

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

(RANDBURG)

CASE NUMBER: LCC02/2024

(1) REPORTABLE: No  
(2) OF INTEREST TO OTHER JUDGES: Yes  
(3) REVISED. No

[REDACTED] 19 February 2024

SIGNATURE

DATE:

Before the honourable Judge Cowen on 14<sup>th</sup> February 2024.

In the case of: -

A RE SHOMENG HOLDINGS PROPRIETARY LIMITED

1<sup>ST</sup> APPLICANT

A RE SHOMANG PROJECTS PROPRIETARY LIMITED

2<sup>ND</sup> APPLICANT

and

LETTA SIBEKO (MTHIMUNYE)

1<sup>ST</sup> RESPONDENT

CHRISTINA SOKO

2<sup>ND</sup> RESPONDENT

MEISI EMILINAH NKOSI

3<sup>RD</sup> RESPONDENT

AARON FATSHI SOKO

4<sup>TH</sup> RESPONDENT

ELIZABETH MINAH NKOSI

5<sup>TH</sup> RESPONDENT

SIPHO MAHLANGU

6<sup>TH</sup> RESPONDENT

PHAKAMANI JOHANNES MAHLANGU

7<sup>TH</sup> RESPONDENT

CHIEF ALBERT LUTHULI LOCAL MUNICIPALITY

8<sup>TH</sup> RESPONDENT

DEPARTMENT OF AGRICULTURE,

RURAL DEVELOPMENT AND LAND REFORM

9<sup>TH</sup> RESPONDENT

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**JUDGMENT**

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**COWEN J**

**Introduction**

1. The applicants, A Re Shomeng Holdings (Pty) Ltd and A Re Shomang Projects (Pty) Ltd (the applicants, or ARS) have applied, on an urgent basis, for interim relief relocating the first to eighth respondents, so as to enable their open cast coal mining activities in Mpumalanga to continue. The first applicant is the owner of and operates a coal mine on several farms in Mpumalanga Province, including Portion 35 of the Farm Kromkrans 208 IS (Portion 35). It operates the coal mine pursuant to a mining right granted to the second applicant by the Minister of Mineral Resources and Energy in terms of the Mineral and Petroleum Resources Development Act 28 of 2002 (the MPRDA). The mining area on Portion 35 is known as the Motshaotshile Colliery
2. The first to seventh respondents are the duly authorised family representatives of seven families, some related, who reside on Portion 35 and who have resided there over many years since 1997, more specifically members of the Mthimunye family, the Soko family, the Nkosi family and the Mahlangu family. The first respondent is

Letta Sibeko, the head of the Mthimunye family; the second respondent is Christina Soko, the head of her family, residing with Jhabi Makhazi Soko and Jerry Soko; the third respondent is Meisi Emilinah Nkosi, the head of the Meisi Nkosi family; the fourth respondent is Aaron Fatshi Soko, the head of the Soko family; the fifth respondent is Elizabeth Minah Nkosi, the head of the Nkosi family including Kalfan David Mahlangu, Thabo Mahlangu and Nkosinathi Mahlangu; the sixth respondent is Siphoe Mahlangu, the head of his family and the seventh respondent is Phakamani Johannes Mahlangu, the head of his family.<sup>1</sup> It is common cause that the first to seventh respondents are occupiers as defined in the Extension of Security of Tenure Act 62 of 1997 (ESTA). I refer to these respondents collectively as 'the respondent families'. The eighth respondent is the Chief Albert Luthuli Local Municipality and the ninth respondent is the Department of Agriculture, Land Reform and Rural Development (the Department). The respondent families and the Department are participating in the proceedings.

3. The application was instituted in terms of section 15 and section 11 of ESTA. Section 15 is titled 'Urgent proceedings for eviction' and makes provision for an owner or person in charge of land to approach the Court urgently for the removal of any occupier from land pending the outcome of proceedings for a final order. Under the section a court may grant an order for the removal of that occupier if it is satisfied that a) there is a real and imminent danger of substantial injury or damage to any person or property if the occupier is not forthwith removed from the land; (b) there is no other effective remedy available; (c) the likely hardship to the owner or any other affected person if an order for removal is not granted, exceeds

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<sup>1</sup> The seventh respondent was originally cited as Samual Mthwalose Mahlangu, substituted by the order made below by Phakamani Mahlangu.

the likely hardship to the occupier against whom the order is sought, if an order for removal is granted; and (d) adequate arrangements have been made for the reinstatement of any person evicted if the final order is not granted.

4. The application was instituted on 15 January 2024 and came before Acting Judge President Meer who issued directions. The matter was set down for hearing on Friday 2 February 2024, when it was to come before me. However, before the application was heard, the applicants approached the Court to expedite the hearing. It is not necessary for me to detail the events surrounding that approach, suffice to state that it culminated in my hearing the parties' representatives on a critically urgent basis during the afternoon of Friday 26 January 2024. On that day I also heard oral evidence from Mr Joseph Masekwameng, the Chief Executive Officer of both applicants. I thereafter granted an order (the 26 January 2024 order) enabling blasting operations on an already charged block to be conducted on 27 January 2024 on Portion 35 for which purpose I directed the families temporarily to vacate their existing homes until the blasting operations had been concluded and the area declared safe. This order was granted in circumstances where explosives were already in place and needed to be detonated in a controlled fashion and the Department of Minerals and Energy (DME) had authorized that process. I was subsequently informed that the blasting took place that day and the families then returned to their homes. In the 26 January 2024 order, I also ordered that the urgent application be heard on 14 February 2024 to enable the respondents to deliver their answering affidavits. The respondents had not been able to comply with the initial directions but by that stage had secured legal

representation through Legal Aid South Africa and wished to deliver answering affidavits.

5. The application was argued before me on 14 February 2024. Adv Riaan Booysen and Adv Sanele Sibisi appeared for the applicants. Mr Ramollo appeared for the respondent families and Adv Mkhari appeared for the Department. The application is in two parts, Part A and Part B. Although framed somewhat unusually, Part A essentially concerns urgent interim relief under section 15 of ESTA whereas Part B is intended to secure final relief. However, both parts entail the initial and temporary relocation of the respondent families to temporary accommodation in mobile homes on Portion 35 whereafter they will move to permanent new accommodation the applicants are constructing for them on Portion 35, some 600 metres from their current homes. It is common cause on the affidavits that the families have agreed, following a process of consultation and engagement, to leave their existing homes and relocate to the permanent new homes. However, the need for urgent interim relief arises from unanticipated circumstances. In brief, there was an unexpected delay in building the new permanent homes for the respondent families and in order to continue with mining operations, and indeed generate funds to keep operations and the construction process going,<sup>2</sup> it is now necessary for the applicants to relocate the families first to temporary accommodation. They would then move to the new homes once they are built. The respondents are refusing to do this. However, the applicants say that if they cannot do this, the mine will not be able to meet its commitments and will close

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<sup>2</sup> The latter point – ie the need to generate funds to construct the homes - was advanced from the bar but it must be noted as it highlights the potential vulnerability of the family respondents.

resulting not only to hardship to the mine but in significant job losses and related economic hardship for those who are benefiting from the mining program. The respondent families are resisting the temporary relocation saying that this was not the subject of the engagement process with them, is highly disruptive to their lives and the temporary accommodation is not suitable for their needs.

### **The legal basis of the application**

6. At the outset it is necessary to clarify the legal basis of this case, an issue that I canvassed with the parties' representatives during the hearing. Although the language of relocation is used in the affidavits, the case has been advanced as an eviction case: In Part A, on the basis of section 15 and Part B as an eviction in terms of section 11 of ESTA.<sup>3</sup> Compliance with section 11, of course, is only one consideration relevant to whether an eviction can be granted under section 9 of ESTA. No eviction can be granted until all of the requirements of section 9 are met. However, on Supreme Court of Appeal authority, this is not an eviction case. As this Court held in *Boplaas Landgoed (Pty) Ltd and Another v Jonkies and Others*:<sup>4</sup>

'It is settled law that a relocation in terms of ESTA is the removal from one housing unit to another on the same farm, and that removal off the land or farm, as in the instant case, is an eviction. In *Pharo's Properties CC and Others v Kuilders and Others* at paragraph 13, this court found that relocation in terms of ESTA was movement from one housing unit to another on the same registered farm. A similar finding was made in *Drumearn (Pty) Ltd v Wagner and Others* at 504F, and in *Mjoli v Greys Pass Farm (Pty) Ltd* at paragraph 11. The Supreme Court of Appeal has confirmed this. In *Chagi*, at paragraphs 19 and 20, it was similarly held that a

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<sup>3</sup> Section 11 of ESTA applies to an eviction of persons who become occupiers after 4 February 1997.

<sup>4</sup> [2022] ZALCC 38 at para 12

relocation from one house to another on the same land does not constitute an eviction. Likewise in *Rouxlandia* where, as aforementioned, with reference to *Chagi*, it was held that an eviction in terms of ESTA is confined to an eviction from the land, not from one dwelling to another.<sup>5</sup>

7. Relocation orders are sought pursuant to this Court's power to grant interdicts conferred by section 20(1)(b) of ESTA.<sup>6</sup> Importantly, although the protections conferred by section 9 of ESTA do not apply, the SCA has held that the protections afforded by sections 5 and 6 of ESTA do apply. In *Rouxlandia*, the SCA held (footnotes omitted):

[17] ... [T]here can be little doubt that the right to refuse relocation can be accommodated within the rubric of s6 of ESTA. The specified rights and duties conferred on an occupier in terms of s6 are not exhaustive. The right to security of tenure in terms of s6(2)(a) could, conceivably, have application in such situations. Relocation to an uninhabitable dwelling would offend an occupier's right to live in accordance with basic human dignity, as was found by the Constitutional Court in *Daniels*. In such circumstances, where a relocation infringes an occupier's human dignity, this could be successfully resisted by invoking ss 5(a) and 6(2)(a) of ESTA.

[18] What of the situation where a relocation does not impact on the human dignity of the occupier? The Constitutional Court has acknowledged that the right of residence conferred by s8 of ESTA is not necessarily tied to a specific house. The protection afforded by those parts of ss 5 and 6 of ESTA on which the appellants rely, is to ensure that an occupier will not be subjected to inhumane conditions violating human dignity. To this extent, an occupier's right to resist relocation is protected. But these sections do not amount to a blanket prohibition on relocation under any circumstances. If indeed the relocation were

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<sup>5</sup> The references to the cases referred to in this paragraph are as follows: *Pharo's Properties CC and Others v Kuillers and Others* 2001 (2) SA 1180 (LCC); *Drumeam (Pty) Ltd v Wagner and Others* 2002 (6) SA 500 (LCC), at 504F; *Mjoli v Greys Pass Farm (Pty) Ltd* [2019] ZALCC 25; *Chagi v Singisi Forest Products (Pty) Ltd* 2007 (5) SA 513 (SCA); *Oranje and Others v Rouxlandia Investments (Pty) Ltd* 2019 (3) SA 108 (SCA) [2019] ZALCC 25.

