was a failure to comply with paragraph 4 of the order⁴² in that there was apparently no service of the order on the Sheriff no engagements with the Sheriff and MEC to ensure that all necessary arrangements are timeously in place should it be necessary to execute the eviction order and no notification of the applicant of service on the Sheriff or all arrangements. There is also a failure to comply with paragraph 8 of the order.⁴³

Knowledge of the Court order

61. The December 2023 order was granted by agreement. In these circumstances, Mr Potgieter submitted that there can be no question that the Municipality, the Mayor and the Municipal Manager had knowledge of it. In my view, this is a persuasive submission as far as the Municipality itself is concerned as there

⁴²For convenience, paragraph 4 reads: 'The [Municipality, Mayor and Municipal Manager] shall, on or before 15 December 2023 serve a copy of this order on the Sheriff and thereafter immediately commence engagement with the Sheriff and the [MEC] to ensure that all necessary arrangements are timeously in place should it be necessary to execute the eviction order. The [Municipality, Mayor and Municipal Manager] shall inform the applicant of service on the Sheriff, as soon as it is effected, and all arrangements.'

⁴³For convenience, paragraph 8 reads: 'The [Municipality, Mayor and Municipal Manager] are furthermore ordered to file an affidavit with the Court and to upload same onto CaseLines as soon as this order has been served in accordance with paragraph 4 and 7, by no later than 18 December 2023.'

is no suggestion that the orders were agreed to by the legal officers without authorisation.

62. I am at this stage, however, not persuaded that the relevant Mayor and Municipal Manager had knowledge of the order. This is because it is not clear from the papers who these individuals are at material times and whether the intention is that the order be enforced against the incumbents as at January 2024 or the present incumbents, if different. I accept that the Mayor and Municipal Manager are ultimately the responsible functionaries, because their offices have effectively assumed responsibility for implementing the order. However, they are not cited by name, but with reference to their office. It is common cause that there was personal service on these functionaries. One is thus left to speculate as to who knew what about the orders that were granted and whether the same people are in office at the point of enforcement. In this regard, Mr Shabangu says on affidavit that it was only the legal officers who were apprised of the order, a contention which is difficult to understand given that the orders were granted by agreement. However, he also self describes as 'a Municipal Manager'. This may be obfuscation but it is unclear whether this means that he is the second respondent or whether there is someone else who holds that office.

63. In my view, while I am not satisfied that the relevant Municipal Manager and Mayor know about the orders, the applicant should nonetheless be afforded the opportunity to serve the papers and the relevant order accordingly and be granted leave to substitute their citation with their names so that the application may be further prosecuted against these functionaries should that become necessary. Moreover, the first to third respondents should be required to disclose the relevant information.

Wilful and *mala fide* breach?

64. In my view, it has been established beyond reasonable doubt that the Municipality's non-compliance was wilful. There is no explanation as to why there was a failure to serve the Sheriff, and to make any arrangements at all with the Sheriff regarding the eviction. It would have been one thing if the Municipality had

sought to give effect to the order and raised such queries or concerns as it may have had, but it did nothing. Indeed, it did not even respond to Timani CC's queries as to implementation after the time for eviction had come and gone.

65. The determination of whether the Municipality was *mala fides* is more nuanced. In this regard, I am of the view that the contention that the Municipality's duties in respect of the occupiers ended with facilitating voluntary relocation to be highly spurious in context of this history of the matter and the orders made, the terms of the December 2023 order and the By-Law. Moreover, the failure to do anything and the election merely to sit back through the December process is not indicative of a party seeking in good faith to give effect to a Court order. It is indicative of a party actively seeking to avoid becoming embroiled in what are almost invariably difficult orders to implement and one that is perhaps particularly difficult in this case. To that extent, the presence of *mala fides* may be inferred.

66. However, I cannot discount the reasonable possibility that the Municipality genuinely entertained doubt as to the extent of their duty in the event that coercive power had to be exercised. For example, doubt legitimately arises because of the tension between paragraph 4 of the December 2023 order and paragraph 5 of the November 2014 eviction order. To the extent that this is so, however, the manner in which these paragraphs are reconciled is set out above.

67. Accordingly, there can at least at this stage be no further doubt that the Municipality must play a central role in executing the eviction order under the December 2023 order and most pertinently making the necessary arrangements with the Sheriff and the MEC in accordance therewith.

68. While I accept that the criminal standard is not met, I am unable to conclude that the civil standard for contempt has not been met. Whatever doubt may have been entertained, on no interpretation of the order was the Municipality in a position to sit back and do nothing as it did. Moreover, the stance adopted that responsibility for all coercive eviction measures resided with Timani CC is, in context, spurious.

Remedy, costs and order

69. In light of the conclusions reached above, this Court is unable to grant all of the relief sought by Timani CC. In my view, the appropriate relief to be granted at this stage is a declaration that the Municipality is in contempt of this Court. There would be little purpose in seeking to impose a fine as this would do nothing to facilitate compliance not least in circumstances where the Municipality is budget constrained. Moreover, provision must be made to enable Timani CC to continue to seek relief against the Municipality should compliance be ongoing, including relief that is competent should the criminal standard of proof be met in due course.

70. Moreover, Timani CC should in my view not be precluded from seeking further relief against the Mayor and Municipal Manager, whether for purposes of securing compliance or for punitive purposes.

71. As indicated above, Timani CC does not at this stage seek relief against the MEC. However, costs are sought. I agree with Mr Potgieter that a costs award is justified against the MEC. It was wholly unreasonable for the MEC simply to fail to respond to correspondence addressed in respect of compliance with the order which led to the institution of these proceedings. Moreover, while the MEC was in some measure disabled from acting to effect the eviction in the absence of arrangements being made by the Municipality, the MEC also adopted a spurious stance that the Department bore no responsibility for the coercive aspects of the eviction order. I have considered whether these costs should include the costs of the replying affidavit and have concluded that they should because in context it remained appropriate for Timani CC to explain its position and reply to the allegations in the answering affidavit.

72. In my view costs on Scale C are warranted given the complexity of this matter and its history.

73. The following order is made:

- a. The first respondent is declared to be in contempt of this Court.

- b. The first is directed, within ten days of the date of this order, to supply the applicant with the names and details of the Mayor and Municipal Manager incumbent during December 2023 and January 2024 and presently incumbent.
- c. The applicant is granted leave to apply on the same papers for further relief against the second and third respondents and should it do so may by notice substitute or, as the case may be, supplement, their citations with their full names.
- d. The applicant is granted leave to apply on the same papers for further relief against all parties in the event that the December 2023 eviction order is not implemented by 15 December 2025.
- e. The costs of the application are to be paid against the first to fourth respondents, jointly and severally, on Scale C.
- f. The wasted costs occasioned by the postponement from 30 April 2025 to 19 May 2025 are to be paid by the first to third Respondents, jointly and severally, on scale C.

SJ COWEN
JUDGE OF THE HIGH COURT
PRETORIA

Date of hearing: 19 May 2025

Date of judgment: 03 September 2025

Appearances:

Applicant: Mr Potgieter SC instructed by EY Suart Attorneys Inc