

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

In the matter between:

CASE NO.: 53830/2021

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Applicant

and

OCCUPIERS OF WOLVESPRUIT  
(R/492 ERASMUS KLOOF, EXTENSION 3, IN WARD 83,  
PRETORIA EAST)

Respondent

---

JUDGMENT

---

- [1] The applicant (the City) approaches this court on an urgent basis to "evict / relocate" the respondents from Wolvespruit R/492 Erasmus Kloof Extension 3, Ward 83, Pretoria East to Orchards Extension 10, Pretoria, Gauteng Province "where they will settle". In the event that the occupiers fail or refuse to vacate, says the City, members of the South African Police Service must be authorised to demolish the shacks currently inhabited and/or to take them to Orchards Extension 10.
- [2] The application is brought on an urgent basis. The City contends that the matter is urgent because the structures occupied by the respondents are beneath a flood line and claims that with the rainy season upon us "the occupiers need to

be evacuated for their own safety". A copy of the report relied upon for this assertion is not attached to the founding affidavit.

[3] In response, the respondents have filed an answering affidavit deposed to by Ms Annah Shadi Lekalakala. Ms Lekalakala alleges that she has been residing in the area since 1990 and that the most recent arrival in the area settled there approximately 5 years ago. While not directly challenging the City's assertion that the informal settlement fell within a flood line, she nevertheless challenges the assertion that they are in any immediate danger. There is no suggestion that Ms Lekalakala's allegations are false. In fact, in reply, the City adopts the attitude that this is "immaterial".

[4] The City's grounds of urgency are exaggerated and is based upon a misconception of what is contained in a report that was in any event not attached to the papers. Section 144 of the National Water Act, 36 of 1998 provides that —

**"144 Floodlines on plans for establishment of townships**

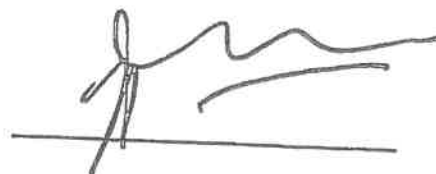
For the purposes of ensuring that all persons who might be affected have access to information regarding potential flood hazards, no person may establish a township unless the layout plan shows, in a form acceptable to the local authority concerned, lines indicating the maximum level likely to be reached by floodwaters on average once in every 100 years."

[5] The mere fact that a settlement falls within a flood line does not mean that it is in any immediate danger. It only means that such place falls within a region

that was flooded once in the past 100 years. On the face of it the matter is patently not urgent.

[6] For this reason, I will not venture into a consideration of the merits which also appear to pose challenges for the City.

[7] I would accordingly dismiss the application with costs.

A handwritten signature in black ink, consisting of a stylized 'G' and 'H' followed by a wavy line, positioned above a horizontal line.

**G.I. HULLEY, AJ**

**8 November 2021**

**APPEARANCES:**

**For the applicant: Adv. R. Baloyi**

**On instructions from: Motimele Attorneys Inc.**

**For the respondent: Mr Leshabana (Attorney) of Leofi Leshabana Attorneys Inc.**