

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

Case Number: 1900/2021

In the matter between:

CITY OF CAPE TOWN

Applicant

and

**THOSE PERSONS IDENTIFIED ON ANNEXURE "A" TO THE
NOTICE OF MOTION WHO ARE UNLAWFULLY OCCUPYING
ERVEN 13130, 13131, 13134, 13135, 131339, 13140, 13143,
13144, 13146, 14011, 14013, 14014 AND 141015, WOODSTOCK**

First Respondent

**THOSE PERSONS WHO ARE FOUND TO BE
UNLAWFULLY OCCUPYING ERVEN 13130, 13131,
131133, 13134, 13135, 13138, 13139, 13140, 13143,
13144, 13146, 14011, 14013, 14014 AND 14015,
WOODSTOCK WHEN SURVEYED**

Second Respondent

**THOSE PERSONS WHO ARE UNLAWFULLY OCCUPYING
ERVEN 13130, 13131, 131133, 13134, 13135, 13138, 13139,
13140, 13143, 13144, 13146, 14011, 14013, 14014 AND 14015,
WOODSTOCK WHOSE FULL AND FURTHER PARTICULARS
ARE UNKNOWN TO THE CITY**

Third Respondent

PROVISIONAL ANSWERING AFFIDAVIT

I, the undersigned,

BASETSANA KOITSIOE

do hereby make oath and say that:

1. I am an adult female attorney employed at the Centre for Applied Legal Studies (“CALS”), DJ Du Plessis Building, West Campus, University of the Witwatersrand, Braamfontein, Johannesburg.
2. I am the attorney of record for the persons cited as the First and Second Respondent in these proceedings and whose names appear on the provisional list of occupiers represented by CALS, annexed marked “X” to the Notice of Opposition served by CALS on 24 February 2020. I will refer to the First and Second Respondents represented by CALS as “the occupiers”.
3. I am duly authorised to depose to this affidavit on behalf of the occupiers.
4. The facts deposed to in this affidavit are within my personal knowledge, unless the context thereof indicates otherwise, and are to the best of my belief both true and correct.

5. Where I rely on information that is not within my personal knowledge, I state the source of such information and verily believe such information to be true and correct.

6. I depose to this affidavit as a provisional answering affidavit to the application instituted by the Applicant (“the City”) on 29 January 2021. I have in this regard read the founding affidavit deposed to by Rayan Rughabar dated 27 January 2021 on behalf of the City.

7. Due to the limited time afforded to the occupiers to oppose this application, which I address more fully later, it is not possible for either myself or the occupiers to deal fully with the allegations in the City’s founding affidavit. This affidavit has been prepared under extreme pressure and is therefore a provisional answer to the City’s founding papers. I respectfully request the Court’s leave for the occupiers to be granted an opportunity to file more comprehensive supplementary answering papers in due course on such terms as to dates determined by the court.

8. The remainder of this affidavit is structured as follows:
 - 8.1 Firstly, I deal with the aspects relating to the general form and content of the application, notice and service on the occupiers and the steps taken by the occupiers to obtain legal representation.

 - 8.2 Secondly, I address the relief sought by the City in this application;

8.3 Thirdly, I outline the basis on which the occupiers oppose the application and explain why the relief sought by the City in part 1 of the notice of motion falls to be struck from the roll alternatively dismissed with a punitive costs order.

I THE APPLICATION, NOTICE AND SERVICE

9. The City's application is a hybrid consisting of three parts. In Part 1 of the notice of motion, the relief sought, in general terms, is what is described as a "*Survey of the unlawful occupiers*". In Part 2, the City seeks a "*Special service order of the notice by the court*." Part 3 of the notice of motion is entitled "*Eviction application*."
10. The application papers are voluminous and run to 782 pages.
11. The founding affidavit traverses matters and events which occurred over a period of some three years, from March 2017 when the occupation of the property commenced to December 2020.
12. At paragraph 21 of the City's founding affidavit, reference is made to the details of a previous interdict application by *the* City, which the deponent states "..will be made available to the court when this matter is heard and are accordingly not recounted herein..." (emphasis added).

