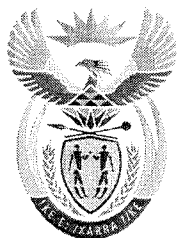


**IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG
(REPUBLIC OF SOUTH AFRICA)**

Case number: 48102/2012



DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) ~~REVISED:~~

In the matter between:

PHILANE HLOPHE

First Applicant

THE RESIDENTS OF CHUNG HUA MANSIONS

Second to One Hundred

191 JEPPE STREET, JOHANNESBURG

and Eighty-Second Applicants

And

CITY OF JOHANNESBURG

METROPOLITAN MUNICIPALITY

First Respondent

EXECUTIVE MAYOR,

CITY OF JOHANNESBURG, PARKS TAU

Second Respondent

CITY MANAGER,

CITY OF JOHANNESBURG, TREVOR FOWLER

Third Respondent

DIRECTOR OF HOUSING,

CITY OF JOHANNESBURG, THABO MAYISELA

Fourth Respondent

CHANGING TIDES PROPERTIES 74 (PTY) LTD

Fifth Respondent

Summary – (1) Chronology of court orders and failure to comply therewith – Eviction of unlawful occupiers granted June 2012 with City to furnish report on arrangements made for provision of shelter to be furnished by 31 October and City to provide temporary shelter by 30th January 2013 and occupiers to vacate on 15th February 2013. Report furnished on 20th November 2012 stated “it would be impossible to accommodate” the occupiers as set out in the order. On 6th February 2013 eviction order suspended and City required to report on arrangements made for accommodation by 20th March 2013. On 20th March City furnished report that “it is impossible, in the foreseeable future for the City to accommodate the occupiers”.

(2) Reports fail to indicate utilisation of expertise involving planning, finance, town and urban and housing development; reports failed to provide any of the information ordered; reports are no more than pleas of misery and give no indication of solutions to problems; reports give no indication of any task team formed, meetings held, research conducted, finances secured, rates defaults identified, buildings inspected, owners consulted, rentals or purchase prices calculated, architects or builders retained; over eight months there has been little activity.

(3) The City of Johannesburg has known of its general obligations to provide temporary shelter to occupiers since February 2010 when the decision in Blue Moonlight Properties 39 (Pty) Ltd was handed down; has known of its specific obligations to these particular identified occupiers since December 2011 when the decision in Blue Moonlight Properties was handed down by the Constitutional Court. Nothing has been sprung upon the City which has undergone a gradual process of enlightenment. There has been opportunity to absorb the import of the court decisions; to understand the role which the City is required to play in sheltering these occupiers, to prepare the appropriate response which the Constitution and the courts have placed upon the City.

(4) The attitude of the City indicates reluctance to comply with the directions of the Constitutional Court. Individuals and entities may lament that the City of Johannesburg will be

expected to house the entire continent of Africa; may disagree that no distinction is drawn between South Africans and non South Africans when it comes to providing temporary housing for the homeless; may complain that the rates and other income of this City cannot support provision of housing of those who do not directly contribute to the tax base of the City; may protest that provision of temporary housing to unlawful occupiers will encourage persons to bypass housing waiting lists and prejudice persons who have been patiently waiting on housing lists. There is no room for any tier of government or any organ of state or any court in the land to be inimical to the reasoning or the decision of the Constitutional Court. The City of Johannesburg is bound thereby. This court is bound thereby. We must all do our best and exert ourselves to implement the decisions of the Constitutional Court in pursuit of the Constitutional promises. The City of Johannesburg cannot continue to sit back and throw up its hands in horror each time a group of persons is about to be evicted and become homeless and the City is therefore required to provide temporary accommodation.

(5) The City needs to be directed as to the information required in order to focus the minds of both politicians and functionaries on the work needed to be done by the City to meet its Constitutional obligations:

- a. Subsequent to the Blue Moonlight order of the Constitutional Court on 1st December 2011,
 - i. Has the City of Johannesburg established a specialist task team or unit to plan for implementation housing arrangements for all those whom it is estimated will be evicted as unlawful occupiers, rendered homeless and whom the City has an obligation to accommodate?
 - ii. The City is required to specify:
 1. Which specialist skills such as urban development, town planning, housing, finance, building and other areas of expertise are represented in this unit?
 2. Which departments within the City administration are represented within this unit and with which departments does the unit liaise?
 3. What budget has been established for such unit?
 - iii. If no such unit has been established:
 1. The City is required to explain in detail why this has not been done.
 2. What structure or structures currently implement the housing arrangements required to be implemented in the Blue Moonlight case with reference to the personnel involved, skills available, liaison undertaken, time availed from other duties, management and direction of implementation.

