

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO: 5083/09

in the matter between:

**CITY OF CAPE TOWN**

Applicant

vs

**All those adult males and females whose names are set out in in Annexure "HS1" to the founding affidavit and who reside at Bluewaters Site B and C, Lukannon Drive, Strandfontein Western Cape**

First to Two Hundred and Thirty Sixth Respondents

**All those persons whose identities are to Applicant unknown who are unlawfully occupying Bluewaters Site B and C, Lukannon Drive, Strandfontein, Western Cape**

Two Hundred and Thirty Seventh Respondent

**JUDGEMENT HANDED DOWN THIS 24<sup>th</sup> DAY OF FEBRUARY 2010**

## **BACKGROUND**

[1] Respondents are all internally displaced persons (IDP's)<sup>1</sup> as a result of xenophobic attacks on foreign nationals during the course of May 2009 in the Cape Town area. 1 hey were forced to flee the communities in which they lived.<sup>2</sup>

[2] The Applicant and the Province co-operated in dealing with the difficulties ensuing from the

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<sup>1</sup> The 1998 UN Guiding Principles on Internal Displacement (UN Doc E/CM.4/1998/53/Add.2) defines IDPs as follows: 'Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid *the* effect of armed conflict, situations or generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.' General consensus as to the definition of IDPs in International Law still evades the legal community. For purposes of this case, the U N definition is adequate enough to identify the Respondents in this case as IDPs. In this case the status of the respondents as refugees and refugee or asylum seekers were not challenged.

<sup>2</sup> The Western Cape Province classified the displacement of foreign nationals as a provincial disaster, and declared a provincial state of disaster in terms of section 41 of the Disaster Management Act 57 of 2002.

disaster, with the Applicant initially driving the recovery processes and setting up the Disaster Risk Management Centre.<sup>3</sup> The Applicant housed affected foreign national in emergency accommodation at various sites across the Cape Peninsula.

[3] Those affected individuals who came to occupy the Bluewaters Site B and C, situated at Lukannon Drive, Strandfontein, Western Cape ('Bluewaters') during September 2008 initially did so with the consent of the Applicant.<sup>4</sup>

[4] Once the emergency situation which had been caused by the xenophobic attacks had abated, the Applicant informed the Respondents that they had to vacate the property. At this stage a number of individuals had already been repatriated or reintegrated into the community, resulting in the consolidation of the safety zone camps into two sites, namely Bluewaters and Harmony Park.

[5] With the steady decline of the number of refugees in the area and the consolidation of the camps, the United Nations High Commission for Refugees (UNHCR) advised the IDPs that there were three sustainable solutions for them following their displacement, namely the return to the same or similar local communities (reintegration), return to their countries of origin (repatriation), or relocation to a third country outside South Africa (resettlement). As appears from the facts of the case, relocation to another area within the borders of South Africa also fall within the resettlement option.

[6] The Respondents refused to vacate Bluewaters based on the fact that they are a particularly vulnerable group and it would be impossible to be reintegrated or resettled. The Applicant submitted that the Respondents refusal has resulted in their unlawful occupation of the property since October 2008.<sup>5</sup>

[7] Before the City of Cape Town brought the application to remove the Respondents, it offered them a resettlement package with the assistance of the UNHCR, taking all reasonable and necessary steps to secure the voluntary vacation of Bluewaters.<sup>6</sup> In terms of the offered package, the City of Cape Town offered to move the particularly vulnerable group to

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<sup>3</sup> The services provided included health, ambulance and emergency services, policing by the South African Police Service, assistance from the South African National Defence Force, and immigration/refugee assistance under the guidance of the Department of Home Affairs. The Applicant was later assisted by the national and provincial spheres of government with regard to health, education, food supply, social and communication services. The Applicant however remained in effective control of the management of the day to day operational requirements.

<sup>4</sup> Bluewaters is one of five safety zones established by the applicant. The other zones being Soetwater, Silverstroom, Harmony Park and Youngsfield Military Base. With the exception of the latter, all the other zones are camps and recreational sites.

<sup>5</sup> In terms of s 1 of PIE an 'unlawful occupier' is defined as "a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996)."

<sup>6</sup> A stakeholders forum was also set up in which the City, the IDPs and the UNCHR could constructively engage with one another regarding the proposed move from Bluewaters.

Blikkiesdorp in the Delft area.<sup>7</sup> Respondents refused the resettlement to Blikkiesdorp, claiming that it is not safe there.