13. The papers in the interdict application referred to by the City in this paragraph have not been annexed to the City's founding papers. CALS has however obtained a copy of these papers. They consist of 392 pages.
14. The City is accordingly requiring this court, sitting in the unopposed Third Division, to grant it relief in an application running to some 1174 pages, excluding this provisional answering affidavit and its annexures. I deal later with the appropriateness of the manner in which this litigation has been conducted by the City.
15. I address next the issue of service.
16. The application papers were personally served on five of the occupiers at the property on Friday 12 February 2021.
17. The occupiers held a mass meeting on 17 February 2021 to decide whether to oppose the application and if so, whether legal representation could be secured to assist therewith. They were only able to obtain legal representation on Saturday 20 February 2021 when CALS agreed to act on their behalf. I point out at this stage the occupiers consist of approximately 500 adults and 290 children and that there are still further occupiers (not represented CALS at this stage) living at CGH.
18. According to the City's notice of motion, the relief sought in part 1 of the notice of motion was to be sought on an *ex parte* basis on 26 February 2021. Part 2 of the City's notice of motion recorded that the relief sought in that part, the special service order, was also being sought *ex parte* on 26 February 2021.

19. The occupiers who were served with the papers were therefore afforded less than 10 days to oppose an application running to 782 pages and spanning events over 3 years. I point out that the City has been aware of the occupation of the property since March 2017.
20. Except for stating that the application for the relief in part 1 and part 2 of the notice of motion was set down for hearing on 26 September 2020, the notice of motion contains no indication as to when the Respondents were required to file a notice of opposition or answering affidavits.

II RELIEF SOUGHT BY THE CITY

21. Its voluminous length notwithstanding, the City's application papers are confusingly unclear about exactly what relief was to be sought on 26 February 2021. While purporting to seek the part 1 and part 2 relief on an *ex parte* basis, the City contradictorily instructed the Sheriff to effect service of the papers on some of the occupiers. It is unclear why an application is stated in terms to be brought *ex parte*, is however preceded by notice of the application through formal service by the Sheriff.
22. Part 2 of the notice of motion is stated to be set down on an *ex parte* basis for hearing on 26 February 2021. But paragraph 112 of the founding affidavit states that "...the City hopes to engage with the unlawful occupiers and that people will move from the property voluntarily. If that occurs then it will not be necessary to

seek the relief in part 2 and 3 of the notice of motion.” In the following paragraph it is stated “...it is premature to prepare a notice by the court at this stage and this will be placed before the court under cover of a further affidavit filed by the City should it become necessary to proceed with the relief sought in Part 2 of the notice of motion.”

23. The confusion as to what exact relief was to be sought on Friday 26 February 2021 was only cleared up by the City’s attorney’s late in the afternoon of Wednesday 24 February 2021 after I addressed a letter to the City attorney, when the City’s attorney advised that the City only intended seeking the relief in part 1 of the notice of motion. The letter is attached and marked as annexure **BK1**. In that part of the notice of motion, the City seeks the following orders:

23.1 *“That the court authorises the City and/or its agent to conduct a survey of all persons who are currently unlawfully residing at erven 13130, 13131, 13133, 13134, 13135, 13138, 13139, 13140, 13143, 13144, 13146, 14011, 14013, 14014, 14015 for purposes of obtaining the information listed in the survey document appended to the founding affidavit, marked "RR20".*

23.2 *“That the City files a report with the court within three months of the grant of the order authorising the survey in which the following information is provided:*

23.2.1 *the biographical details of the unlawful occupiers;*

23.2.2 *an indication whether the City has engaged with the unlawful occupiers and whether they are prepared to vacate the property;*

23.2.3 *in the event that the unlawful occupiers are not prepared to vacate the property, whether they will require alternative accommodation if evicted therefrom.”*

