

# **A municipality's obligation to provide temporary accommodation to evictees.**

In the matter of *Sethunya Family Trust and Another v Occupiers of Erven 139 Berea and Others*, the Johannesburg High Court (once again) highlighted the responsibility owed by Municipalities in respect of evictions which could render the unlawful occupiers homeless.

The Applicant's acquired the property in August 2019 with the aim of leasing out the various units thereat. It was not in dispute that the Applicant had the required legal right to pray for the eviction of the occupiers, and it was also not in dispute that the occupiers were unlawfully in occupation of the property. The main issue pertained to the common cause fact that many of the occupiers would be rendered homeless if the eviction order were granted.

One of the principal requirements to obtain an eviction order is that the eviction must be just and equitable. It has repeatedly been held that an eviction that leads to homelessness would be unjust and inequitable. The converse to this is that an indefinite delay in evicting unlawful occupiers, based on potential homelessness, would conceivably amount to a deprivation of property without compensation.

Therefore, in matters such as this, the local Municipality has a dual role to play; firstly, it must provide a comprehensive report setting out, amongst others, the personal circumstances of the unlawful occupiers, and secondly, it must, where homelessness will result, within its reasonable means, make temporary alternative accommodation available to the unlawful occupiers.

Obviously, the preparation and provision of such a report, and the local Municipality's ability to house the unlawful occupiers, results in delays. On this point, the Court remarked that a person acquiring land for commercial use, on which long-standing occupiers are present, must acknowledge the potential for enduring their continued occupation for "a certain duration," and thus the need to exercise patience.

Ultimately, the Court ordered the local Municipality to, within a period of 4

months, provide temporary alternative accommodation. Such accommodation was to be provided to households earning less than R3,500.00 per month (this threshold was determined by a policy adopted by the Municipality and would therefore be different in differing areas; assuming a similar policy has been adopted by the Municipality), with those earning more than R3,500.00 per month being regarded as not having been rendered homeless if the eviction order is granted. However, any income derived from Child Support grants must not be considered for purposes of determining if the R3,500.00 threshold is met. The Municipality had attempted to limit the provision of alternative accommodation to persons “legally within the country,” but the Court held that this was untenable and ordered that the provision of temporary accommodation must not be conditional upon proof that the occupier is legally in the country.

This matter could be used to contend, as a general threshold, that households earning less than R3,500.00 would not be rendered homeless if they were evicted. It is also a matter that should strongly motivate local municipalities to adopt similar policies to determine thresholds for when temporary alternative accommodation would be provided. It also serves to illustrate that landowners must unfortunately expect the possibility that their eviction claim may be significantly delayed whilst the courts await the provision of a report from the local Municipality as well as ensuring that temporary alternative accommodation is made available.

Wesley Keeny, Van Velden-Duffey Inc