[8] As a result of the fact the Respondents' refusal to accept the relocation package and the deteriorating conditions at Bluewaters (no water, electricity and sanitation)<sup>8</sup> the Court is called upon to consider the Applicant's request for an eviction order.

[9] On 18 March 2009 the Applicant applied to this Court (as required by s 4(2) of PIE) for an order to issue and serve on the Respondents notices containing the PIE required s 4(5) information. The s 4(2) notices were duly served on the Respondents on 27 March 2009,<sup>9</sup> giving them more than the minimum 14 day notice period prescribed by PIE.

#### **PROCEDURAL REQUIREMENTS OF S 4 OF PIE**

[10] The Applicant has brought an application for the eviction of the Respondents in terms of s 4(6) of PIE that reads as follows:

*"If an unlawful occupier has occupied the land in question for less than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by women."<sup>10</sup>*

[11] The Respondents were relocated to Bluewaters during September 2008. In October 2008 the Applicant informed them that they must vacate the premises, "through this notice the Applicant withdrew its consent required for lawful occupation of the property. Due to their refusal to vacate the property, the Respondents are unlawful occupiers within the ambit of the Act, even though they initially resided there lawfully.<sup>11</sup> The fact that the Applicant instituted proceedings in March 2009 also places it within the "less than sixth months" time period prescribed by the Act. The application therefore falls within the scope of s 4(6) of PIE. Respondents argue that it would not be just and equitable for them to be evicted.

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<sup>7</sup> A list has been identified as to who falls within the particularly vulnerable group.

<sup>8</sup> It appears that the health services and sanitation facilities in the camp have deteriorated as a result of the use and unfortunately abuse of these services

<sup>9</sup> The s 4(2) notices were translated into French, Swahili, Somali, Arabic, Portuguese, Xinyarwanda, Shona and Ndbele.

<sup>10</sup> Own underlining.

<sup>11</sup> *Ndlovu v Ngcobo, Bekker and Another v Jika* [2002] 4 All SA 384 (SCA) at Par 11 per Harms AJ

[12] The task of the judiciary in determining whether the eviction can be described as just and equitable regard must be had to the underlying holistic purpose of PIE. PIE was enacted with the objective to overcome abuses associated with evictions in the past through depersonalised processes, by calling for the judicial consideration of "the life circumstances of those being expelled ... [through] humanised procedures that [focus] ... on fairness to all."<sup>12</sup> The judiciary is now tasked "to hold the balance between illegal eviction and unlawful occupation".<sup>13</sup> This calls for the exercise of a discretion in balancing "the proprietary rights of the owner and the basic human rights of the unlawful occupier",<sup>14</sup> but also calls for "[considerations beyond those immediate to the parties, such as the national, social and economic context".<sup>15</sup> Consequently, there rests an obligation on the Court, in terms of PIE and the Constitution, to take into considerations all relevant circumstances in evaluating the justice and equity of an eviction application.<sup>16</sup>

[13] With regard to this obligation, it must be noted that a range of factors call for consideration in the application before the Court, namely the differing conditions and factors within the group regarding the legitimacy of their presence in the country, the varying degrees of individual vulnerability and the fact that some families have no breadwinners and are headed by women, to name but a few.

[14] In *Port Elizabeth Municipality v Various Occupiers*,<sup>17</sup> the Constitutional Court explained that a court, in exercising its discretion when weighing up all the relevant factors must consider whether consultation (and where appropriate mediation) have taken place.<sup>18</sup>

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<sup>12</sup> *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) at par 13 per Sachs J.

<sup>13</sup> *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) at par 13 per Sachs J.

<sup>14</sup> LAWSA Vol 11 par 684.

<sup>15</sup> LAWSA Vol 11 par 684. See also *Absa Bank Ltd v Murray* 2004 2 SA 15 (C); 2004 1 BCLR 10 (C). Cf the factors taken into in *Pedro v Greater George Transitional Council* [2001] 1 All SA 334 (C); *Modderklip Boerdery (Pty) Ltd v Modder East Squatters* 2001 (4) SA 385 (W); *Port Elizabeth Municipality v Peoples Dialogue on Land and Shelter* [2001] 1 All SA 381 (E); *Ridgway v Janse van Rensburg* [2002] 2 All SA 506 (C); *City of Cape Town v Unlawful Occupiers, Erf 1800, Capricorn (Vrygrond Development)* [2003] 3 All SA 371 (C); *Baartman v Port Elizabeth Municipality* 2004 (1) SA 560 (SCA); *FHP Management (Pty) Ltd v Theron* [2003] 2 All SA 516 (C); *Port Elizabeth Municipality v Various Occupiers* 2004 (12) BCLR 1268 (CC); *Dauids v Van Straaten* 2005 (4) SA 468 (C); *Cashbuild (SA) (Pty) Ltd v Scott* 2007 (1) SA332 T).