22.3 *“In the event that it is necessary for the unlawful occupiers to be evicted from the property in terms of section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No. 19 of 1998 ('the PIE Act'), that the City is granted leave to apply on the same papers duly amplified, if necessary, for an order in terms of Parts 2 and 3 of the notice of motion.”*

23.4 *“Further and/or alternative relief.”*

23.5 *“That the costs of the application for the survey stand over for determination in the eviction application.”*

III PROVISIONAL GROUNDS OF OPPOSITION

24. The occupiers oppose the relief sought on the provisional grounds which I set out below.

25. These grounds are provisional in nature given the limited time afforded to the occupiers to oppose this application. They will be elaborated upon in further answering papers in due course and in legal argument at the hearing of this application.
26. Firstly, while purporting to bring its application as an *ex parte* application, the application for the relief in part 1 of the notice of motion is in fact an application on notice to the respondents. The occupiers plainly are persons interested in the relief sought.
27. The City has not complied with the time periods and forms applicable to applications on notice in terms of the Uniform Rules (“the Rules’) nor has it sought or made out a case for the condonation of its non-compliance. On this basis alone the application falls to be struck from the roll with costs.
28. Secondly, and even in the event that the application for the relief in part 1 of the notice of motion is to be determined as an *ex parte* application, it falls to be dismissed with costs due to the City’s failure to disclose material facts.
29. Thirdly, the relief sought in prayer 1 of the notice of motion, and in respect of which prayer 2 is dependent, has no basis in law, does not comply with the requirements of the Protection of Personal Information Act 4 of 2013 (“POPIA”) and is impermissibly vague and unenforceable.
30. Fourthly, the City has failed to meaningfully engage with the occupiers prior to bringing this application.

Non-compliance with the Uniform Rules

31. I respectfully submit that the City's application, while stating to be one brought *ex parte*, is as a fact an application on notice not an *ex parte* application within the meaning of the term in Rule 6(4)(a). The application for the relief set out in the notice of motion has been brought on notice to the respondents, who are plainly persons interested in the relief sought against them and by way of formal service by the Sheriff. It is consequently not an *ex parte* application in which the applicant is the only person interested in the relief sought. Applications other than applications brought *ex parte* are governed by Rule 6(5)(a), (b), (c) and (d) of the Uniform Rules.

32. The Rules afford a respondent against whom relief is sought a period of 5 days to file a notice of opposition and 15 days for the delivery of answering affidavits. The City's application and notice of motion does not comply with the requirements of the Rules relating to forms and the time periods for filing answering affidavits. The City has not sought the Court's leave in terms of Rule 6(12)(a) of the Rules to dispense with these requirements on the basis that the matter is urgent and that there are circumstances and reasons why the City will not be afforded substantial redress at a hearing in due course. No such case for urgency and dispensing with the requirements of the Rules has been made out in the City's founding affidavit, which makes it clear that the City has been aware of the occupation of the property since March 2017.

33. The City's failure to comply with the Rules in this respect manifestly prejudices the occupiers. The application is voluminous and spans events over a period of some 3 years. The number of occupiers exceeds 500 persons, all of whom have an interest and must be afforded a fair opportunity to consult with their legal representatives and respond to the orders sought against them. They have been afforded less than 10 days to file answering affidavits setting out their defence to the relief sought. The occupiers were in this regard only able to obtain legal representation on 20 February 2021, just a week before the application was set down for hearing.
34. In the circumstances, I submit that the City's application for the relief sought in part 1 of the notice of motion is fatally flawed and falls to be struck from the roll with costs. Further legal argument will be advanced in this regard at the hearing of this matter.

Non-disclosure of material facts

35. I submit that even in the event that the City's application can properly be described and dealt with as an *ex parte* application, the application falls to be dismissed with costs due to the City's failure to disclose material facts and breach of its duty of good faith as a government litigant. I set out below various instances of this non-disclosure of material facts. The occupiers on the basis of any determination by the court that the City's application is an *ex parte* application within the meaning of the Rules, must be granted leave to oppose the application in order to draw the full extent of the City's non-disclosure to the attention of the

Court. I set out below the instances in respect of which CALS has been able to obtain instructions at this stage.

