

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

24/10/14

CASE NO: 11111/14

In the application between:

THE SOUTH AFRICAN NATIONAL
ROADS AGENCY LIMITED

WESTERN CAPE HIGH COURT
GENERAL OFFICE
2014-01-24
CAPE TOWN/KAAPSTAD
WES-KAAP HOË HOF

Applicant

and

THE PERSONS INTENDING TO OCCUPY ERF 32524
NOMZAMU STRAND

Respondents

~~DRAFT ORDER~~

HAVING read the papers filed of record and having heard the counsel for the Applicant ex parte an order is hereby made in the following terms:

1. The application is heard as one of urgency and the provisions of Rule 6(12) in respect of notice and service are dispensed with.
2. A rule nisi is issued calling upon the Respondents or any other interested person to appear and show cause, if any, to the above Honourable Court on 24th February 2014 at 10h00 or so soon thereafter as the matter may be heard, as to why a final order should not be granted interdicting and restraining the Respondents from:
 - 2.1 entering or being upon Erf 32524 Nomzamu, Strand, for the purpose of unlawfully occupying or invading that property or erecting structures

there except for those Respondents currently occupying the property at the date of the granting of this order; and

2.2 erecting, completing and/or occupying any structures there or extending their current structures save except those Respondents currently occupying the property at the date of the granting of this order are not interdicted from occupying the property; and

2.3 intimidating, harassing, assaulting or in any way interfering with:

2.3.1 the employees, agents or contractors of Applicant; or

2.3.2 any person involved in or connected with law enforcement at the property and service of process;

2.4 inciting persons to enter the property or to erect structures on the property for the purpose of unlawfully occupying or invading the property or erecting, completing, extending and/or occupying any structures thereon.

3. Authorising the Applicant, duly assisted by the Sheriff and in so far as needs be, by the members of the South African Police Services to give effect to the provisions of this order by:

3.1 Removing any person found to be in breach of this order subsequent to service as recorded in paragraph 6 below;

3.2 Demolishing any structure unlawfully erected on the property subsequent to the service of this order;

3.3 Removing any possessions found at or near such structures including any building materials, which possessions and/or building materials shall be kept in safe custody by the Applicant until released to the lawful



owner thereof and to take all reasonable steps necessary to give effect to this order.

4. Any Respondents who oppose this application are to pay the costs jointly and severally, the one paying the other to be absolved.
5. Pending the return day, paragraph 2 above shall operate as an interim interdict with immediate effect.
6. Service of this order shall be effected upon Respondents by the Sheriff attending at the property and serving a copy of this order, duly assisted in so far as needs be, by the members of the South African Police Services, in the following manner:
 - 6.1 by reading aloud the contents of this order by the loudhailer in Xhosa, Afrikaans, and English at the property;
 - 6.2 by erecting 8 notice boards on the property, each containing copies of the order with Xhosa and Afrikaans translations.

BY ORDER OF THE COURT
COURT REGISTRAR



**IN DIE HOË HOF VAN SUID-AFRIKA
(WES-KAAPSE HOË HOF, KAAPSTAD)**

SAAKNO: 1114/14

In die aangeleentheid tussen:

**DIE SUID AFRIKAANSE NASIONALE
PADAGENTSAP**

Applikant

en

**DIE PERSONE WAT VAN VOORNEME IS OM ERF
32524 NOMZAMU STRAND TE OKKUPEER**

Respondente

BEVEL

Na deurlees van die stukke en aanhoor van die advokaat vir applikant word 'n *ex parte* bevel in die volgende terme uitgereik:

1. Hierdie aangeleentheid word aangehoor as een van dringendheid ooreenkomstig die bepalings van Reël 6(12), en daar word afstand gedoen van die reëls met betrekking tot diening, kennisgewing en tydspannes.
2. 'n Bevel *nisi* word uitgereik in terme waarvan die Respondente en/of enige ander belanghebbende partye geroep word om te verskyn, in die Agbare Hof op 24 Februarie 2014 te 10h00, of so spoedig daarna sodra die aangeleentheid aangehoor word, om redes aan te voer waarom 'n finale bevel nie gemaak moet word wat die Respondente verhoed, weerhou en/of verbied om:
 - 2.1 die eiendom bekend as Erf 32524 Nomzamu, Strand, onwettig te okkupeer, te betree, of in te neem, of om bestaande strukture daar te

bewoon, uitsluitend die Respondente wat huidiglik die eiendom op datum van die bevel bewoon; en

2.2 om enige strukture op te rig, te voltooi en/of te okkupeer, of om die bestaande strukture uit te brei wat op datum van hierdie bevel deur die Respondente bewoon word; en

2.3 om die volgende persone te intimideer, of aan te rand of op enige wyse hoe ook al in te meng met:

2.3.1 die werknemers, agente of kontrakteurs van die Applikant; of

2.3.2 enige persoon wat betrokke is met die uitvoering van die reg tydens die diening van hierdie proses;

2.4 om enige persone op te stook om die eiendom te betree, of strukture op die eiendom op te rig met die doel om dit onwettig te okkupeer, of die eiendom te betree, of strukture op te rig, te voltooi, of uit te brei, en om enige diesulke strukture te bewoon.

3. Applikant word hiermee gemagtig, bygestaan deur die Geregsbode en sover nodig, lede van die Suid Afrikaanse Polisie diens om uitvoering te gee aan die bepalings van hierdie bevel deur:

3.1 enige persoon wat teenstrydig met hierdie bevel op tree te verwyder nadat diening volvoer is soos gemeld in paragraaf 6 hieronder;

3.2 om enige struktuur wat onwettig op die eiendom aangebring is af te breek na diening van hierdie bevel;

3.3 om enige eiendom wat naby diesulke onwettige strukture gevind, insluitend boumateriale, in Applikant se besit te hou tot tyd en wyl die

nodige stappe deur die eienaar daarvan geneem word om uitvoering aan hierdie bevel te gee.