<sup>6</sup> Section 20(1) provides that this Court has jurisdiction throughout the Republic and 'shall have all the ancillary powers necessary or reasonably incidental to the performance of its functions in terms of this Act, including the power – (a) ...; (b) to grant interlocutory orders, declaratory orders and interdicts ...'. See *Rouxlandia*, *supra* n 4 para 24.

to impair an occupier's human dignity, then the provisions of s 5 and s 6 would apply and the occupier could invoke his or her constitutional rights. This does not mean that all relocations necessarily suffer the same fate.'

8. Also relevant is the recent decision of this Court in *Du Plessis and another v Kriel NO and others*, in which the majority concluded that the protections of section 8 of ESTA, which regulates the termination of a right of residence, and imposes requirements of both procedural and substantive fairness,<sup>7</sup> applies to relocations. Accordingly, in this case, the applicants would only be entitled to final relief if they satisfy the requirements of section 8 of ESTA and subject to the respondent families' section 5 and 6 rights and their *prima facie* rights, must be viewed through this lens.

9. The parties' representatives were not in a position to make detailed submissions on whether section 15 of ESTA applies to an application for an urgent relocation and not only an eviction.<sup>8</sup> In the urgent circumstances of the case, I do not consider it necessary to address this issue, as I am satisfied that a case is made out for at least some urgent interim relief both applying the test under section 15 of ESTA and applying the usual requirements for urgent interim relief in this Court.<sup>9</sup> In this

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<sup>7</sup> See *Snyders and Others v De Jager and Others (Appeal)* [2016] ZACC 55; 2017 (5) BCLR 614 (CC); 2017 (3) SA 545 (CC)

<sup>8</sup> Cf *Sibanyoni v Umcebo Mining (Pty) Ltd* 2021 JDR 0360 (LCC).

<sup>9</sup> The requirements for interim relief are set out in *Chief Nchabeleng v Chief Phasha* 1998(3) SA 578 at para [6] to [8]. They are a) that the right which is the subject matter of the main action and which the applicant seeks to protect is clear or, if not clear, is *prima facie* established though open to some doubt; b) that, if the right is only *prima facie* established, there is a well-grounded apprehension of irreparable harm to the applicant if the interim interdict is not granted and he ultimately succeeds in establishing his right (it is implicit in this requirement that the harm apprehended must be the consequences of an actual or threatened interference with the right referred to in (a); c) that the balance of convenience favours the granting of interim relief; and d) that the Applicant has no other remedy." This Court follows the approach expounded in *American Cyanamid Co v Ethican Ltd* [1975] 1 All ER 504 (HL) which departs from a rigid approach of a 'strong *prima facie* right' and emphasizes flexibility and the importance of the balance of convenience criterion. The Court must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried. In this regard, the House of Lords held in *American Cyanamid*: 'It is not part of the Court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult question of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial.' In *Macassar Land Claims Committee v Maccsand CC* [2003] ZALCC 21 at p 14, this Court held that '...

regard, the applicants ultimately sought to persuade me to grant final relief. However, I am of the view that they are not entitled to material aspects of the relief they seek on a final basis on the evidence to hand or on the case as advanced in the papers. The permanent structures have not yet been built and the case is pleaded as one for interim relief without due reference to the legal principles underpinning relocations (or indeed evictions having regard to section 9). There are too many uncertainties that face the respondent families, the process of engagement has not been wholly adequate as regards the temporary accommodation and they have legitimate concerns about their ongoing security of tenure not least in the apparently tenuous position the mine is facing on its own version.

### **Urgency**

10. In my view, there can be no real debate that the application is urgent. In short, mining activities have ground to a halt and indeed, in early January, the DME issued a directive in terms of section 54 of the Mine Health and Safety Act 29 of 1996 (the section 54 notice) to stop all blasting activities, primarily because under the applicable regulations, blasting activities may not be undertaken within a horizontal distance of 500 metres of occupiers' homes (the blasting radius). At this juncture, in order for mining to continue, it is necessary for blasting to take place within a radius which includes – most imminently – the homes of the first and fourth respondent's families, but which will in the next few months extend to a radius that includes the homes of the other affected respondent families. The DME

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where the grant of the interim interdict results in significant inconvenience for the respondent, a higher standard of proof is required of the applicant under the 'serious question to be tried' criterion. Conversely, where the inconvenience to the respondent is insignificant, a lesser standard of proof may be accepted.'

has made it quite clear that it will not allow further blasting until the affected occupiers – ie those within the blasting radius at the relevant time – are duly relocated. Moreover, it is established on the papers that unless blasting continues in the near future, the applicants will be unable to meet their contractual commitments to deliver coal to Eskom to supply the Hendrina Power Station and other nearby stations as well as other export contractors, and the mine will close. This will result in a loss of numerous jobs, livelihoods and social benefits emanating from the mine.

11. It was submitted on behalf of the respondent families that the urgency in the situation had abated since the grant of the 26 January 2024 order. However, while that order catered for the critical threat of danger that flowed from the explosives that were already charged, it did not cater for the relief sought in Part A. It was distinct relief sought on critically urgent safety grounds. The respondents also submitted that any urgency was self-created because, in effect, the applicants have failed adequately to mine and construct the new homes to plan. I am however not persuaded by this argument when regard is had to all of the circumstances that have given rise to the application. Moreover, it does not ultimately counter the reality, sufficiently established on the affidavits, that if no relief is obtained, the mine will close with all attendant consequences.

### **Background facts**

12. The material background facts are largely common cause. When the second applicant purchased Portion 35, the employees of the previous owner who resided there all remained, including the respondent families.

13. It is common cause that the applicants developed a Social and Labour Plan, approved by the Department of Mineral Resources (DMR), in compliance with the MPRDA and the Broad-based Socio-economic Empowerment Charter for the Mining and Minerals Industry 2018 (the Charter). The first applicant has committed, in terms thereof, to source 60% of its employees from the nearby Carolina area.

14. To further consultation and interaction with affected communities, the first applicant established a Mine Forum which convenes regularly. This is the platform where all stakeholders can voice, ventilate, discuss, debate and record the employment needs of the people they represent. The applicants have appointed Sefala Strategic Solution (Pty) Ltd (Sefala) to represent them on the Mine Form and Sefala's Ms Mahlako Mahapa is primarily responsible for executing community liaison duties on their behalf. Sefala have held various meetings including as regards the impact of the mining activities on the families. The applicants employ approximately 132 employees and 10 subcontractors employing about 83 people, all of whose livelihood depend on continued mining activities.

15. During November 2021, ARS conducted a household survey covering each household on Portion 35, being the respondent families. A civil engineer inspected the state of the infrastructure of the existing households, which yielded concerns about whether they would withstand mining activity. In January 2022, the applicants conducted household visits to inform residents of mine processes and to establish communication channels. The outcomes of the consultation processes

are detailed in the founding affidavit and were reported to the DMR. It is common cause that this resulted in an agreement on the part of the respondent families to relocate to new stands on Portion 35 on which new homes would be constructed, approximately 600 metres from their current homes. There is no dispute that the mining activities create a real and imminent danger of substantial injury and damage. Indeed, it was understood, at least by May 2023 that the state of some of the structures required the applicants to implement temporary measures like Park Homes for already unstable structures. This culminated in the first and fourth respondent families moving into Park Homes which were erected next to their existing homes. Customised housing plans were devised for the new stands.

16. According to the applicants, the construction of the new homes was intended to commence on 1 August 2023 and be completed by 8 November 2023. However, there were delays in reaching agreement regarding the new plans. The respondent families lay blame on the applicants for the delays. What is noteworthy in this regard is that the Court has not been supplied with the original construction time-frames save in respect of two houses which were scheduled for construction in that period. It is common cause that did not happen.

17. By November 2023, at a community meeting, the applicants communicated that the construction project would begin only in the second quarter of 2024. Blasting matters were discussed and it was mentioned that the mine had decided to move people out of their homes to a safe area when blasting is to take place. This was agreed to and documents signed. The mine would take responsibility should the

blasting have any negative impact on the houses. After blasting, families would move back into their homes.

18. Ultimately, however, the delay in the construction of the permanent homes means that for mining activities to continue, the respondent families, initially the first and fourth respondents, would have to move temporarily, pending the construction of the permanent structures. The remainder of the families would have to move in a phased way, with ongoing communication ensuing between the applicants and the families.

19. There is a dispute on the papers as to whether the respondent families agreed to this. In other words, to the phased move via temporary accommodation, a prospect that was only mooted from November 2023 but which the applicants sought to implement in respect of the first and fourth respondent families in December 2023.

20. In this regard, it is clear from the papers that a meeting was held between the applicants' representatives and representatives of the first and fourth respondent families on 15 December 2023, and the Court has been supplied with notes of this meeting. According to the applicants it culminated in an agreement that these families would relocate to temporary accommodation in mobile homes also on Portion 35 but outside the blasting radius but that the move would be delayed until January 2024 to accommodate family plans over the December period. According to the respondents, there was no such agreement either with these two families or with the remaining respondent families. Indeed, they say there was no consultation with the remaining respondent families. All of the respondent families ultimately

refused to relocate to the temporary accommodation. What is also apparent is that there has been a breakdown of communication and trust between the parties over recent months. Indeed, on the applicants' version, which is only baldly denied, there has been active hostility involving the second and third respondents and a member of the seventh respondent family, ultimately leading to the applicants obtaining an interdict in the Mpumalanga High Court.

21. The inability to continue mining flows from the section 54 notice which the Chief Inspector of Mines issued on Friday 12 January 2024 after attending the Motshaotshile Colliery. The reason this ensued was because the respondent families refused to vacate their homes and be relocated to new accommodation.
22. There is no dispute that the applicants and their employees will suffer irrecoverable financial loss if the mining activities cannot continue. There is also no dispute that unless the respondent families relocate, ARS will be unable to exercise its mining rights and honour contractual obligations to supply coal to Eskom. Although the applicants were able to blast the charged block on 27 January 2024, they have been unable to continue mining thereafter and this has severely impacted its cash flow to the extent that it cannot continue its operations. The applicants have already informed its employees of the possibility of mine closure and retrenchment.
23. In my view the prudent manner to approach this dispute is to accept, for present purposes, but without deciding, that indeed none of the respondent families agreed to relocate to the temporary accommodation, and then to determine whether the applicants are, nevertheless, entitled to the relief that they seek. Moreover, it

appears to me to be relatively clear on the affidavits that save for discussions with the first and fourth respondent families, there have been no meaningful discussions about the temporary relocation program with the remaining respondent families.

24. The respondents raised issues and concerns in the answering affidavits. First, concerns are raised about the disruptive effect of temporary arrangements and an absence of clarity about how it will practically impact upon their movements practically. This concern is understandable as save for the intended building programme affecting the first and fourth respondent families, there is no clarity as to how it will unfold. Secondly, concerns are raised about access to water and electricity, which were only clarified in the replying affidavit and during engagement that I requested counsel to embark upon during the course of the hearing. Thirdly, concerns are raised about the size and suitability of the accommodation, issues that were also clarified in reply. Fourthly, concerns are raised about access to grazing for the family's cattle. Fifthly, concerns are raised about the failure adequately to consult and engage with the respondent families about the temporary arrangements. These concerns are raised not only by the respondent families in their answering affidavit but also by the ninth respondent, who refers the Court to the Mine Community Resettlement Guidelines of 2022 published on 30 March 2022 by the Minister of Mineral Resources and Energy. One of the reasons for doing so is that these guidelines emphasise the need for ongoing consultation and established dispute resolution mechanisms in the resettlement process, which the DME contends should be invoked in the present case.

25. As for the proposed temporary plan, the applicants have explained that each family will be provided with more than one mobile home, thereby providing sleeping, kitchen and bath facilities commensurate with their requirements. The delivery and relocation plan is a staggered approach whereby, as the blasting radius approaches each homestead, the applicants will provide temporary accommodation to the affected households. The intention is first to provide temporary accommodation to the first and fourth respondents. The construction plan supplied to the Court envisages that their permanent housing will be completed by 23 May 2024. At this stage, these families can move to their permanent new housing and the blasting radius can then extend further onto Portion 35. The next two affected families – not identified – can then move into the temporary accommodation while their permanent homes are built. The estimated cost of building the new homes runs into several millions of rands.

26. The mobile homes – which were occupied temporarily by the first and fourth respondents albeit close to their existing homes – have three bedrooms (each 4m X 3m), an open plan lounge and dining room and a kitchen. Each family is to be given more than one mobile home so as to provide sleeping, kitchen and lounge / dining room and bath facilities commensurate with the family's requirements. Water, electricity and sanitation are available at the mobile homes, although connections will only be made when people move for security reasons. The manner in which water and electricity is to be supplied was clarified during the hearing. It was also clarified both in reply and at the hearing that there will be no disruption or impediment to grazing arrangements.

**Entitlement to relief**

27. In my view, the applicants should succeed in obtaining such relief as will enable them to continue mining activities safely and lawfully while simultaneously ensuring that the legitimate concerns of the respondent families, their dignity and security of tenure are duly protected. A case has been made that the mining activities, which the applicants are entitled to pursue – subject to lifting the section 54 notice – pose real and significant safety threats that can result in injury to the respondent families' person and property. The applicants are without alternative remedy. The respondent families have agreed to relocate to the permanent accommodation once built. There are ways to accommodate the hardships and inconvenience that the temporary relocation process will place on the respondent families whereas if no temporary relocation plan is in place, the mine will close with the attendant hardships and inconvenience not only to it but to its many employees and beneficiaries. This must include imposing requirements on the provision of the temporary accommodation and related services, the process of movement and an ongoing process of consultation and dispute resolution, should it arise. This is particularly important as regards the respondents other than the first and fourth respondents with whom it appears there has not to date been any effective engagement regarding the temporary accommodation plans, in other words, there has to date been no formal process with these respondents whereby the applicants have terminated their rights on the basis that there will be an interim temporary relocation. Furthermore, there are adequate arrangements for reinstatement or, as planned, the construction of permanent structures as agreed. In this regard, the

applicants have tendered full reinstatement if a final order is not granted. It is just and equitable that the applicants obtain temporary and interim relief.

28. The order I grant caters for the substitution of the seventh respondent, initially cited as Samuel Mahlangu with Mr Phakamani Johannes Mahlangu. I make no order as to costs in accordance with this Court's usual practice.

29. The following order is made.

29.1. Mr PHAKAMANI JOHANNES MAHLANGU is substituted as the seventh respondent in the application.

29.2. The first and fourth respondents and all persons claiming rights of residence through them are ordered, by 16h00 on 23 February 2024, to vacate their existing homes on Portion 35 of the farm Kromkrans 208 IS ("Portion 35") and relocate to the temporary housing made available for them by the applicants on Portion 35.

29.3. The applicants must ensure that the temporary housing provided to the first and fourth respondents includes sleeping, kitchen, lounge / dining room and sanitation facilities commensurate with each family's requirements. Water and electricity must be supplied as follows: -

29.3.1. Generator power will be supplied at the applicants' costs until the applicants have installed solar electricity or have provided an

Eskom connection. Once the Eskom connection is supplied, the relevant occupiers will be responsible for their own electricity costs.

29.3.2. Water will be supplied in a JOJO tank, and the applicants will ensure the tank remains adequately filled to address the mobile homes' occupiers' reasonable needs.

29.3.3. The first and seventh respondents' livestock will continue to graze Portion 35 at all relevant times.

29.4. The applicants must forthwith facilitate an ongoing process of engagement with the first and fourth respondents, either directly or through their legal representatives, to communicate the temporary relocation plan and decision, to facilitate the relocation process, to ensure that the temporary accommodation is commensurate with the respondents' reasonable needs having regard to their existing living arrangements.

29.5. The applicants must provide such assistance with transport and labour as is required to move the furniture and belongings of the families in a safe, orderly and dignified manner.

29.6. The applicants must construct the first and fourth respondents' permanent houses on Portion 35 in accordance with the plans signed off by the first and fourth respondents, **FA4** to the applicants' founding affidavit and take such steps as are reasonably necessary to follow the programme in **F5** to

the founding affidavit (attached). The first and fourth respondents must relocate to the permanent houses, once constructed, on no less than 14 days' notice and the provisions of paragraph 29.5 apply.

29.7. The applicant will endeavour to expedite the construction of the second, third, fifth, sixth and seventh respondents' permanent houses to avoid them having to first relocate to the temporary mobile homes. Save where otherwise agreed, these permanent houses must be constructed following the plans signed off by the first to sixth respondents, **FA4** to the applicants' founding affidavit and in accordance with the seventh respondent's existing home plans.

29.8. The applicants shall, within ten court days of the date of this order deliver a report to Court and the respondents detailing the proposed sequence in which the applicants will construct the second, third, fifth, sixth and seventh respondents' permanent houses, the anticipated time-frames within which construction will take place and advising of the order in which and likely time-frames in which any of these respondent families may need to relocate to temporary housing on Portion 35 to ensure mining activities are not unduly interrupted. The report must include details of the intended ongoing process of engagement and assistance in accordance with paragraph 29.4 and 29.5.

29.9. The applicants shall, upon delivery of the report, conduct a meaningful engagement with these respondents about the proposed plan and their

accommodation needs should it be necessary for them to relocate to the temporary accommodation at any stage.

29.10. The applicants may thereafter approach the Court, on no less than ten days' notice, on the same papers duly supplemented, for an interim order regulating the relocation of the second, third, fifth, sixth and seventh respondents, including the notice period for vacating their existing homes to either the temporary or, when built, permanent new housing.

29.11. The first to seventh respondents are ordered to comply with any direction given to them by the first applicant's mine manager or other authorised official to move to a safe place during blasting operations.

29.12. The Sheriff for the district of Carolina is authorised to remove the first and fourth respondents from their existing homes on Portion 35 if they have not complied with paragraph 29.2 or 29.6 of the order by moving to the temporary or permanent housing made available for them by the applicants on Portion 35.

29.13. The South African Police Service and the Sheriff of the High Court and/or any other entity or person(s) delegated/instructed by the South African Police Service and/or the Sheriff of the Court are authorised to take all such steps as may be necessary to enforce this Court Order.

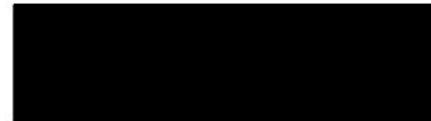
29.14. Service of this order and any process under it may be effected electronically upon the relevant party's legal representatives, who shall thereafter promptly ensure it is delivered to the relevant respondent, save that this order must be served by the Sheriff or otherwise physically delivered to the first and fourth respondents by a representative of the applicants or the applicants' legal representatives by no later than 10am on 20 February 2024.

29.15. The above order operates on an interim basis pending the determination of Part B of the application, in respect of which, the applicants are directed to deliver any amended notice of motion and supplementary founding affidavit within one month of the date of this order whereafter the ordinary Rules of Court will apply.

29.16. No final relocation order may be granted unless and until the permanent new homes are constructed and the applicants are authorised to update their affidavits accordingly and the grant of this order does not prejudice any rights of any respondent to claim compensation for which the applicants may be liable arising from the relocation process.

29.17. Should any dispute arise in respect of the implementation of this order, the relevant parties must first attempt to resolve the dispute by engagement failing which they may approach the Court on such notice as is reasonable in the circumstances.

29.18. In the event that the relief sought in Part B is not granted, the second applicant is ordered to remediate any damage caused to any occupier's existing homes situated on Portion 35 due to the second applicant's blasting activities.



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**S J COWEN**  
**Acting Judge President**  
**Land Claims Court**

**Date Heard: 14 February 2024**  
**Date of Judgment: 19 February 2024**

For the Applicant  
Webber Wentzel Attorneys  
E-Mail: [Manus.Booyens@Webberwentzel.Com](mailto:Manus.Booyens@Webberwentzel.Com)  
Ref: Mr M Booyens

For the 1<sup>st</sup> to 7<sup>th</sup> respondents and all persons claiming rights of residence through them  
Legal Aid South Africa  
Ermelo Local Office  
E-Mail: [Thabor@Legal-Aid.Co.Za](mailto:Thabor@Legal-Aid.Co.Za)  
Ref: Mr Thabo Ramollo

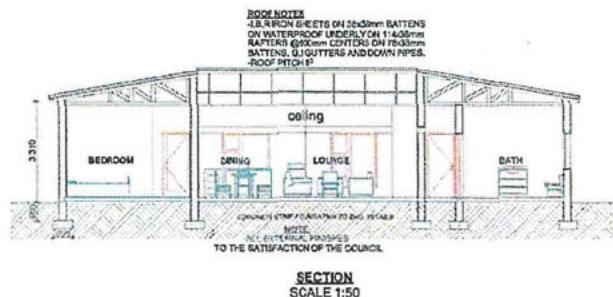
For the 9<sup>th</sup> Respondent represented at the hearing by Adv  
State Attorney Nelspruit  
E-Mail [Gingobeni@Justice.Gov.Za](mailto:Gingobeni@Justice.Gov.Za)  
Ref: Mr G.O. Ngobeni

Plan Accepted By  
Meisie Nkosi  
M Nkosi

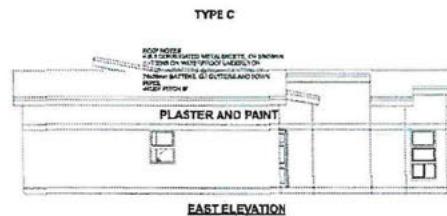
For ARS



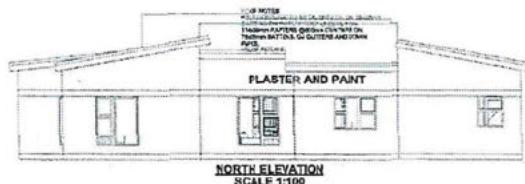
24/07/2023



## TYPE C



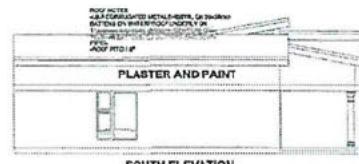
EAST ELEVATION  
SCALE 1:100



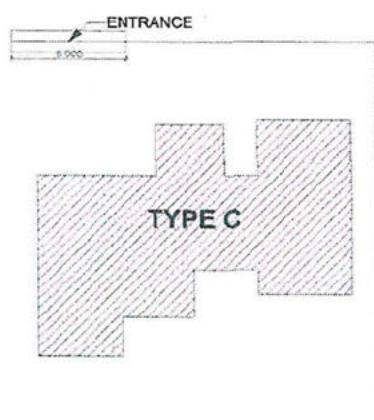
NORTH ELEVATION  
SCALE 1:100



WEST ELEVATION  
SCALE 1:100



SOUTH ELEVATION  
SCALE 1:100



WINDOW SCHEDULE					
GLAZING ELEMENT	1.000	800	1.000	800	1.074 x 1.154
QUANTITY	1	2	3	2	1
AREA	1.0	1.6	13.5	2.68	3.15
BRONZE FRAME WITH CLEAR GLASS	TOTAL				22.41m <sup>2</sup>

TOTAL AREA OF  
GLAZING ELEMENTS :  
WINDOWS : 22.41m<sup>2</sup>  
15% of 149.8m<sup>2</sup> =  
21.285m<sup>2</sup>  
21.285m<sup>2</sup> < 22.41m<sup>2</sup> ACCEPTABLE.

THE THEREFORE GLAZING  
ELEMENTS COMPLY

## SCHEDULE OF FINISHES

CEILING	STANDARD GYPSUM RHINO BOARDS WITH RHINOLITE
PAINTING	2 <sup>nd</sup> COATS PAINTING (PLASCON CAR 22)
DOORS	EXTERIOR: IPANEMA MIRANTI DOORS - 1 ALLUMINUM SLIDING DOOR INTERIOR: PANEL WHITE DOORS TO BE DETERMINED BY THE NUMBER OF DOORS AS SHOWN ON PLAN
LOCKS	EXTERIOR: LEVER LOCKETS TO BE DETERMINED BY THE NUMBER OF DOORS AS SHOWN ON PLAN
LIGHTS	STANDARD WHITE DOWN LIGHTERS
TILING	STANDARD 800*3000 NAWADA BEIGE
PLUMBING	TAPS: KASTORA, SHOWER BASIN AND SINK MIXER, SHOWER DOORS: SILVER DOOR, TELESCOPIC, BASINS: WHITE LIVING RECEIVERS: STAINLESS STEEL CYLIN SINKS: FAVRE NOUVEAU SINKS SHOWER SLIM ROUND SHOWER HEAD.



**ARE  
SHENG**  
LET'S WORK TOGETHER



PROPOSED AREA : 141.9m<sup>2</sup>

PROPERTY OWNER DETAILS  
OWNER:.....  
STAND:.....  
TOWNSHIP:.....  
SIGNATURE:.....

DRAWN BY:  
COLANI ZWANE  
CHECKED BY: RONALD JERE  
SACAP REGISTRATION: D2225

2019/01 PHASE 2

GENERAL NOTES  
1. ALL WORK TO COMPLY WITH THE NATIONAL  
BUILDING REGULATIONS  
2. ALL DRAWINGS TO BE CHECKED DRAWN  
TO CONVENTIONAL  
3. ALL MATERIAL TO MANUFACTURER'S  
SPECIFICATION  
4. ALL EXTERNAL WALLS TO BE 225mm & AND  
INTERNAL NOV LOAD CARRYING WALLS TO BE  
100mm THICKNESS & PLASTER.

FOUNDATIONS  
ALL TO 4 COURTSIDE: 600MM THICKNESS &  
STRUCTURE DECANTED THIN TO 200MM  
MINIMUM. 200MM DEEP CONCRETE BASE  
MINIMUM 200MM ABOVE NATURAL GROUND LEVEL  
ON WELL DRAINED PASTURE PAVING.

STRUCTURE  
EX. & INT. WALLS 225mm (10% 275mm)  
DAMP PROOF MEMBRANE UNDER ALL WALLS AND  
ROUNDED CORNERS.

WINDS AND FROST  
EX. CONCRETE BLOCKS IN STEEL & WOODEN  
FRAMES WITH A LEVER MORTICE LOCK,  
WELDING OF STEEL FRAMES, 2 LEVER MORTICE LOCK, STANDARD  
AND STEEL WINDOOR INDICATED.

ELECTRICAL & PLUMBING  
ELECTRICAL NOT TO EXCEED BUT TO BE  
INSTALLED ACCORDING TO STANDARDS & BY  
LAWSON A QUALIFIED ELECTRICIAN.

GLAZING & TILES  
PAVES NOT TO EXCEED 0.75M x 0.75M  
PAVES ALL WALKWAYS LOWERS THAN 0.3M FROM  
FLOOR, CERAMIC GLASS TO ALL BATHROOM AND  
W.C.

DRAINAGE NOTES  
REINFORCED PLUMERIA & DRAIN LAYERS TO  
BE PROVIDED TO 600MM DEEP IN ACCORDANCE OF  
LOCAL AUTHORITY. NO DURABLE ENDS OR  
JUNCTIONS IN DRAINS TO BE FITTED WITH SEW  
AND GUTTER WITH MORTICE GROOVES AT JUNCTION  
AND DRAINS TO BE FITTED WITH DRAINS &  
DRAINS 100MM EARTHWARE WASTE PIPES  
DRAINS TO BE TAPERED & INCLINED TO  
COMPLY WITH THIS NORMS SAYS 1402.

DOOR & TRIMES  
DOORS: 600MM CORRODED METAL SHEETS, ON  
300mm BATTENS & WATERPROOF UNDERLY  
09114x300mm BATTENS, 0900x100mm  
PVC COATED PIPES, 0900x100mm  
DOOR PITCHES.

ROOF  
ROOF: 100MM CORRODED METAL SHEETS, ON  
300mm BATTENS & WATERPROOF UNDERLY  
09114x300mm BATTENS, 0900x100mm  
PVC COATED PIPES, 0900x100mm  
DOOR PITCHES.

STRUCTURE  
STRUCTURE: 600MM CONCRETE BLOCKS, 200MM  
WALLS, 225mm (10% 275mm) DAMP PROOF  
MEMBRANE UNDER ALL WALLS AND  
ROUNDED CORNERS.