- iv. Has the City planned an estimate of the number of persons and the gender and age distribution of persons who will be required to be accommodated over the period 1st December 2011 to 30 November 2011, 1st December 2012 to 30th November 2012, 1st December 2012 to 30th December 2013 and for each successive twelve month period until the end of 2016? If the City uses another twelve month period for such estimates, then it should so indicate.
- v. Has the City, in accordance with the estimates referred to above :
 1. Planned for the number of beds, rooms, buildings and other facilities required over this period?
 2. Ascertained the current and prospective availability of land and/or buildings?
 3. Budgeted for rentals or purchase of land and buildings and refurbishment and maintenance thereof to achieve provision of temporary accommodation over this period?
 4. Arranged financing estimated to be needed over this period. The City is required to identify sources of funding:
 - a. Dates of applications and sums required from the National Treasury.
 - b. Dates of applications and sums required from the Gauteng Province.
 - c. Dates of applications and sums required from the City of Johannesburg.
- vi. Which experts prepared these estimates and plans on behalf of the City of Johannesburg and are these plans and estimates continuously updated?
- vii. If no such estimates and plans have been prepared, the City is required to explain why this has not been done and on what basis the City is currently attempting to meet its current and future obligations in terms of the Blue Moonlight case.
- viii. Has the City identified buildings for rental in order to provide accommodation as required? How many such buildings have been identified? How many beds would be available on a rental basis per building and in total? At what cost are the rentals per building and per bed? How many rental agreements have been negotiated and concluded? How many negotiations are currently underway?
- ix. Has the City identified buildings for purchase in order to provide accommodation as required? How many such buildings have been identified? How many beds would be available on a per building and in total? At what cost are the purchase and refurbishment of each building

and per bed? How many purchase agreements have been negotiated and concluded? How many negotiations are currently underway?

- x. On what date did the City make a written offer to Fifth Respondent in this matter, Changing Tides Properties 74 (Pty) Ltd, to rent the building situate at 191 Jeppe Street, Johannesburg and at what rental and for what period in order to provide accommodation to the occupiers in this matter. On what date did the City make a written offer to Fifth Respondent to purchase the aforesaid building and at what purchase price and on what terms? Over what period did negotiations take place? On what date did the City receive a written response from Fifth Respondent and to what effect?
- xi. Has the City identified architects, builders, plumbers, electricians and other persons with expertise who can procure renovations and refurbishments and maintenance of any building rented or purchased to provide accommodation? Has the City taken steps to ensure speedy tender processes or contractual arrangements to ensure temporary accommodation is available on an emergency basis?

JUDGMENT

SATCHWELL J:

INTRODUCTION

1. A number of ¹ men, women and children unlawfully occupy a building at 191 Jeppe Street, Johannesburg. The owner launched an application in the South Gauteng High Court on 26th May 2011 for their eviction. Such eviction order was granted on 14th June 2012. The date for eviction allowed sufficient time to the City of Johannesburg both to furnish an accounting of its arrangements for housing these occupiers and to provide them temporary shelter secure against eviction. On 6th February 2013, the order of June 2012 was suspended because the City required, and was granted, further

¹ This application before me refers to 182 people as applicants but in the eviction application there was reference to some 248 persons. The exact numbers of occupiers do not affect this judgment since both the occupiers and the City are *ad idem* as to the identities and personal particulars of those persons who are affected by the pending eviction and for whom temporary emergency accommodation is to be provided.

time to provide temporary shelter secure against eviction, and to furnish yet another accounting of the arrangements made by the City for the provision of such shelter.