<sup>16</sup> See LAWSA Vol 11 par 684.

<sup>17</sup> 2005 (1)SA217 (CC).

<sup>18</sup> In *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) at par 43 the Constitutional Court reasoned that an eviction will "not ordinarily be just and equitable if proper discussions, and where appropriate,

[15] Throughout this whole ordeal, the Applicant attempted to promote dialogue between all the stakeholders<sup>19</sup> and encouraged the participation of the IDPs in attempts to seek a viable solution. It was submitted on behalf of the Applicant that it was with the awareness of the obligation to pursue justice and equity that it began a process of engagement with the Respondents in order to arrive at solutions that would ensure that *he* removal of the Respondents from Bluewaters proceeded in a dignified manner, recognising the Respondents' individual vulnerabilities and taking all steps possible to address those difficulties. This approach by the Applicant is commendable.

[16] The Applicant, NGO's and the UNHCR ultimately offered to help with relocation, but the Respondents refused this gesture. It was accordingly submitted that, although the Respondents had an equal voice in the Stakeholders Forum, they failed to demonstrate a genuine commitment to the finding of solutions to alleviate the extent to which they would be adversely affected once evicted from Bluewaters. The Constitutional Court has recently again emphasised the importance of cooperation:

*"It must be understood that the process of engagement will work only if both sides act reasonably and in good faith. The people who might be rendered homeless as a result of an order of eviction must, in their turn, not content themselves with an intransigent attitude or nullify the engagement process by making non-negotiable, unreasonable demands."*<sup>20</sup>

[17] it was further argued, on behalf of the Applicant, that it would be insufficient for the Respondents merely to assert that they are entitled to remain at the Bluewaters camp merely because the atmosphere at Bluewaters (a foreigners' enclave if one can call it that) is more congenial than the atmosphere found elsewhere and security at that camp provides greater peace of mind than would be enjoyed if living in the open community.

[18] Council for the Respondents however emphasised the particularly vulnerable character of the group of foreigners residing at Bluewaters as an important consideration calling for the Court's attention.

## **PARTICULARLY VULNERABLE GROUP**

[19] Although the Constitutional Court in *Occupiers of 51 Olivia Road, Berea Township and*

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mediation, have not been attempted."

<sup>19</sup> The stakeholders included the Applicant (City of Cape Town), the UNCHR, its NGO implementation partners, civil society, the Department of Home Affairs and the Respondents (IDPs) themselves.

<sup>20</sup> *Occupiers of 51 Olivia Road, Berea Township and Others v City of Johannesburg and Others* 2008 (5) BCLR 475 (CC) at par 20. See also *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) at par 41 per Sachs J.

*Others v City of Johannesburg and Others*<sup>21</sup> did emphasise that "[engagement has the potential to contribute towards the resolution of disputes and to increased understanding and sympathetic care if both sides are willing to participate in the process," the Court also acknowledged that considerations surrounding the vulnerability of a group can hinder proper engagement:

*"People about to be evicted may be so vulnerable that they may not be able to understand the importance of engagement and may refuse to take part in the process. If this happens, a municipality cannot walk away without more. It must make reasonable efforts to engage and it is only if these reasonable efforts fail that a municipality may proceed without appropriate engagement. It is precisely to ensure that a city is able to engage meaningfully with poor, vulnerable or illiterate people that the engagement process should preferably be managed by careful and sensitive people on its side."*<sup>22</sup>

[20] It can accordingly be argued that the particular vulnerability of the IDPs at Bluewaters prevented them from fully engaging with the other Stakeholders. This is a factor to take into consideration, but it does not take anything away from the good faith efforts made by the Applicant to involve the Respondents in searching for a solution.

