

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

Case No: 13686/2022

In the matter between:

BULELANI QOLANI

Plaintiff

and

THE CITY OF CAPE TOWN

Defendant

DEFENDANT'S PLEA

The defendant pleads as follows to the particulars of plaintiff's claim:

AD PARAGRAPH 1

1. The identity of the plaintiff is admitted.
2. The defendant denies that the informal settlement on erf 18322 Khayelitsha is commonly referred to as eThembeni, and pleads that it is called Empolweni.
3. Save as aforesaid, the defendant has no knowledge of the allegations in this paragraph, does not admit same, and puts the plaintiff to the proof thereof.

AD PARAGRAPH 2

4. The defendant has no knowledge of the allegations in this paragraph, does not admit same, and puts the plaintiff to the proof thereof.

AD PARAGRAPHS 3 TO 5

5. The allegations in these paragraphs are admitted.

AD PARAGRAPH 6

6. It is admitted that the defendant's Anti-Land Invasion Unit ("the ALIU") demolished certain structures in Empolweni during the period April to July 2020.
7. It is further admitted that the Covid-19 national state of disaster was declared by the State President on 15 March 2020, and that it remained in place during the period April to July 2020.
8. Save as aforesaid, the allegations in this paragraph are denied.

AD PARAGRAPHS 7 AND 8

9. The defendant has no knowledge as to the allegations in these paragraphs, does not admit same, and puts the plaintiff to the proof thereof.

AD PARAGRAPH 9

10. The defendant repeats the admission in paragraph 6 above.

11. It is further admitted that these demolitions gave rise to urgent interdictory proceedings before this Court in the matter of *Habile and another v City of Cape Town*, case number 5562/2020.

12. Save as aforesaid, the defendant has no knowledge of the allegations in this paragraph, does not admit same, and puts the plaintiff to the proof thereof.

AD PARAGRAPH 10

13. This paragraph is admitted.

14. In particular, it is admitted that pursuant to the application for urgent interdictory relief referred to in paragraph 11 above, an interim order was granted which (a) directed the defendant *inter alia* to return all building materials which had been removed from Empolweni between 9 and 11 April 2020 and (b) granted the persons listed in annexure A to the interim order permission to erect a total of 49 structures on the property and to occupy those structures for the period described in paragraph 7 of the interim order.

AD PARAGRAPH 11

15. It is admitted that the plaintiff was not among the persons listed in the aforesaid annexure A.

16. Save as aforesaid, the defendant has no knowledge of the allegations in this paragraph, does not admit same, and puts the plaintiff to the proof thereof.

AD PARAGRAPH 12

17. The allegations in this paragraph are denied.

AD PARAGRAPHS 13 AND 14

18. It is admitted that the ALIU demolished certain structures in Empolweni on 30 June and 1 July 2020.

19. Save as aforesaid, the allegations in these paragraphs are denied.

AD PARAGRAPHS 15 TO 19

20. It is admitted that members of the ALIU (employees of the defendant) forcibly removed the plaintiff from a structure and tried, unsuccessfully, to prevent him from re-entering the structure.

21. It is further admitted that the plaintiff was naked at the time.

22. The defendant pleads that the amount of force used was reasonable and necessary given the impending collapse of the structure.

23. The defendant further pleads that the plaintiff's nakedness resulted from his having removed his clothes and chosen to be naked in front of the defendant's officials and members of the public gathered outside the structure *before* he first entered the structure, and having then chosen to remain naked.

24. Save as aforesaid, the allegations in these paragraphs are denied.

AD PARAGRAPHS 20 AND 21

25. The defendant has no knowledge of any injuries or trauma allegedly suffered by the plaintiff or of the alleged *sequelae*, does not admit same, and puts the plaintiff to the proof thereof.

26. Save as aforesaid, the allegations in these paragraphs are denied.

27. If it should be found that the plaintiff did suffer loss (which is denied), it is denied that this is attributable to the defendant as opposed to the plaintiff himself, who was negligent, *alternatively* wilful, in the following respects:

27.1 he removed his clothes and chose to be naked in front of the defendant's officials and members of the public gathered outside the structure *before* he first entered the structure, and then chose to remain naked;

27.2 he entered and sought to remain in the structure at a time when he knew it was about to be demolished and sought to re-enter it when it was in the process of being demolished;

27.3 he failed to adhere to lawful instructions of the defendant's officials and to have due regard to his own safety and that of the officials in regard to the foregoing;

27.4 he engaged physically with the defendant's officials in an effort to re-enter the structure.

28. If however it should be found that the plaintiff did suffer loss which was caused by

the fault of the defendant's officials, that loss was also caused by the plaintiff, in amplification of which the defendant refers to paragraph 27 above.

AD PARAGRAPH 22

29. This paragraph is admitted.

AD PARAGRAPHS 23 TO 27

30. The allegations in these paragraphs are denied.

AD PARAGRAPH 28

31. The allegations in this paragraph are denied.

32. The defendant refers to paragraph 27.1 above, and pleads as follows:

32.1 the plaintiff was fully aware of the risk of suffering humiliation, ridicule, contempt, and the impairment of his dignity, personality and bodily integrity in being naked in front of the defendant's officials and members of the public gathered outside the structure;

32.2 despite this awareness, and whilst appreciating the risk, the plaintiff nevertheless removed his clothes and chose to be naked in front of the defendant's officials and members of the public and to remain naked;

32.3 the plaintiff accordingly consented to be subjected to such risk;

32.4 the defendant is not in the premises liable for any loss allegedly suffered

by the plaintiff.

33. If it should be found that the plaintiff did suffer loss (which is denied), it is moreover denied that this is attributable to the defendant as opposed to the plaintiff himself, who was negligent, *alternatively* wilful, in the respects described in paragraph 27 above.

34. If however it should be found that the plaintiff did suffer loss which was caused by the fault of the defendant's officials, that loss was also caused by the plaintiff, in amplification of which the defendant again refers to paragraph 27 above.

AD PARAGRAPH 29

35. This paragraph is admitted.

AD PARAGRAPH 30

36. This paragraph is denied.

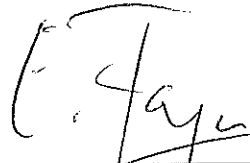
AD PARAGRAPH 31

37. The defendant admits demand and its refusal to pay, but denies that is liable to do so.

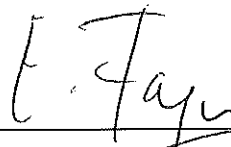
WHEREFORE the defendant prays that the plaintiff's claims be dismissed with costs, *alternatively* that the amounts of damages to be awarded to the plaintiff as against the defendant be reduced in terms of section 1 of the Apportionment of Damages Act 34

of 1956 to such extent as may seem just and equitable, having regard to the plaintiff's degree of fault.

Dated at **CAPE TOWN** this 26th day of **MAY 2023**.



Eduard Fagan S.C.



Mushabida Akhikari

Counsel for the defendant

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