2. To date, the City has failed to comply with either part of the orders of June 2012 or February 2013.
3. Accordingly, an application has now been brought by the Applicant to order the individuals who occupy the positions of Executive Mayor, City Manager and Director of Housing to take personal responsibility for ensuring compliance with these orders.
4. The response of the City is to ask that the eviction order continues to be suspended for an unknown period while the City takes steps to provide emergency housing as previously ordered and provide a further report on the provision of accommodation. Everyone must "*wait a little longer*"². The owner of the building maintains that it cannot continue to wait indefinitely to regain possession of its property.

CHRONOLOGY PRIOR TO ORDER OF 12 JUNE 2012

5. The fact that the City would eventually be required to provide accommodation for these particular individuals, has not come as a surprise to it. The City has had potential indication of its general responsibilities for a period of some 38 months and final indication of its specific responsibilities for a period of some 16 months.
6. The original decision in the South Gauteng Local Division in Blue Moonlight Properties 39 (Pty) Ltd, was handed down on 4th February 2010. The City has therefore known for about 38 months that the High Court had found that it had an obligation to provide temporary shelter to unlawful occupiers about to be evicted. The Supreme Court of Appeal, by order handed down on 30th March 2011, required the City to provide the occupiers in Blue Moonlight Properties 39 (Pty) Ltd with temporary emergency accommodation. The obligation of the City to provide accommodation to potential evictees, has been known to be very probable for a period of some 25 months.
7. On 26th May 2011, the owner of 191 Jeppe Street, Johannesburg, launched proceedings for the eviction of the occupiers of this building. The City has therefore known of the possibility of the pending homelessness of these occupiers for a period of some 36 months. During this period, it has also been alive to the very real possibility that the City was constitutionally required to provide them with temporary accommodation.

²See Paragraph 65 of the Answering Affidavit of the City.

8. The judgment of the Constitutional Court in City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and another 2012(2) SA 104 CC, was handed down on 1st December 2011. That judgment confirmed the obligation of the City to provide temporary accommodation to unlawful occupiers about to be evicted in the circumstances of that case. Since that date, the City has been in no doubt that it would need to make arrangements for the occupiers of 191 Jeppe Street, Johannesburg.
9. On 12th June 2012, the City of Johannesburg consented to the orders made by Claassen J. The City was therefore in agreement that it was obliged to provide “temporary shelter” to the occupiers. It acceded to the time period (six and a half months) within which it would provide such shelter to these named individuals.
10. As this chronology demonstrates, this obligation to shelter the occupiers has not been suddenly sprung upon the City of Johannesburg. Nothing has leapt out of the blue. There has been a gradual process of enlightenment. There has been opportunity to absorb both the general and specific import of the court decisions. There has been opportunity to understand and appreciate the role which the City is required to play in sheltering these occupiers. There has been opportunity to prepare the appropriate response to the obligations which the Constitution and our courts have placed upon the City.

CITY REPOSE TO THE COURT ORDERS OF JUNE 2012 AND FEBRUARY 2013

11. On 12th June 2012 Claassen J was asked, by consent, to make orders which incorporated the following timeline:
 - a. By 31 October 2012, the City was directed to file a report “setting out the nature and location of the temporary shelter to be provided to the occupiers”;
 - b. By no later than 30th January 2013, the City was directed “to provide the list of residents with temporary shelter where they may live secure against eviction, in a location as near as possible to the area where the property is situated”.
 - c. By not later than 15th February 2013, the occupiers were “to vacate Chung Hua Mansions, 191 Jeppe Street, Johannesburg..”
12. On 20th November 2012, the Deputy Director, Legal and Compliance for the City of Johannesburg finalized a report. The report:
 - a. Commented that the “recent” ‘Blue Moonlight’ decision has meant that the City has been ordered to provide “*temporary emergency accommodation assistance to many more persons in need of such assistance..*” and that the “*numbers of evictees who require temporary emergency accommodation assistance will swell in the very near future*”. There was also reference to other

litigation or pending orders where the City had been or was about to be ordered to provide temporary emergency accommodation.