## Construction of House

Activities: Entire program

Activity description	Duration	Current		2024																									
		Start	Finish	February			March			April			May			June			July										
				2	9	16	23	1	8	15	22	29	5	12	19	26	3	10	17	24	31	7	14	21	28	5	12	19	26
<b>A000 - A Re Shomeng - Housing Project</b>	<b>81</b>	<b>01 Feb 24</b>	<b>23 May 24</b>																										
A170 - Safety File Approval	1	05 Feb 24	05 Feb 24																										
A180 - Quality File approval	1	02 Feb 24	02 Feb 24																										
A190 - Medical and Induction	1	01 Feb 24	01 Feb 24																										
A200 - Site Establishment	5	02 Feb 24	08 Feb 24																										
A210 - Practical Completion	1	23 May 24	23 May 24																										
<b>A540 - Access Road</b>	<b>14</b>	<b>02 Feb 24</b>	<b>21 Feb 24</b>																										
A550 - Construction of access road	14	02 Feb 24	21 Feb 24																										
<b>A010 - House no 1 &amp; 2</b>	<b>65</b>	<b>22 Feb 24</b>	<b>22 May 24</b>																										
A020 - Earthworks	8	22 Feb 24	04 Mar 24																										
A220 - Clear and Grub	1	22 Feb 24	22 Feb 24																										
A230 - Setting Out	1	23 Feb 24	23 Feb 24																										
A240 - Removing Top Soil	1	26 Feb 24	26 Feb 24																										
A250 - Excavation for foundation	3	27 Feb 24	29 Feb 24																										
A260 - Compaction	2	29 Feb 24	01 Mar 24																										
A270 - Soil Poisoning	1	04 Mar 24	04 Mar 24																										
<b>A030 - Concrete</b>	<b>1</b>	<b>05 Mar 24</b>	<b>05 Mar 24</b>																										
A280 - Cast concrete for foundation	1	05 Mar 24	05 Mar 24																										
<b>A040 - Surface Bed</b>	<b>16</b>	<b>06 Mar 24</b>	<b>27 Mar 24</b>																										
A290 - Brickwork in Foundation	4	06 Mar 24	11 Mar 24																										
A300 - Backfill and compact foundation	3	12 Mar 24	14 Mar 24																										
A310 - Soil poisoning	1	15 Mar 24	15 Mar 24																										
A320 - Damp Proofing	1	15 Mar 24	15 Mar 24																										
A330 - Concrete	1	18 Mar 24	18 Mar 24																										
A340 - Curing	7	19 Mar 24	27 Mar 24																										
<b>A050 - Masonry work</b>	<b>16</b>	<b>25 Mar 24</b>	<b>15 Apr 24</b>																										
A350 - Brickwork till roof level	16	25 Mar 24	15 Apr 24																										
<b>A060 - Metal work</b>	<b>1</b>	<b>09 Apr 24</b>	<b>09 Apr 24</b>																										
A360 - Standard heavy duty door frame	1	09 Apr 24	09 Apr 24																										
<b>A070 - Roofing</b>	<b>9</b>	<b>16 Apr 24</b>	<b>26 Apr 24</b>																										
A370 - Fixing roof trusses	5	16 Apr 24	22 Apr 24																										
A380 - Fixing IRB Sheeting	4	23 Apr 24	26 Apr 24																										
<b>A080 - Electrical</b>	<b>6</b>	<b>12 Apr 24</b>	<b>19 Apr 24</b>																										
A390 - Tubing	3	12 Apr 24	16 Apr 24																										
A400 - Wiring	2	17 Apr 24	18 Apr 24																										
A410 - Installing DB and Plugs	1	19 Apr 24	19 Apr 24																										
<b>A090 - Plastering</b>	<b>11</b>	<b>19 Apr 24</b>	<b>03 May 24</b>																										
A420 - Inside walls	6	19 Apr 24	26 Apr 24																										
A430 - Outside walls	5	29 Apr 24	03 May 24																										
<b>A100 - Floor Screed</b>	<b>2</b>	<b>29 Apr 24</b>	<b>30 Apr 24</b>																										
A440 - Floor screeding	2	29 Apr 24	30 Apr 24																										

## Construction of House

Activities: Entire program

Activity description	Durn	Current		2024																							
		Start	Finish	February	March	April	May	June	July																		
		2	9	16	23	1	8	15	22	29	5	12	19	26	3	10	17	24	31	7	14	21	28	5	12	19	26
A110 - Plumbing	12	16 Apr 24	01 May 24																								
A450 - Installing Pipeworks	5	16 Apr 24	22 Apr 24																								
A460 - Bath tub, shower,toilet and basin	3	29 Apr 24	01 May 24																								
A470 - Connecting pipeworks to the drain	4	23 Apr 24	26 Apr 24																								
A120 - Floor Tiles and Skirting	5	01 May 24	07 May 24																								
A480 - Installing Floor tiles and skirting	5	01 May 24	07 May 24																								
A130 - Aluminium Windows	3	23 Apr 24	25 Apr 24																								
A490 - Installing aluminium windows	3	23 Apr 24	25 Apr 24																								
A140 - Ceiling and Cornice	6	01 May 24	08 May 24																								
A500 - Installing ceiling and cornice	6	01 May 24	08 May 24																								
A150 - Painting	10	09 May 24	22 May 24																								
A510 - Painting inside walls	6	09 May 24	16 May 24																								
A520 - Painting outside walls	4	17 May 24	22 May 24																								
A160 - Doors	3	17 May 24	21 May 24																								
A530 - Installation of doors	3	17 May 24	21 May 24																								