[21] Particularly vulnerable individuals or groups are those people who are not in a position within our society to protect themselves.<sup>23</sup> In *Union of Refugee Women and Others v Director: Private Security Industry Regulatory Authority and Others*,<sup>24</sup> the Constitutional Court recognised the vulnerability of foreign nationals who are refugees:

*"Refugees are unquestionably a vulnerable group in our society and their plight calls for compassion. As pointed out by the applicants, the fact that persons such as the applicants are refugees is normally due to events over which they have no control. They have been forced to flee their homes as a result of persecution, human rights violations and conflict. Very often they, or those close to them, have been victims of violence on the basis of very personal attributes such as ethnicity or religion. Added to these experiences is the further trauma associated with displacement to a foreign country."*<sup>25</sup>

It is accordingly accepted that refugee status implies 'a special vulnerability, since refugees are by definition persons in flight from the threat of serious human rights abuse.'<sup>26</sup>

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<sup>21</sup> 2008 (5) BCLR 475 (CC).

<sup>22</sup> *Occupiers of 51 Olivia Road, Berea Township and Others v City of Johannesburg and Others* 2008 (5) BCLR 475 (CC) at par 15.

<sup>23</sup> See for example *Fraser v Naude and Others* 1998 (11) BCLR 1357 (CC); *Minister of Welfare and Population Development v Fitzpatrick and Others* 2000 (7) BCLR 713 (CC); *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC); *Bannatyne v Bannatyne (Commission for Gender Equality, as Amicus Curiae)* 2003 (2) BCLR 111 (CC); *Bhe and Others v Magistrate, Khayelitsha, and Others (Commission for Gender Equality as Amicus Curiae)* 2005 (1) SA 580 (CC).

<sup>24</sup> 2007 (4) 3CLR 339 (CC).

<sup>25</sup> *Union of Refugee Women and Others v Director: Private Security Industry Regulatory Authority and Others* 2007 (4) BCLR 339 (CC) at par 26.

<sup>26</sup> Hathaway (ed) *Reconceiving international Refugee Law* (Martinus Nijhoff Publishers, London 1997) at 8 as

[22] it was the aim of the established Stakeholders Forum to identify the vulnerabilities to which the Respondents were subject as a result of the xenophobic attacks. The dialogue promoted by the Stakeholders was in pursuit of an appropriate response to the vulnerabilities of the group. ~he hand of assistance extended to the Respondents in an attempt to support them due to their vulnerable position in the current societal milieu has been rejected.

[23] Due to their vulnerable position it is undeniable that they cannot be sent back to their countries of origin if those countries remain unsafe. Repatriation is admittedly not an option at present.

[24] Some foreigners previously residing in the safe zones provided by the Applicant have reintegrated into their communities. The majority of the remaining IDPs in Bluewater have however not attempted reintegration in any manner or form. As a result they have no knowledge of the possible threat they could face or the degree of their vulnerability in those communities. Arguably some will not be able to reintegrate into the communities in which they were subjected to xenophobic attacks a little more than a year ago, as a high degree of intolerance is still prevalent in some areas, with the recent incident in De Dooms as an example of the continuing threat to foreigners in certain parts of South Africa.

[25] However, relocation is a viable option for those who cannot be reintegrated. In fact, relocation is a necessary step for those individuals whose degree of vulnerability renders them ill-suited for reintegration, given the deteriorating living conditions at Bluewaters. Council on behalf of the Respondents placed reliance on the principle of ubuntu in petitioning for the continued occupation of Bluewaters by the remaining IDPs. As submitted on behalf of the Respondents, "ubuntu translates as humaneness"<sup>27</sup> and envelops, along with the values of group solidarity, compassion, and collective unity, also the values of human dignity and respect.<sup>28</sup> There is nothing dignified and respectful of the deteriorating living conditions at Bluewaters. Relocation will furthermore not negatively impact on the values of group solidarity and collective unity. The Applicant and the other Stakeholders have in fact extended a helping hand in an act of compassion and justice. Relocation is a necessary step if one considers "the *rights and needs* of the elderly, children, disabled persons and households headed by women"<sup>29</sup> as directed by s 4(6) of PIE. The relevant *rights* (dignity, humane treatment) call for an improvement in the conditions of the remaining IDPs.<sup>30</sup> The Applicant (with the

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quoted in *Union of Refugee Women and Others v Director: Private Security Industry Regulatory Authority and Others* 2007 (4) BCLR 339 (CC) at par 29.

