

## ISAK BARON & 5 OTHERS V CLAYTILE

This matter is an application for leave to appeal an eviction order of the Bellville Magistrates court. The appeal failed and the constitutional court granted the eviction and ordered that the occupiers vacate the farm on 13 October 2017.

The City of Cape Town offered alternative accommodation to the occupiers in a temporary relocation site known as Wolverivier. According to the City the accommodation meets the requirements of emergency housing in terms of the Housing Code. While the occupiers argued that the location of the accommodation alone rendered it wholly unsuitable, the court ordered that the occupiers must accept the accommodation.

On Friday 13 October the City of Cape Town arrived at Claytile around 10h00 in order to relocate the occupiers to Wolverivier. Their belongings had already been placed outside their homes in preparation for the move. The land owner, a brick manufacturing company, arranged forklifts and heavy machinery to demolish the homes of the former employees and their family members who had lived and worked on the property for a collective period of over 30 years.

The demolition started while the former occupiers were still on the property. It is surprising that Claytile had alleged that the company needed the houses in order to accommodate current employees.

In its heads of argument to the constitutional court Claytile argued that it was just and equitable to grant an eviction order against the occupiers having regard to (among other considerations); “The comparatively greater hardship suffered by Claytile from the applicants’ continued occupation, as a result of which it is unable to house its current employees who, in turn, must suffer their own hardships while the applicant (Claytile) provides free accommodation and services to persons that do not work for it.”

The constitutional court sympathised with the plight of the current employees, as did the Land Claims and Magistrates’ courts. One can only conclude that Julian De la Hunt simply misled the courts from the start.

On the day that the constitutional court handed down judgment De La Hunt locked the main entrance to the occupiers' homes on the farm, stating that he had won and could do as he pleased. The occupiers contacted LHR and informed of the unlawful act. LHR then warned Claytile to desist from its conduct and threatened legal action, after which the land owner gave the occupiers the keys to the gate and granted them access to the farm.

Apart from this specific incident, Claytile has displayed a tendency to frustrate the occupiers throughout legal proceedings. When the occupiers failed in their bid to appeal the Magistrates' Court judgment Claytile immediately instructed the sheriff to evict them, despite the fact that LHR had informed Claytile that the occupiers had instructed LHR to file a petition with the SCA. Claytile continued to threaten the occupiers when the SCA petition was dismissed. The application for leave to appeal to the constitutional court was filed slightly out of time in October 2016. At the time Claytile instructed the sheriff to execute the eviction order despite knowledge of a pending application for leave to appeal. The occupiers resisted the eviction and remained until 13 October 2017.

#### SUITABILITY OF WOLVERIVIER

The temporary relocation site has been widely criticised in matters such as the Bromwell Street eviction and other relocations that have taken place since its establishment. The Claytile occupiers are not the first evictees to lament its many shortcomings. These include the fact the site is isolated and located far away from amenities such as public transport, clinics and shopping areas; the units are much smaller than their previous homes; there was no electricity when the occupiers moved in; the units remain the property of the municipality and do not improve the occupiers' position on the housing waiting list, meaning that there is no security of tenure to the occupiers.

In spite of lengthy litigation in attempts to strengthen the rights of ESTA occupiers, this matter brought deep disappointment and leaves ESTA occupiers in a worse

position than ever before. The court ought to have allowed the occupiers to act on their offer to pay rent in exchange for their continued occupation after their employment was terminated. More importantly the court should have demanded more evidence to support the allegation that the land owner needed the houses for its employees. None of the above was done and the result was the total stripping away of the occupiers' constitutionally guaranteed rights to security of tenure.