36. Paragraphs 45 to 49 of the City's founding affidavit deal with the City's intended use of the property for the purpose of affordable housing development. The City states that at paragraph 45 that "*...the unlawful occupation of the property has effectively put a brake on this development.*" Later at paragraph 49 the City states "*The unlawful occupation of the property has jeopardised the City's legitimate social housing plans for the site. The unlawful conduct of the first, second and third respondents has effectively denuded the rights of other poor people who are patiently awaiting their turn for access to formal housing. The City has undertaken the preliminary steps in relation to the provision of social housing at the property but this project will only come to fruition if the relief sought this application is granted.*"
37. Earlier at paragraph 46 the City refers to the intended use of the property being set out in the City's Prospectus dated 29 September 2017 and states at paragraph 47 that since the issuing of the Prospectus, the City undertook further steps to prepare the site for the development.
38. The City has failed to disclose to the Court that one of the further steps taken after the issuing of the Prospectus on 29 September 2017, was the issuing of a Request for Quotation (RFQ) to Stedone Developments (Pty) Ltd on 14 March 2019, which specifically contemplated mitigating the further displacement of the

occupiers by absorbing them into housing opportunities arising from the re-development of the property into social housing and community residential units.

39. The RFQ, a copy of which I annex marked **BK2**, states the following at page 2:

“Woodstock Hospital is unique in terms of the occupation as most of the occupiers are historically from the area and have extended networks within the Woodstock/Salt River area. Taking all the dynamics into consideration and due to the magnitude of this invasion, the City’s Human Settlement Implementation Department is subsequently proposing that this property be redeveloped for Social Housing and a component of Community Residential Units (CRU). A number of ground-breaking social housing opportunities, will be established within Salt River and Woodstock, in addition to the establishment of the proposed community residential units. It is envisaged that the existing occupants will be absorbed into these housing opportunities. The aforementioned will ensure that further displacement is mitigated.” (emphasis added).

40. On 19 March 2019, a few days after the issuing of the RFQ, a meeting took place to discuss the future of the property, which has become known as Cissie Gool House (“CGH”). Three officials from the City’s Human Settlements Department namely Pogiso Molapo, Nomzamo Mlungu and Bronwyn Hans were in attendance. This was when the City had still not purchased the land from WC Province. The officials told leaders of the occupiers that the City does not intend to evict them and they wanted to know whether the occupiers wanted to

cooperate with the City to renovate and develop the building for the people already living there. The occupiers indicated that they want to build a relationship with the City that is based on trust. The City officials said that occupiers' concerns regarding issues with the building (rubbish, sewerage) can be resolved by working together and the City would send an engineer to assess the building. I annex hereto marked **BK3** a note prepared by Reclaim the City ("RTC") for occupiers confirming the above and summarising the matters discussed at the 19 March 2019 meeting.

41. On 8 April 2019 a further meeting was held between City officials and leaders of the occupiers at the property. The minutes record that at this meeting Mr Pogiso Molapo confirmed that the City did not plan to evict the occupiers and that the removal of occupiers to a relocation camp was not possible because there was no available space. Bronwyn Hans confirmed that officials from the Solid Waste Department had come to inspect the property and agreed to deliver further refuse collection bins.
42. At this same meeting, the minutes record that the City's Ms Hans confirmed that a group of consultants had visited with some Leaders to visit the House in order to provide the City with a quote to do the full inspection and produce a report. She confirmed that this was a term tender that had already been issued and that the next step was to authorise the work and issue terms of reference. The City confirmed that the terms of reference would be shared with leaders before this meeting and that the terms would include provision for meaningful engagement

with occupiers on all aspects, especially those involving any vision for what may be possible.