4. Respondent wat hierdie aansoek opponeer sal aanspreeklik wees vir die koste gesamentlik en afsonderlik, die een om te betaal en ander om vrygestel te word.
5. Tot en met die keerdatum soos vervat in paragraaf 2 hierbo, sal die regshulp verleen in terme van hierdie bevel dien as 'n tussentydse / interim interdik.
6. Diening van hierdie bevel sal uitgevoer word op die Respondente deur die Geregsbode wat sal aandoen op die perseel, en 'n afskrif van hierdie bevel sal dien met die bystand sover nodig van die lede van die Suid Afrikaanse Polisie diens op die volgende wyse:
 - 6.1 deur die inhoud van hierdie bevel op 'n luidspreker bekend te maak op die eiendom en deur dit te herhaal in Xhosa, Afrikaans en Engels;
 - 6.2 deur 8 kennisgewingborde aan te bring wat afskrifte van hierdie bevel asook vertalings in Xhosa en Afrikaans bevat.

Op las van die Hof

Geteken deur die Hofgriffier
Wes-Kaapse Hoë Hof, Kaapstad

**KWI NKUNDLA EPHAKEMEYO YASE NTSHONA KOLONI, EKAPA
(EMZANTSI AFRIKA)**

TYALA LESI: 1114/14

Kwicelo sase nkundleni phakhathi ko:

THE SOUTH AFRICAN NATIONAL ROADS AGENCY

Unceli

Kunye

**KUBO BONKE ABANTU ABAHLALA
NGO NGEKHO SEMTHETHWENI KUMHLABA
ONGU ERF 32524 NOMZAMU STRAND**

Abaphenduli

ISIGQIBO SE NKUNDLA SOKWE THUTYANA

EMVA KOBA kufundwe onke amaphepha aphambili kwe nkundla nokumamela amaqgweha ka Mceli ex parte, inkundla ifikelele kwesisgqibo:

1. Isicelo esi simanyelwe ngokungxama kwaye zonke izinto eziphantsi ko Rule 6(12) emalungane nonikezela izixwayiso nokwenza nje ngesiqhelo zibekwe ecaleni.
2. I rule nisi ikhutshiwe ebiza Abaphenduli nabanye abachaphezelekayo uba phambili kwale Nkundla ngomhla ka 24 February 2014 ngentsimbi ye shumi ekuseni 10h00 ukuba bazokutsho ukuba kutheni esicelo singenziya isigqibo esipheleleyo naba Phenduli batsho ukuba kutheni bayekwe bahlale pha nje behlala ngokhekho semthethweni ngoku.

- 2.1 ukungena nokuhlala ngo ngekho semthethweni pha ku Erf 23524 Nomzamu, Strand. Ngaphandle kwaba bebehleli behlala pha phambili kwesiscelo.
- 2.2 ukwakha, ukugqibezela nokwandisa izakhiwo zabo zokuhlala ngaphandle kwaba bebehleli behlala pha phambili kwesi sicelo enkundleni.
- 2.3 ukungcungcuthekisa noku betha nokhlukumeza nangoluphi uhlobo:
 - 2.3.1 abaphangeli nono kontraki baka Mceli.
 - 2.3.2 Abeziko boncedo nama polisa kwaye nabanye abadingekayo ukuba bazo bamba ucwangco.
- 2.4 ukuxelela abanye abantu ukuba maba ngene kulomhlaba ukuba nabo mabakhe, bazogqibezela izakhiwo zabo ngongekho semthethweni ne mvume. Okanye bahlale ngongekho semthethweni.
3. Inkundla inika igunya ku Mceli, encediswa sisithunywa se Nkundla ephakamileyo (Sheriff) kwaye nama polisa ukuba mabenze okulandelayo nje ngasigqibo se nkundla:
 - 3.1 Usasa wonke umntu okula mhlaba ngongekho se mthethweni ne mvume ka Mceli emvakoba besibonisiwe esisgqibo se Nkundla nje ngoba ibhaliwe phantsi konombolo 6 lo siya kuye.
 - 3.2 Ukususa zonke izakhiwo ezakhiwe ngongekho se mthethweni emveni koba besinikiwe esisgqibo.

- 3.3 Ukususa kwanto epha ibingafanelekanga ubakho enje ngezixhobo zokwakwa, ne furniture. Ezizinto zizogcinwa ngu Mceli lo ngoku khuselekileyo kude fike umnikazi wazo.
4. Wonke umphenduli ophikisana nesigqibo se Nkundla, uyothi abhatale indleko ze nkundla ngoku linganayo ukuba baphikise esigqibo.
5. Kude kubuyelwe eNkundlemi, esigqibo sizobe sisebenza ngoku khawuleza.
6. Esigqibo sizothathwa ukuba sifunyenwe ngaba Phenduli ngoba isithunywa se Nkundla, sincediswa ngama polisa, senze okulandelayo:
 - 6.1 ukhwazela phezulu yonke lento ibhalwe kwesigqibo, usebenzisa uliwimi lwesi Xhosa ne Afrikaans kula mhlaba ungu Erf 32524.
 - 6.2 ukuxhoma esigqibo kwi ndawo ezisibhozo, zonke zine sigqibo sibhalwe ngo lwimi lesi Xhosa ne Afrikaans.

NGE SIGQIBO SE NKUNDLA

COURT REGISTRAR