<sup>27</sup> S v *Makwanyane and Another* 1995 (3) SA 391 (CC) at par 308.

<sup>28</sup> S v *Makwanyane and Another* 1995 (3) SA 391 (CC) at par 308.

<sup>29</sup> Emphasis added.

<sup>30</sup> The Constitutional Court in *Dawood and Another v Minister of Home Affairs and Others* 2000 (3) SA 936 (CC) confirmed that right (not exclusively reserved for South African citizens) such as the right to dignity is extended to all

assistance of the UNHCR) is also making available an alternative place of residence as required to give substantive effect to the rights calling for consideration. The associated *needs* similarly call for 'considerations which would have to be satisfied to give substance to the rights.'<sup>31</sup> Socioeconomic considerations are therefore called upon and also endorse the proposed improved living conditions.

[26] If relocation of those sufficiently vulnerable individuals can be realised, the Applicant can set about transforming the currently unlawfully occupied area into revenue creating recreational area. With such endeavours the Applicant will be providing services to communities in a sustainable manner, promoting social and economic development and encouraging the involvement of communities and community organisations in matters of local government. Through such action the Applicant will be fulfilling its constitutional obligation to "improve the quality of life of *all citizens* and free the potential of *all people*."<sup>32</sup> This obligation is an important consideration

(seen within the national, social and economic context) beyond the immediate considerations affecting the Applicant and the Respondents. This fact was also emphasised by the Constitutional Court in *Residents of Joe Slovo Community, Western Cape v Thubeiisha Homes and Others*:<sup>33</sup>

*"It is true, as is emphasised by the amici, that this relocation would entail immense hardship. I have considerable sympathy with the applicants, but there are circumstances in which this Court and all involved have no choice but to face the fact that hardship can only be mitigated but can never be avoided altogether. The human price to be paid for this relocation and reconstruction is immeasurable. Nonetheless it is not possible to say that the conclusion of the City of Cape Town, to the effect that infrastructural development is essential in the area and that the relocation of people is necessary, is unreasonable. There are circumstances in which there is no choice but to undergo traumatic experiences so that we can be better off later."*<sup>34</sup>

[27] The attitude of the Respondents during the negotiation phase, and the ultimate rejection of offers of assistance, leaves the impression that they seek as a right the indefinite continuation of the preferred and special treatment at Bluewaters which they are now receiving.

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individuals within the borders of the country.

<sup>31</sup> *ABSA Bank Limited v Murray and another* 2004 (2) SA 15 (Z) at par 28.

<sup>32</sup> See the preamble of the 1996 Constitution Emphasis added

<sup>33</sup> 2009 (9) BCLR 347 (CC).

<sup>34</sup> *Residents of Joe Slovo Community, Western Cape v Thubeiisha Homes and Others* 2009 (9) BCLR 347 (CC) at par 107.

[28] Although it is true, as submitted on behalf of the Respondents, that the circumstances in which they came to be residing at Bluewaters were not of their own making, they cannot be allowed to manipulate the situation due to their status as particularly vulnerable individuals at the cost of the land owner and the community at large. With due regard to the relevant circumstances in the case, the Court is exercising its discretion in favour of the Applicant, subject to certain requirements that I deem necessary for the eviction to be just and equitable

[29] The Court accordingly orders that:

1. The respondents vacate the Bluewaters Site B and C owned by the Applicant (hereinafter referred to as "the property"), by no later than 31 March 2010.
  
2. The respondents, listed in annexure "A" hereto, who have been identified by the United Nations High Commissioner for Refugees (UNHCR) in terms of its own assessment criteria as 'vulnerables', together with their immediate family members, shall vacate the property in terms of clause 1 above, but shall be relocated to a maximum of 40 accommodation units at the Applicant's existing Delft Temporary Relocation Area (herein after referred to as "TRA"), each unit being an 18m<sup>2</sup> insulated wooden and metal framework structure including a roof and windows, erected on a concrete slab, situated on a site serviced with electricity, water and sanitation. These accommodation units shall be allocated to the vulnerables listed in Annexure "A", together with their immediate family members, by the applicant prior to their relocation. The reasonable cost of such relocation, being the transportation of the vulnerables and their immediate family members and their belongings to the TRA shall be arranged and paid for by the Applicant.
  