43. I annex marked **BK4** the minutes of the 8 April 2019 meeting recording the above.
44. Other than the engagements identified above, during the limited time available for the preparation of this affidavit, it has not been possible for CALS to consult fully with the occupiers and RTC regarding further engagements with the City in the 3 years which preceded this application and which have not been disclosed in the City's founding affidavit. The instances of engagement identified above, the City's previous commitment to meaningfully engage with the occupiers instead of evicting them and the City's envisaged plans as at 19 March 2019 to absorb the occupiers into housing opportunities arising from the re-development of the property, are material facts which ought to have been disclosed in the City's application papers.
45. The City has also failed to disclose material facts relating to correspondence with RTC and committee members representing the occupiers shortly before this application was served. The correspondence related to requests for clarity as to whether the City was intending to apply for a court ordered survey as this would affect the rights of the occupiers. This correspondence is material because it is relevant to the manner in which the City has instituted this litigation against the occupiers: on what is stated to be an ex parte basis and on short notice which does not comply with the time periods stipulated in the Uniform Rules.

46. On 8 February 2021 RTC sent a letter to the City requesting clarity regarding public statements by the City that it intended applying for a court ordered survey of the property and requesting a copy of the application papers.
47. A copy of this letter and an email from the City's attorneys dated 9 February 2021 stating that the application would be served by the Sheriff that week, are annexed marked **BK5** and **BK6**.
48. On 9 February 2021 committee members representing the occupiers directed a letter to the City also requesting clarity on the application apparently being brought by the City. A copy of their letter is annexed marked **BK7**. The City's attorney responded on 9 February 2021 stating inter-alia "*....With all court processes due process must follow. The court rules provide for time periods in which parties served with applications can respond. There is no need for demands as set out in your correspondence. An application has been issued that will be served on the occupiers and the occupiers will be given an opportunity to respond thereto. There is no unwillingness to provide information – you have been informed that an application will be served. Once served you will have time to consider your options and decide on a course of action.*" A copy of this email is annexed marked **BK8**.
49. Although the correspondence set out above occurred subsequent to the issuing of the City's application, I submit that it ought to have been disclosed to the Court by way of a supplementary affidavit. The non-disclosure thereof as well as the non-disclosure of the meeting referred to above and the City's previous plans to

accommodate the occupiers in housing opportunities arising from the re-development of the property is material and inconsistent with the City's duty of good faith.

50. On this basis alone the part 1 relief should be dismissed with costs. Further legal argument in this regard will be advanced at the hearing of this application.

Relief sought not legally competent

51. The City's allegations in support of the relief sought in part 1 of the notice of motion are in the main the following:

51.1 At paragraph 106 of the founding affidavit, the deponent states "...A meeting was convened at the property on 27 August 2019 chaired by Mr Jared Rossouw of RTC and attended by amongst others Priti Mohandas (architect), Wardah Armine and Salaama Davids-Ismael of Mzi Development Services ("MOS") and Juliet Harrison and one, Ronel of Urban Concepts on behalf of Stedone Developments. The issue of the survey was not resolved for the reasons expressed in paragraph 7 of the minutes, a copy of which is appended and marked "RR23". MOS was appointed to do the survey."

51.2 Paragraph 107 states that "...The unlawful occupiers have since refused to be surveyed and the City is unable to conduct a survey without the assistance of the court. It is necessary to obtain their personal information so that the City knows who will require assistance and who

can secure alternate accommodation should it become necessary to evict the unlawful occupiers. The information required appears from the attached survey.”