- b. Described temporary shelter as the provision of *"beds in dormitory-type accommodation with shared cooking and ablution facilities. Dormitory means typical hostel configurations consisting of small bed cubicles or communal sleeping halls sharing limited ablution, cooking and dining facilities."* for a specified period of 6 months.
- c. Identified seven buildings acquired by the City or its municipally owned entities for purposes of providing temporary or rental accommodation. These buildings were stated to be not available for temporary emergency accommodation assistance or fully occupied or otherwise not available.
- d. Detailed the building known as Linatex (Stand 902, New Doornfontein) as currently *"in the process of being renovated"* which renovations will be completed by April 2013 and would be able to provide temporary accommodation for 144 persons. Further detailed the building known as Ekuthuleni, corner De Villiers and Nugget Street, which would have approximately 100 temporary accommodation *"opportunities"* available from February 2013.
- e. Complains that *"without financial resources and assistance from other spheres of government, the City is not able to upscale or accelerate the provision of temporary emergency accommodation assistance and is not able to provide temporary emergency accommodation assistance in the short term."*

13. Accordingly, the conclusion reported on 20th November 2012 (five months after the court order) by the city was that *"it would be impossible for the City to accommodate the Respondents as outlined in the order"* by reason of *"the lack of available buildings and financial and other resources"* and the *"ever-growing list of evictees who await allocation of temporary emergency accommodation assistance"*.

14. The report advised the court that, if this lack of temporary accommodation would render an eviction unjust and unfair, *"then the court must not order the respondents eviction"* . If the court had already ordered that the occupiers vacate the premises then the court is advised that *"an appropriate date for the respondents eviction and allocation of temporary emergency accommodation assistance must be determined"*. [sic]

15. On 6th February 2013, Lamont J suspended the eviction order made by Claassen J (which was to be implemented on or before 15th February 2013) and again made an order incorporating certain milestone:

- a. By no later than 20th March 2013, the City was directed to file a report “setting out the nature and location of the temporary shelter to be provided to the occupiers”. That report was required to “identify the building or buildings where the occupiers will be accommodated and the particular terms as to rent and occupation on which the occupiers will be accommodated, including any house rules or other tenant responsibilities sought to be imposed. The report must specifically deal with the buildings known as Ekuthuleni and Linatex. The report must also contain an undertaking to make the accommodation available by a specified date, giving fully detailed and rational reasons why such date cannot be any earlier. The report must deal specifically with the issue of proximity and explain why the particular location and form of accommodation have been selected.....”

16. On 20th March 2013, the Deputy Director: Group Legal and Contracts employed by the City finalized a report. The report:

- a. Stated that both the Ekuthuleni and Linatex buildings had been allocated by the City to the occupiers of the Tikwelo House building whose eviction and housing was the subject matter of the judgment of the Supreme Court of Appeal in *City of Johannesburg v Changing Tides 74 (Pty) Ltd & Others* handed down on 14th September 2012.
- b. Amplified upon the numbers of occupiers facing homelessness due to eviction proceedings;
- c. Gave further description of the temporary accommodation provided by the City, explaining the policy underlying the management of such accommodation and the rules pertaining to the use of such accommodation;
- d. Refers again to Europa House which forms part of Joshco’s low cost rental accommodation portfolio and “*does not constitute temporary emergency accommodation assistance.*”
- e. Outlined the SPRE Policy (Special Process for the Relocation of Evictees) with particular reference to ‘transitional shelters’;
- f. Indicated that “*officials from the City’s Housing and other departments in early February 2013 conducted a series of site visits in all regions of the city, in order to identify buildings and sites. The buildings will have to be renovated in such a way as to provide for the type of accommodation referred to in paragraph 8 of the City’s previous report. The sites which comprise vacant land will have to be developed for purpose of constructing buildings the City was successful in identifying a number of sites that may very well serve this purpose.*” “*The next step, which has commenced, involves the preliminary costing and budgeting for refurbishment and development of such building and sites. Once this process is finalized the costing and budgeting report will be placed before the City’s budget*

committee for approval. It is not known at this stage how long this process will take. An announcement on budget allocation will be made by the Mayor and is expected in May 2013.” This process will take a while to complete, it being “envisaged that the City will require a minimum period of 9 (nine) months to complete the supply chain management and procurement processes.”