3. The applicant shall:
  - 3.1 in order to assist with the re-integration of the respondents into the greater Cape Town community, provide skills training to those respondents who elect to receive

same, at the applicant's cost, to a maximum sum of R300 000.00 (three hundred thousand P.and). This skills training shall be arranged and provided by a forum of non-government organizations who have been working with the respondents to date, known as the Livelihood Task Team and comprising of Scalabrini, PASSOP, Cape Town Refugee Centre ("CTRC"), Bonne Esperance and Arresta. The skills training will consist of life skills training, English language lessons and various trade skills as determined by the outcome of a needs analysis that will be conducted by the Livelihood Task Team. The final sum which shall be allocated to this service shall be determined after the respondents have made their election in terms of clause 4.1 hereinbelow: and such final sum shall then be allocated by the Livelihood Task Team to the Respondents who request skills training, on a case by case basis, in their sole discretion.

3.2 Provide trauma counseling to those respondents that require same and who elect to receive same, which counseling shall be provided by the Cape Town Trauma Centre at the Applicant's cost, at the property, to a maximum sum of R100 000.00 (one hundred thousand Rand). The final sum which shall be allocated to this service shall be determined after the Respondents have made their election in terms of clause 4.1 hereinbelow; and such final sum shall then be allocated by the Cape Town Trauma Centre to the respondents who request trauma counseling, on a case by case basis, in their sole discretion.

4. On vacation of the property by the Respondents in terms of this Order, each family unit or individual, as the case may be, shall be entitled to apply for a once off relocation payment from the UNHCR, in a predetermined amount, as delivered and administered by the UNHCR in its discretion.

4.1. Those Respondents who elect neither to undergo the skills training not the trauma counseling or one thereof referred to in clauses 3.1 and 3.2 above, shall be paid their proportionate share from the maximum funds allocated by the applicant for these purposes as referred to in clauses 3.1 and 3.2 above; together with any

relocation payment made by the UNHCR, referred to in paragraph 4 above, upon vacation of the property.

4.2. The election of each Respondent in respect of life skills training and trauma counseling shall be made and communicated to the applicant by the respondents within in 10 (ten) days of this agreement being made and Order, failing which the Applicant shall be entitled to assume that the respondent in question has elected to proceed with life skills training and trauma counseling as opposed to payment of the *pro rata* cash equivalent.

5. It is recorded that all the respondents have been given the necessary assistance by the applicant to obtain the requisite documentation from the Department of Home Affairs in order to legitimize their continued residence in South Africa. The applicant shall accordingly be obliged to comply with the terms of this Order only in respect of those respondent who are lawfully resident in South Africa.

6. All the respondents, whether lawfully resident in -South Africa or not, shall be obliged to vacate the property by no later than 31 March 2010; and agree that in the event of them not so vacating the property, the applicant may request the Sheriff to evict them without further notice.

7. All payments to be made by the applicant to the service providers referred to in clauses 3.1 and 3.2 above, i.e. in respect of those respondents who choose to make use of same, shall be paid directly to the service providers concerned by the applicant on receipt of an invoice. In respect of those respondents who decline the offer of life skills training and trauma counseling, their *pro rata share* of the maximum sums available will be paid directly to the UNHCR by the applicant to disburse to those respondents on behalf of the applicant upon their vacation of the property, on or

before 31 March 2010.

8. It is specifically recorded that the applicant's financial obligations in respect of the implementation of this Order, (other than in respect of the costs of the TRA accommodation for the vulnerable and their immediate family members as listed in annexure "A" hereto, and the reasonable relocation costs which are also for applicant's account), is which sum shall be disbursed strictly in accordance with the provisions of this order.

9. Those respondents who are lawful residents of South Africa (this being defined, as those respondents who have made, or are currently in the process of making, application for refugee status with the relevant authorities, appealing the refusal of same or have applied for the condonation of the late appeal of same); and are not opposing this application will be given the same rights and opportunities as the respondent who have opposed this application on the same terms and conditions as are set out herein.

10. Should any respondent fail to vacate the property by 31 March 2010, the Sheriff of the Court is authorized summarily to evict that person and to remove any of the materials and/or possessions, which shall be kept in safekeeping by the applicant for a period of 60 (sixty) days, calculated from 1 February 2010, or until access thereto is requested by the lawful owner, whichever is the sooner. In the event of no such request being received within a period of 60 (sixty) days, then the applicant shall be entitled to dispose of the said items, in its sole discretion.

11. No order is made as to costs.

**NC ERASMUS J**