51.3 Paragraph 108 states that “...*It is also necessary to conduct a survey so that the City has records of who the unlawful occupiers are. This will also assist the City should more people move onto the property as the City could enforce the interdict. The refusal by the current occupiers to be identified effectively means that the City cannot enforce the interdict which it has obtained.*”

52. The information which the City seeks to obtain from the occupiers in terms of part 1 of the notice of motion is listed on a “*pro forma survey document*” annexed as annexure **RR20** in the City’s application. It is apparent from this form that the information includes the following information relating to the occupiers:

- 52.1 Names, gender and date of birth
- 52.2 Identity number, nationality and marital status
- 52.3 Employment details and occupation income
- 52.4 Disability status and language
- 52.5 Details of children including schooling details
- 52.5 Details of dependants;
- 52.6 Property ownership and housing subsidy status
- 52.7 Contact telephone numbers including those of next of kin

53. The City’s founding papers identify no common law or statutory right entitling the City to require the occupiers to provide personal information of the sort set out above.
54. The information set out above which the City requires from the occupiers furthermore constitutes “*personal information*” as defined in section 1 of POPIA.¹
55. In terms of section 3 of POPIA, the Act applies to “...*the processing² of personal information entered in a record by or for a responsible party³ by making use of automated or non-automated means: Provided that when the recorded personal*

¹ **Personal information means** “means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to—
 (a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
 (b) information relating to the education or the medical, financial, criminal or employment history of the person;
 (c) any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
 (d) the biometric information of the person;
 (e) the personal opinions, views or preferences of the person;
 (f) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
 (g) the views or opinions of another individual about the person; and
 (h) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person;

² “**processing**” means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including—
 (a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
 (b) dissemination by means of transmission, distribution or making available in any other form; or
 (c) merging, linking, as well as restriction, degradation, erasure or destruction of information;

³ “**responsible party**” means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information;

information is processed by non-automated means, it forms part of a filing system or is intended to form part thereof.”

56. I submit that the survey which the City seeks to have the court authorise in terms of part 1 of the notice of motion, constitutes the collection and recording of personal information and hence “*processing*” thereof as defined in POPIA.
57. The City is a public body⁴ and consequently a responsible party as defined in section 1 of POPIA.
58. In terms of section 4 of PAIA, conditions for the lawful processing of personal information by a responsible party are subject to various conditions including “*Accountability*”, as referred to in section 8; “*Processing limitation*”, as referred to in sections 9 to 12; “*Purpose specification*”, as referred to in sections 13 and 14; “*Information quality*”, as referred to in section 16; “*Openness*”, as referred to in sections 17 and 18; “*Security safeguards*”, as referred to in sections 19 to 22 and “*Data subject participation*”, as referred to in sections 23 to 25.

⁴ “**public body**” means—

(a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
(b) any other functionary or institution when—
(i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
(ii) exercising a public power or performing a public function in terms of any legislation;

59. In terms of section 4(4) of POPIA, the processing of the personal information of a child is prohibited in terms of section 34, unless the provisions of section 35(1) are applicable or the Information Regulator has granted an authorisation in terms of section 35(2).
60. Section 35(1) in turn provides that the prohibition on processing personal information of children, as referred to in section 34, does not apply if the processing is inter-alia *“carried out with the prior consent of a competent person (a person who is legally competent to consent to any action or decision being taken in respect of any matter concerning a child)”* or *“necessary for the establishment, exercise or defence of a right or obligation in law.”*
61. It is apparent from annexure **RR20** that the information required by the City in its survey form includes personal information relating to children. Such information may only be processed with the consent of the child’s guardian or parent. In the absence of such consent, the City must show that the information required is *“necessary for the establishment, exercise or defence of a right or obligation in law”*. The City’s founding affidavit does not specify how obtaining the personal information of children is necessary for the exercise of its rights or obligations, or indeed, what those rights and obligations are.
62. Section 5 of POPIA confers certain rights on persons to whom personal information relates, known as “data subjects”. Data subjects have inter-alia the right to to have his, her or its personal information processed in accordance with

the conditions for the lawful processing of personal information as referred to in Chapter 3, including the rights:

62.1 to be notified that personal information about him, her or it is being collected as provided for in terms of section 18;

62.2 to object, on reasonable grounds relating to his, her or its particular situation to the processing of his, her or its personal information as provided for in terms of section 11(3)(a).