17. Accordingly, the conclusion reported on 20th March 2013 (nine months after the court order) by the city was that *“it is not possible for the City to identify a specific building or buildings where the occupiers will be accommodated.”* and *“ It is impossible, in the foreseeable future, for the City to accommodate the occupiers in terms of paragraph 4 of the order granted by the Honourable Mr Justice Claassen”* by reason of *“lack of availability of further buildings”, “the current lack of financial resources for the City to acquire buildings for temporary emergency accommodation assistance”* , the *“ever growing list of evictees who require temporary emergency accommodation assistance in terms of court orders which have been handed down subsequent to the City’s previous report”* and *“the time period for the completion of supply chain management and procurement processes, which is a minimum of 9 (nine) months [and which] does not take into account the period for renovations of buildings after same are acquired by the City”*.
18. The report requested that the court further suspend the date of eviction of the occupiers from 191 Jeppe Street for a period of at least nine months.

THE CITY OF JOHANNESBURG AND THESE COURT ORDERS

19. In short, the response of the City of Johannesburg to the orders of Claassen J (to which the City had consented) and to the orders of Lamont J was to claim that it could not comply with the orders of June 2012 and February 2013 either to detail the accommodation to be provided to these occupiers or to provide these occupiers with temporary accommodation.
20. On reading these reports and appreciating the import thereof, I had a number of concerns - most of which I have already indicated to counsel at the Wednesday hearing of this application. They bear repeating because I am not confident that those individuals who head up the City of Johannesburg (and who are the respondents in this application) are necessarily aware of what is or rather what is not happening in this application. I extended an invitation through counsel for the Executive Mayor, the City Manager and the Director of Housing to attend at court on Friday to hear these concerns personally. I appreciate that this was very short notice on which to extend an

invitation to the Executive Mayor and the City Manager, that it was not possible for either of them to attend and thank them for the most courteous letter which I received in response to this invitation. I thank the newly appointed Director of Housing, Mr Thabo Mayisela and his Director of Contracts, Mr Mbulelo Ruda, for taking the time out of their busy schedules to attend at court on the Friday hearing.

21. Amongst the concerns arising from these two reports are as follows:

- a. First, I was a little surprised that both reports appear to have been compiled by a lawyer – ‘Deputy Director: Legal and Compliance’ and ‘Deputy Director: Legal and Contracts’. The City may have been brought to court and the City may be responding to court orders but the subject matter of these reports is not a legal issue. It is a planning, budgetary, town planning, urban development and housing issue. Are there no experts in these fields available to the City who can compile reports on the realities on which the courts have required factual information? Is there no dedicated task team working on provision of temporary shelter?
- b. Second, the City was ordered to detail certain specified information viz “the nature and location of the accommodation to be provided”. This both reports failed to do. General elucidation of accommodation provided to other persons is of no assistance to the court; information about other buildings which are not available for use in housing these occupiers does not take resolution of this matter any further; mission and vision and policy development are irrelevant to the particular task ordered by the court; budgetary and asset constraints were not sought by the court³.
- c. Third, both reports are essentially pleas in misericordiam outlining the difficulties confronted by the City in complying with the orders. The City was not asked to share its various problems with the court. The court ordered details of the solution achieved by the City to the problem of the pending homelessness of the occupiers to be evicted. The City was given a period of months to achieve this solution. The court required information on the positive result achieved by the City over the period of months allowed to it.
- d. Fourth, the first report of November 2012 gave no indication at all of any task team formed, meetings held, research conducted, finances secured, deeds office records perused, town plans scrutinised, rates records and defaults

³ See the comment of the SCA in Changing Tides 74. *supra* at paragraph “the general approach of local authorities, so far as it can be discerned from the reported cases, has been to file with the court a general report detailing its current housing policy without addressing the facts of that particular case. That is inadequate. In addition to such a report it must deal directly with the facts of the particular case.”

identified, buildings inspected, owners consulted, negotiations attempted, rentals or purchase prices calculated, architect, builders and other subcontractors retained. No activity is identified as having been taken by the City subsequent to the order of 12th June 2012 and pertaining to that order. On reading the report of November 2012, it would seem that nothing was done – the past and the present were simply described and the future was hoped for. There is no semblance of action and no pretence thereto.

- e. Fifth, the second report of 20th March 2013 does report on physical motion and mental application by City employees. Eight months after the order of Claassen J, officials from various of the City departments “*conducted a series of site visits to identify buildings and sites*”. The City was able to “*identify a number of sites*”. And that is the sum total of all activity within the eight month period⁴.
 - f. Sixth, the first report appears uncertain whether or not the eviction had been ordered – it had. Both reports explicitly request extensions of time (for an indefinite period since no definite date for compliance can be furnished) regardless of the position of the occupiers or the owner.
22. The reports with which the court has been furnished by the City and the lack of any positive outcome pursuant to efforts taken by the City seem to indicate an attitude on the part of the City which is only very reluctantly (if at all) compliant with the directions of the Constitutional Court.
 23. The City has definitely known since December 2011 of its general obligations towards the homeless and definitely of its specific obligations towards these individual occupiers since June 2012. It states that the numbers of evictees and potentially homeless persons in Johannesburg is on the increase. Yet where is the necessary planning and preparation by the City to meet its Constitutional obligations?
 24. There are many individuals and entities whose views are not reflected in the decision of the Constitutional Court in Blue Moonlight supra. They may lament that the City of Johannesburg will be expected to house the entire continent of Africa. They may disagree that no distinction is drawn between South Africans and non South Africans when it comes to providing temporary housing for the homeless. They may complain that the rates and other income in this City cannot support provision of housing of those who do not directly

⁴ Costing and budgeting now has to be done, placed before the City’s budget committee and then a further period of at least nine months will be required to complete procurement processes after which the development of sites or refurbishment of buildings will take place.

contribute to the tax base of the City. They may protest that provision of temporary housing as required will encourage persons to bypass housing waiting lists and prejudice persons who have been patiently waiting on housing lists. And on and on the dissatisfactions may be expressed.

25. But there is no room for any tier of government or any organ of the state or any court in the land to be inimical to the reasoning or the decisions of the Constitutional Court. The City of Johannesburg is bound thereby. This court is bound thereby. We must all do our best and exert ourselves to implement the decisions of the Constitutional Court in pursuit of the Constitutional promises.
26. The result of this homily is that the City of Johannesburg cannot sit back and throw up its hands in horror each time a group of persons are to be evicted as unlawful occupiers, about to become homeless and the City is therefore required to provide temporary accommodation. The City must act in a Constitutional and professional manner and this has not been done to date in this litigation.

FURTHER REPORT

27. At the hearing of this application, I indicated to the parties that I believed that a further report would be necessary. I indicated that I thought the City required direction from the court as to the information required. Such direction might focus the minds of both politicians and functionaries on the work needed to be done by the City to meet its Constitutional obligations. I cannot and do not claim to have any knowledge of town planning, urban development, provision of housing or budgeting therefore or management of large corporations. But I do believe that the questions to which I would like answers might propel the City into (if not a whirl) at least a flow of directed and focussed action.
28. I invited all parties to take a week or so to consider the questions which I indicated I wanted asked and to formulate further or different issues which they believe the City should address in order to move this litigation towards finalisation.
29. Applicants suggested that the further report should deal with:
 - a. Since Europa House is the only property identified in the City's March report as being potentially available for occupation, the City is to:
 - i. provide the date on which accommodation can and will be made available to the applicants at Europa House;
 - ii. give reasons why such accommodation would not be possible;

- b. The location of any other vacant property at the disposal of the City and the date by which that property will be made available to the applicants.
 - c. The measures already adopted or to be put in place by the City to ensure that occupiers of other buildings in the Johannesburg CBD who are facing eviction and likely to be rendered homeless will be provided by the City with emergency accommodation .
 - d. In addition a process of meaningful engagement by the City with the applicants is proposed to address, inter alia, the terms of accommodation, the process of relocation and the measures to ensure that the applicants will be secure against eviction.
30. Respondents have suggested that the proposed further report should follow the specifications set out in City of Johannesburg v Changing Tides 74 (Pty) Ltd and others 2012 (6) SA 294 (SCA) at paragraph 40. In my view, the directions or suggestions given in that judgment were appropriate at a stage which has long passed in the present case. In fact, the respondents own comments indicate that this is so:
- a. There is no dispute over the fact that the continued occupation of the building by the applicants gives rise to health or safety concerns;
 - b. The identity of the applicants is not in dispute nor is it in dispute that the applicants socio-economic circumstances make them eligible for the provision of temporary emergency accommodation in the event that they are evicted;
 - c. There is no dispute that some or all of the applicants face homelessness if evicted and that they are therefore eligible for the provision of temporary emergency accommodation;
 - d. The City intends to provide temporary emergency accommodation to the applicants. It must in its report provide details of buildings or land which has been identified for the provision of temporary emergency accommodation, the date on which accommodation will be made available to the occupiers and the terms and conditions on which such accommodation will be made available;
 - e. The City undertakes to hold discussions with the owner in this respect with the aim of identifying measures that may alleviate the burden on it.
31. I require a report from the City of Johannesburg, to be personally signed by each of the Executive Mayor, the City Manager and the Director of Housing.
32. The report must respond to each of the questions set out in paragraph 2 of the Order below whether or not the City is able to respond in the affirmative that it has found and is making available accommodation to these occupiers. In other words, the City cannot produce the address and details of accommodation and the date when this will be available

and then state that it is not necessary to answer the specific questions which are required to be answered in terms of this order.

33. These questions are formulated with one outcome only in mind: provision of temporary accommodation for these applicants sooner rather than later. They are premised upon the view that management towards an outcome must be planned, focussed and directed towards that outcome. These questions seek to address the many difficulties and problems upon which the City relies to explain its failure to have taken any concrete steps over the past eleven months towards compliance with the court order.
34. In addition, the City is required to specify in writing the nature and location of the temporary shelter to be provided to the applicants.

ORDER.

1. It is declared that the second, third and fourth respondents, in their respective capacities as the Executive Mayor, Municipal Manager and Director of Housing of the City of Johannesburg Metropolitan Municipality ("the City"), are constitutionally and statutorily obliged to take all the necessary steps to ensure that the City complies with paragraph 2 of the court order granted by Claassen J in case no. 2011/20127 on 14th June 2012 ("the June 2012 court order") and the court order granted by Lamont J on 6th February 2013 ("the February 2013 court order"), obliging the City to provide the applicants with temporary shelter where they may live secure against eviction, in a location as near as feasibly possible to 191 Jeppe Street, Johannesburg.

2. The City is directed to provide full and complete answers to the following questions, such answers to be signed by the second, third and fourth respondents personally, and furnished to the applicants and fifth respondent as also this court by 12h00 on Friday 18th May 2013:

- a. Subsequent to the Blue Moonlight order of the Constitutional Court on 1st December 2011,
 - i. Has the City of Johannesburg established a specialist task team or unit to plan for implementation housing arrangements for all those whom it is estimated will be evicted as unlawful occupiers, rendered homeless and whom the City has an obligation to accommodate?
 - ii. The City is required to specify:
 1. Which specialist skills such as urban development, town planning, housing, finance, building and other areas of expertise are represented in this unit?
 2. Which departments within the City administration are represented within this unit and with which departments does the unit liaise?

3. What budget has been established for such unit?
- iii. If no such unit has been established:
 1. The City is required to explain in detail why this has not been done.
 2. What structure or structures currently implement the housing arrangements required to be implemented in the Blue Moonlight case with reference to the personnel involved, skills available, liaison undertaken, time availed from other duties, management and direction of implementation.
- iv. Has the City planned an estimate of the number of persons and the gender and age distribution of persons who will be required to be accommodated over the period 1st December 2011 to 30 November 2011, 1st December 2012 to 30th November 2012, 1st December 2012 to 30th December 2013 and for each successive twelve month period until the end of 2016? If the City uses another twelve month period for such estimates, then it should so indicate.
- v. Has the City, in accordance with the estimates referred to above :
 1. Planned for the number of beds, rooms, buildings and other facilities required over this period?
 2. Ascertained the current and prospective availability of land and/or buildings?
 3. Budgeted for rentals or purchase of land and buildings and refurbishment and maintenance thereof to achieve provision of temporary accommodation over this period?
 4. Arranged financing estimated to be needed over this period. The City is required to identify sources of funding:
 - a. Dates of applications and sums required from the National Treasury.
 - b. Dates of applications and sums required from the Gauteng Province.
 - c. Dates of applications and sums required from the City of Johannesburg.
- vi. Which experts prepared these estimates and plans on behalf of the City of Johannesburg and are these plans and estimates continuously updated?
- vii. If no such estimates and plans have been prepared, the City is required to explain why this has not been done and on what basis the City is currently attempting to meet its current and future obligations in terms of the Blue Moonlight case.
- viii. Has the City identified buildings for rental by the City in order to provide accommodation as required? How many such buildings have been

identified? How many beds would be available per building and in total? At what cost are the rentals per building and per bed? How many rental agreements have been negotiated and concluded? How many negotiations are currently underway?

- ix. Has the City identified buildings for purchase in order to provide accommodation as required? How many such buildings have been identified? How many beds would be available on a per building and in total? At what cost are the purchase and refurbishment of each building and per bed? How many purchase agreements have been negotiated and concluded? How many negotiations are currently underway?
- x. On what date did the City make a written offer to Fifth Respondent in this matter, Changing Tides Properties 74 (Pty) Ltd, to rent the building situate at 191 Jeppe Street, Johannesburg and at what rental and for what period in order to provide accommodation to the occupiers in this matter. On what date did the City make a written offer to Fifth Respondent to purchase the aforesaid building and at what purchase price and on what terms? Over what period did negotiations take place? On what date did the City receive a written response from Fifth Respondent and to what effect?
- xi. Has the City identified architects, builders, plumbers, electricians and other persons with expertise who can procure renovations and refurbishments and maintenance of any building rented or purchased to provide accommodation? Has the City taken steps to ensure speedy tender processes or contractual arrangements to ensure temporary accommodation is available on an emergency basis?

3. The second, third and fourth respondents are ordered to take all the administrative and other steps necessary to ensure that the City –

i) complies, within two months of the date of this order, with its obligations in terms of paragraph 2 of the June 2012 and February 2013 court orders, to provide the applicants with temporary shelter where they may live secure against eviction, in a location as near as feasibly possible to 191 Jeppe Street, Johannesburg.

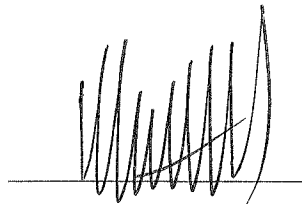
ii) complies, within one month of the date of this order with its obligations in terms of the June 2012 and February 2013 court orders to deliver a report specifying the nature and location of the temporary shelter to be provided to the applicants. That report must be delivered, under oath, and signed by the second, third and fourth respondents.

4. Paragraph 4 of the 14 June 2012 court order, evicting the applicants from their homes at Chung Hua Mansions, 191 Jeppe Street, Johannesburg, is suspended pending compliance with the orders made in paragraph 2 above.

5. If the second to fourth respondents fail to comply with any of the orders in paragraph 2 above, the applicants and the fifth respondent are given leave to supplement their papers and to enrol this application on 5 days' notice to the first to fourth respondents for a further hearing on, and determination of, such complaints of contempt of court, or claims for constitutional damages, as the applicants and the fifth respondent may then advance;

6. The first respondent is directed to pay the costs of this application on the scale as between attorney and client;

7.. This matter has already been postponed for further hearing before Satchwell J in the opposed motion court on Wednesday 12th 2013 and will remain with Satchwell J for determination of further steps and processes, including further argument as necessary, to be undertaken in the case.

A handwritten signature in black ink, consisting of a series of vertical, slightly wavy lines of varying heights, ending in a small loop on the right side. The signature is written above a horizontal line.

K. SATCHWELL

Counsel for the Applicants: i) Adv P. Kennedy SC

ii) Adv. S. Wilson

Attorneys for the Applicants: SERI Law Clinic

Counsel for First to Fourth Respondents: Adv. I. Currie

Attorneys for First to Fifth Respondents: KRB Law Firm

Counsel for the Fifth Respondent: i) Adv. R. Willis

ii) Adv. S. Rawat

Attorneys for Fifth Respondent: Esthe Muller Attorneys

Date of hearing: 10th April 2013

Date of Judgment: 3rd May 2013