63. With regard to such objections, section 11(3)(a) states that a data subject may object, at any time, to the processing of personal information in terms of section 11(1)(d) to (f), in the prescribed manner, on reasonable grounds relating to his, her or its particular situation, unless legislation provides for such processing. In terms of section 11(1)(d) to (f), personal information may only be processed (in the absent of consent), if processing protects a legitimate interest of the data subject; processing is necessary for the proper performance of a public law duty by a public body or processing is necessary for pursuing the legitimate interests of the responsible party or of a third party to whom the information is supplied.

64. I submit that the City has not demonstrated which public law duty requires it to process personal information of the occupiers in the manner sought in part 1 of the notice of motion or which legitimate interests of the City necessarily requires processing of personal information in this manner.

65. At the time of the determination of the purpose and means of the processing and during the processing itself, a responsible party must ensure in terms of section 8 of POPIA that the conditions set out in Chapter 3 have been complied with.

This includes conditions relating to consent, justification and objection and collection for a specific purpose. In respect of the latter, section 13 provides that personal information must be collected for a specific, explicitly defined and lawful purpose related to a function or activity of the responsible party and steps must be taken in accordance with section 18(1) to ensure that the data subject is aware of the purpose of the collection of the information.

66. The relief sought by the City in part 1 of the notice, I submit, does not set out or inform the occupiers of the specific, explicitly defined and lawful purpose of collecting the personal information as required by section 13 of POPIA. There is also no indication in the founding affidavit or the survey form that the collection of personal information by the City in terms of the survey complies with the relevant conditions set out in Chapter 3 of POPIA. It is for example entirely unclear why the City requires the extensive personal information set out in the survey form merely to determine the identity of persons who may or may not have breached the interdict obtained by the City in respect of the property.
67. For these reasons, I submit that the relief sought by the City in part 1 of the notice of motion is inconsistent with the requirements of POPIA and the conditions of processing of personal information which include consent, notification, data protection, data privacy, purpose specification, security safeguards and data subject specification. The relief sought in part 1 is also impermissibly vague. It does not specify when the personal information of the occupiers will be collected, who will be responsible for completing the forms, where this will take place, bearing in mind the current pandemic what arrangements (safety and otherwise) will be made with the occupiers to collect the information, what are the

consequences for non-compliance, what steps can be taken to update information changes.

68. All of these aspects call for engagement with the occupiers regarding the collection of their personal information. The absence of meaningful engagement by the City with the occupiers regarding the collection of personal information, such as that required by the survey form, is evident from the City's founding affidavits. I respectfully submit that the City is under a duty to engage with the occupiers and to act reasonably at every step of the provision of housing in accordance with its constitutional duties. The absence of a detailed record of the engagements undertaken by the City in relation to obtaining information such as that now sought in terms of part 1 of the notice of motion, is a further reason why I submit that the relief sought in part 1 of the notice of motion is not competent. Further legal argument in this regard will be advanced at the hearing of this application.

IV. CONCLUSION

69. CALS wrote a letter to the City's attorneys on Wednesday 24 February 2021 advising them that this application was opposed and requested the matter be removed from the roll in order to allow the occupiers an opportunity to file answering papers. A copy of this letter is annexed marked **BK1**. The City refused to remove the matter from the roll and has persisted with seeking the relief set out in part 1 on 26 February 2021.

70. I respectfully submit that this approach by the City in litigating in this manner has not only prejudiced the occupiers but also inconveniences the court which deals with this matter on the un-opposed roll on 26 February 2021. The relief sought by the City is without merit for the reasons set out above. In the event that the application is not struck from the roll I submit that the relief falls to be dismissed with costs on an appropriate scale.

BASETSANA KOITSIOE

I certify that the deponent has acknowledged that they know and understand the contents of this affidavit which was signed and sworn to before me aton this day of **FEBRUARY 2021**, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended and Government Notice No. 1648 of 19 August 1977, having been complied with.

COMMISSIONER OF OATHS

Full names:

Business Address:

Designation:

Area/Office: