IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

**CASE NO: 2017/37231**

In the matter between:

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| **PAMELA DUDUZILE NKOSI** | First Applicant |
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|  |  |
| **SIBONGILE GOODNESS NJAPA** | Second Applicant |
|  |  |
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| **BENJAMIN SEMAKALENG RABOSHAGA** | Third Applicant |
|  |  |
| **LEBOHANNG STEVEN MOTSUMI** | Fourth Applicant |
|  |  |
| **PATRICK MANDLA NXUMALO**  **NIKEZIWE DORRIS NHLEKO**  **RENDANI VIRGINIA RAMUHASHI**  **EDWARD RABAGE MOTSEOTHATA**  **ZWELAKHE MANANA**  and  **THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY**  **JOHANNESBURG PROPERTY COMPANY**  **DEPARTMENT OF HUMAN SETTLEMENTS**  **TSHEPO FREDDY MOKATAKA**  **(SENIOR MANAGER LEGAL:**  **JOHANNESBURG PROPERTY COMPANY)**  **THE MUNICIPAL MANAGER OF THE CITY OF JOHANNESBURG**  **THE MAYOR OF THE CITY OF JOHANNESBURG** | Fifth Applicant  Sixth Applicant  Seventh Applicant  Eight Applicant  Ninth Applicant  First Respondent  Second Respondent  Third Respondent  Fourth Respondent    Fifth Respondent      Sixth Respondent |
| **THE MINISTER OF POLICE**  **THE NATIONAL COMMISSIONER OF THE**  **SOUTH AFRICAN POLICE SERVICE** | Seventh Respondent    Eighth Respondent |
|  |  |

SUPPORTING AFFIDAVIT − contempt of court

I the undersigned,

**PAMELA DUDUZILE NKOSI**

do hereby make an oath and state as follows:

1. I am the first applicant in this matter and the deponent of the founding affidavit in the main application and in the subsequent application before Karachi AJ for contempt of the court order granted by Justice Mudau on 15 October 2018.
2. I remain authorised to depose to this affidavit on behalf of all the applicants.
3. The facts contained in this affidavit are, save where the contrary appears from the context, within my knowledge and belief, and are both true and correct.
4. Where I make submissions of a legal nature, I do so on the advice of our legal representatives, which advice we accept as true and correct.

# THE PARTIES

1. The applicants in this matter are mostly residents of Soweto Township in Johannesburg who purchased property stands from the Second Respondent under the Land Regularisation Programme between 2009 and 2014.
2. The applicants’ property stands are situated in Zondi, Soweto. We, as the applicants, have fully paid for our individual stands and have consequently obtained our title deeds.
3. The applicant's details are as follows:
   1. I am the first applicant in this application. I am an adult female residing at 3126 Mogoye Street, Orlando East, Soweto.
   2. The second applicant is Sibongile Goodness Njapa an adult female residing at 450D/57 Mosenapela Street, Meadowlands, Zone 3, Soweto.
   3. The third applicant is Benjamin Semakaleng Raboshaga an adult male residing at 1860 Tladi Street, Xuma, Soweto.
   4. The fourth applicant is Lebohang Steven Motsumi an adult male residing at 6568 Motloung section in Katlehong, Soweto.
   5. The fifth applicant is Patrick Mandla Nxumalo an adult male residing at 15489 Ntsane Street, Moletsane, Soweto.
   6. The sixth applicant is Nikeziwe Dorries Nhleko an adult female residing at 1401 Hlubi Street, Zondi, Soweto.
   7. The seventh applicant is Rendani Virginia Ramuhashi an adult female residing at 2339 Protea North, Soweto.
   8. The eighth applicant is Edward Rabage Motseotheta an adult male residing at 431 Williams Street, Dobsonville, Soweto.
   9. The ninth applicant is Zwelakhe Manana an adult male residing at Pongola, Emagengeni area in rural KwaZulu-Natal.
4. The first respondent is the City of Johannesburg Metropolitan Municipality (“the City”). The City is a Metropolitan Municipality established in terms of section 151 and section 155 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), and in terms of the Local Government: Municipal Structures Act 117 of 1998 (“the Municipal Structures Act”). The offices of the City are situated at 158 Civic Boulevard, Braamfontein, Johannesburg.
5. The City is responsible, in terms of the Constitution and national legislation for the provision of services to its residents, including supply of water and electricity. I am advised that the City has important constitutional obligations to fulfill in providing housing and basic services to the residents of the City.
6. The second respondent is Johannesburg Property Company ("JPC"). JPC is a state-owned company registered in terms of the Companies Act, wholly owned by the City. The services that the JPC provides to the City include property asset management, commercial property management, social property management, facilities management, and maintenance services. The JPC has its offices situated on the first floor of Braam Park, 33 Hoofd Street, Braamfontein, Johannesburg.
7. The third respondent is the Department of Human Settlement (“the Department”). The Department is mandated by the Constitution, the Housing Act, and other legislation to provide housing. Such provision of housing includes but is not limited to free housing for indigent persons, subsidised housing, and the provision of serviced sites. The offices of the Department are situated at Govan Beki House, 240 Justice Mohammed Street, Sunnyside, Pretoria.
8. The fourth respondent is Mr Tshepo Freddy Mokataka: a Senior Manager Legal in the employ of JPC. The fourth respondent was the deponent of the affidavit on behalf of the City and JPC in the main application. He is also responsible for the implementation of court orders against the JPC.
9. The fifth respondent is the Municipal Manager of the city. As an accounting officer of the City, the fifth respondent is tasked with overseeing the implementation of court orders against the City. The Municipal Manager is also one of the logical persons to be held responsible for the overall administration of the City.
10. The sixth respondent is the Mayor of the City whose duty is to monitor and oversee the management and administration of the City and the implementation of court orders against the City. The sixth respondent has an obligation to implement and oversee the provision of services to communities such as the applicants whose services form part of the court order granted by Karachi AJ on 10 December 2021.
11. The fourth, fifth, and sixth respondents were joined in the proceedings between the applicants and the first, second, and third respondents through a joinder application that was made by the applicants before Karachi AJ. The joinder of these respondents was to ensure compliance with the orders granted by this Court against the City and JPC as they are the officials responsible for the administration and implementation of court orders against the first and second respondents.
12. The seventh respondent is the Minister of Police. He is cited here for any potential interest he may have in this matter. No relief is sought against the Minister. His offices are located at 231 Pretorius Street Pretoria.
13. The eighth respondent is the National Commissioner of the South African Police Services. He is cited in this application in his official capacity in order to give effect to the order sought by the applicants. His offices are located at Maupa Naga Building, 3rd Floor, Nr 3 Troye Street, Pretoria respectively.

# NATURE OF THE APPLICATION

1. This application is about the continued wilful non-compliance of this Court’s two orders by the respondents. As a result of this continued non-compliance with the orders, this application is for the committal of the fourth, fifth, and sixth respondents owing to a contempt of the court order dated 10 December 2021 by Her Ladyship Karachi AJ under case number 2017/37231. Secondly, it is for a declaratory order that the conduct of the first, second, fourth, fifth, and sixth respondents is wilful and mala fide, and is inconsistent with the Constitution.
2. At its core, this application is about accountability. The issues raised in this application are about holding government institutions and officials accountable for not only contemptuous conduct towards this Court but also about dereliction of their constitutional obligations even after they have been clarified by this Court twice.
3. **PERSISTENT CONTEMPT OF COURT BY THE RESPONDENTS**
4. The respondents have persistently been in, and remain in, contempt of two orders of this Court. The facts detailed below demonstrate an unwillingness from the respondents to comply with the court orders, either substantially or at all.
5. The first order was granted by this Court per Mudau J, by agreement on 15 October 2018. The second order for contempt against the first and second respondents was granted per Karachi AJ on 10 December 2021.
6. In the five years that have passed since the order of Mudau J in 2018, and the three years since the order of Karachi AJ in 2021, the respondents have failed to provide me or my co-applicants with any good reason for why the court orders have not been complied with. The facts detailed below demonstrate that there are in fact no good reasons and that the respondent's contempt is in bad faith.

# BACKGROUND FACTS

1. The applicants purchased individual stands within the City. After the sale and transfer of the applicants’ individual stands, it came to our attention that the necessary bulk infrastructure (water and electricity) was not in place and, as such, the applicants could not build their houses on the stands. It is the responsibility of the City and JPC to install the bulk infrastructure onto our stands.
2. Immediately after the transfer of the stands, the City started charging us for rates and taxes on our individual stands.
3. That is when we, as the applicants, approached this Court for an order declaring that the conduct of the City and JPC in failing to install bulk infrastructure on the applicants’ stands was inconsistent with and in contravention of section 26(1) and (2) of the Constitution.
4. The facts contained in the main application that served before Mudau J and do not need to be repeated here in detail. All that is important is that there was an order from Mudau J that obligated the respondents to install infrastructure and write off the debts.
5. The parties settled the matter and a court order by agreement annexed as “***Annexure FA 1*”**, was granted by Mudau J on 15 October 2018 in the following terms:
   1. The first and second respondents are ordered to install the bulk water and electrical infrastructure on the first to ninth applicants’ stands, namely erfs 1779, 1777, 1740, 1770, 1752, 1776, 1775, 1733, 1769;
   2. The second respondent has prepared a report of the budget for the installation of the bulk water and electrical infrastructure on the first to ninth applicants’ stands as described in paragraph 1 above. The report is awaiting the first respondent’s council approval;
   3. The first and second respondents accept the installation of the bulk water and electrical infrastructure on the first to ninth applicants stands as described in paragraph 1 above is urgent and is to be prioritised by the respondents. The first respondent shall endeavor to have a special meeting of the council convened in terms of section 29(2) of the Municipal Structures Act 117 of 1998 to approve the report mentioned in paragraph 2 above;
   4. The first and second respondents shall within 60 days from the date of this order file a report, under oath setting out the steps they have taken to install the bulk water and electrical infrastructure described in paragraph 1 above.
   5. The applicants may within 30 days of the report/reports, deliver commentary under oath.
   6. The first respondent is ordered to write off the rates and taxes amount owed by the first to ninth applicants in respect of their individual stands from the date of purchase of the stands to the date of the use of the bulk water and electrical services on each stand within 30 days of this order being served on the first respondent;
   7. The first and second respondents shall pay the costs of this application on a party and party scale, the one paying, the other being absolved.
6. Despite the court order by Mudau J, the respondents failed to comply with the terms thereof. It is against this backdrop that a contempt application was made by the applicants and argued before Karachi AJ.
7. This application set out various instances of communication between our attorneys in an attempt to acquire compliance with the 15 October 2018 order. Amongst others, the application set out the following:
   1. Interactions between our attorneys and the respondents’ attorneys as early as 26 February 2019 seeking the respondents’ compliance. These efforts continuously failed as the respondents’ attorneys were either not available to provide clarity or were still taking instructions or were just generally non-responsive.
   2. As early as 05 June 2019, the respondents’ attorneys asked us to forward them our details so as to process the writing off process. The writing off had at the time of the contempt order also not been done.
   3. After several requests for compliance, what was meant to be a report in terms of the 15 October 2018 order, was not only out of time but was nothing more than just a consolidation of correspondence dating as far back as June 2018. This was also clearly a fragrant disregard of the order.
8. On 10 December 2021, Karachi AJ made a judgement and order, annexed as “***Annexure******FA2***” finding the City and JPC in contempt of the 15 October 2018 court order and also joining the fourth, fifth, and sixth respondents in the matter to ensure future compliance with the court orders by this Court against the first and second respondent. Karachi AJ made an order in the following terms:
   1. The fourth, fifth, and sixth respondents are joined as a party to these proceedings;
   2. It is declared that the first and second respondents are in contempt of the court order of Justice Mudau on 15 October 2018;
   3. The first, second, fourth, and fifth respondents are ordered to, by 1 February 2022, file a report under oath
      1. setting out the steps taken since July 2020 to install the required electrical and water bulk services on the first to ninth applicants' stands, namely erf 1779, 1777, 1740, 1770,1752, 1776, 1775, 1733, and 1769;
      2. setting out the date by which the required electrical and water bulk services in respect of the aforementioned stands will be installed; and
      3. confirming that the rates and taxes amounts owed by the first to ninth applicants in respect of their individual stands from the date of purchase of the stand to the date of use of the bulk water and electrical services on each stand has been written off.
   4. The first and second respondents are ordered to pay the costs of the application jointly and severally the one paying the other to be absolved on an attorney and client scale.
9. The respondents have to date not complied with the above court order by Karachi AJ in addition to the order of Mudau J.
10. Importantly, Karachi AJ made the following factual findings at paragraph 15 of her judgement (***Annexure FA 2***); “*There was a clear disregard by the respondents to meaningfully address the point of substance of the court order directly. No attempt whatsoever was made by the respondents to address the applicants’ concerns and the court order*.”.
11. Further, Karachi AJ at paragraph 18 of the judgement continued that “*to date, the bulk infrastructure has not been installed nor have the applicants’ rates and taxes been written off as per the court order* [The Mudau J order, ***Annexure FA 1***]”.
12. The respondents have still to date not complied with the court order of Karachi AJ in addition to Mudau J’s order.
13. This is in excess of five years, and October 2024 will mark the sixth anniversary of this matter.
14. Below, we detail the conduct of the respondents to date. This conduct indicates an unwillingness by the respondents in the five years to deal with this matter in finality.

**JANUARY 2022 – DECEMBER 2022**

1. On 09 February 2022, our attorneys addressed a letter to the respondents and the respondents’ attorneys and advised the respondents that the respondents are in contempt of the court order of 10 December 2021 and demanded that the respondents comply with the said court order. A copy of the letter dated 09 February 2022 is attached hereto as “***Annexure FA 3***”.
2. There was no response to that letter until 03 March 2022 when our attorneys received a call from the respondents’ attorneys who advised that the report referred to in the Karachi AJ court order had been prepared by the respondents and was awaiting to be settled by the respondents’ counsel
3. On 08 March 2022, our attorneys received another call from the respondents’ attorneys who advised that the respondents’ report in terms of the court order was awaiting to be commissioned by JPC.
4. On 22 March 2022**,** the respondents’ attorneys emailed our attorneys an uncommissioned affidavit prepared on behalf of the first, second, fourth, and fifth respondents.
5. The uncommissioned affidavit did not at all comply with the court order of Karachi AJ
   1. The affidavit was not under oath as it had not been commissioned; and
   2. The affidavit did not confirm that the rates and taxes amount owed by the first to the ninth applicants in respect of their individual stands from the date of purchase of the stands to the date of use of the bulk water and electrical services on each stand had been written off.
6. The commissioned report was only served on 25 March 2022. This report still did not confirm that the rates and taxes had been written off nor did it set out a date on which the required electrical and water bulk services would be installed. This report is attached hereto as annexure “***Annexure FA 4***”.
7. Importantly, the 25 March 2022 report did not place us in any different of a position than we were when we approached this Court in both 2018 and 2021. The report is substantially non-compliant with Karachi AJ’s order. The report fails to set out the steps taken by the respondents, it fails to commit to a compliance date, and it fails to confirm that the amounts charged by the City had been written off.
8. On 18 May 2022, our attorneys met with the respondents' attorneys. In this meeting, the respondents' attorneys communicated the respondents' interest in bringing this matter to finalisation.
9. On 2 June 2022, our attorneys wrote a letter, annexed as “***Annexure FA 5*”,** to the respondents’ attorneys informing them:
   1. That the respondents remain in breach of the Karachi AJ judgement in so far as that the rates and taxes have not been written off from when we purchased the stands; and
   2. That the respondents failed to set out the date by which the required electrical and water bulk services in respect of the stands will be installed.
   3. The letter further requested weekly and/or bi-weekly progress reports for the duration of three months or until the installation of the bulk services and the writing off rates and taxes have been completed, and the installation of bulk electrical and water services, and the writing off of rates and taxes be complied with within four months of receipt of this letter. This commitment was not given by the respondents.
   4. Importantly, the letter also noted the respondents’ “*own admission that this matter has taken far too long to be resolved”*.
10. On 7 June 2022, our attorneys wrote a letter to the respondents’ attorneys informing them that Benjamin Semakaleng Raboshaga, the third applicant in the matter requests that the respondent repurchases his stand (land) at the current market value of the land (buy back option). This letter is annexed as “***Annexure FA 6*”.**
11. The applicants have *not yet* received a response to both these letters.
12. On 13 June 2022, our attorneys sent an email to the respondents’ attorneys following up on the correspondence to which the respondents’ attorneys responded on 20 June 2022 stating that they were on leave. There was no further response. This email is annexed as “***Annexure FA 7*”.**
13. On 21 July 2022, the applicants’ attorneys wrote to the respondents’ attorneys via email requesting feedback and did not receive any response. This email is annexed as “***Annexure FA 8***”.
14. On 3 August 2022, our attorneys wrote a letter, annexed as “***Annexure FA 9***”, to the respondents’ attorneys requesting the respondents to:
    1. Provide feedback from the budget meeting where factoring in the bulk installations in the annual budget was discussed as per the report of 25 March 2022 **(*Annexure FA 4*);**
    2. Provide feedback on the bulk installations as well as timelines as to when these bulk installations shall occur;
    3. Provide feedback concerning the applicants’ client Benjamin Semakaleng Raboshaga, the third applicant in the matter, who requested that the respondent purchase back the land.
15. On 3 October 2022, our attorneys called the respondents’ attorney to inform them:
    1. That they had been attempting to get hold of the respondents’ attorneys several times concerning an update in this matter with no success; and
    2. That they were contemplating instituting a contempt application proceeding against the respondents but would nonetheless like to meet with the respondents’ attorneys prior to this.
    3. Our attorneys confirmed this call on email annexed as “***Annexure FA 10”.***
16. On 5 October 2022, the respondents’ attorneys responded by email stating that they are in the process of taking instructions from the respondents and will revert as soon as they are in receipt thereof. The respondents’ attorneys, therefore, requested an extension of time to schedule a meeting in the course of the next few days. This email is annexed as **“*Annexure FA 11***”.

**JANUARY 2023 – DECEMBER 2023**

1. After several requests for an update, our attorneys wrote again on 10 February 2023, wherein we:
   1. Requested for the report they had committed to finalise by the end of 2022 on these matters and their clients’ instructions (as referred to by the respondents’ attorneys in email dated 7 December 2022 marked as ***Annexure FA 12)***; and
   2. Communicated the prejudice we continued to suffer at the back of this matter not being finalised.
2. The 10 February 2023 email is annexed hereto as ***Annexure FA 13***.
3. This email was not responded to. Our attorneys called the respondents' attorneys on 24 February 2023 and also communicated contact persons who would form part of a committee intending to finalise this matter. It is our view that this committee has not been able to yield any substantive outcome to date.
4. On 28 February 2023, our attorneys sought clarity about the committee the city intended to establish. This email was not responded to until another email on 8 March 2023.
5. This matter remained unaddressed until our attorneys again sought clarity on 14 April 2023 on the committee and to communicate that we were being threatened by debt collectors as a result of the rates and taxes. This email exchange including the response of the respondent's attorneys that the matter is being dealt with is attached hereto as “***Annexure FA 14***”.
6. Our attorneys made several follow-ups until 10 May 2023 when the respondents’ attorneys communicated that a Sihle More of the Revenue Department had been instructed on the issue of writing off the debts. This email exchange is attached hereto as “***Annexure FA 15*”.**
7. On 8 June 2023, a meeting was held between the respondent's attorneys and our attorneys. The letter addressed to our attorneys summarised the outcomes of that meeting which included that the Chief Financial Officer's approval would be sought for the writing off process. This meeting also established a “working committee” to finalise this matter as the relevant department was ready for the installation process but for some instability in the community which the “working committee” was meant to monitor. This letter is attached hereto as “***Annexure FA 16***”.
8. On 19 July 2023, our attorneys again wrote to the respondent's attorneys as there had not been any update about the writing off of debts. This email was not responded to and follow-ups on 31 July 2023 and on 10 August 2023 followed. Despite the respondents' attorneys’ response that they would take instruction in two days, our attorneys again wrote on 22 August 2023 and a meeting was proposed by the respondents' attorneys. This email chain is attached hereto as “***Annexure FA17***”.
9. On 11 September 2023, a meeting of the “working committee” took place. Nothing substantively different was achieved at this meeting outside of the officials of the first respondents committing to engage with the Ward Councillor regarding the installations. A follow-up meeting was to be held to give an update on this matter. This meeting did not happen until our attorneys wrote again on 30 October 2023 to request a further update. This email is attached hereto as “***Annexure FA 18***”.
10. This too was not responded to and our attorneys contacted the respondents’ attorneys. The respondent's attorneys requested “patience” from our attorneys and committed to respond by 24 November 2023. On 28 November 2023, and off the back of no response, our attorneys again wrote to the respondents’ attorneys to request an update on when this “working committee” meeting would happen. This email chain is attached hereto as “***Annexure FA 19***”.
11. On 11 December 2023, the “working committee” meeting finally took place. The meeting resolved that engagements with the ward councilor would continue and writing off of debts owed would happen on 18 December 2023.
12. The “working committee” which purported to deal with this matter in finality has not been able to do so. Instead, even the establishment of this “working committee” was another avenue for delay which has contributed to continued prejudice and lack of accountability.

**JANUARY 2024 – JULY 2024**

1. On 18 January 2024, our attorneys requested a follow-up from the respondents’ attorneys regarding the outcomes of the 11 December 2023 meeting. The respondents did not respond nor confirm receipt of the correspondence. Our attorneys again had to make contact on 31 January 2024 and on 8 February 2024 without any response.
2. The respondents' attorneys only responded to this correspondence on 15 February 2024. Their response was to the effect that the writing off awaited final approval by Johannesburg Water and the Group's Chief Financial Officer. These email chains are attached as annexure "***Annexure FA 20***”.
3. On 5 March 2024, our attorneys sent a letter attached hereto as annexure “***Annexure FA 21***” to the respondents’ attorneys. The letter reminded the respondents’ attorneys that despite the installation of the necessary electricity and water bulk infrastructure being the main issue towards the finalisation of the matter, there had not been any update on this aspect.
4. Further, that the respondents remained in contempt of the two orders of this Court. The letter also highlighted the prejudice we continued to experience as a result of the respondent's unwillingness to abide by the orders of this Court.
5. The respondents’ attorneys did not respond to this correspondence. On 09 May 2024, our attorneys sent another letter to the respondents’ attorneys. This letter put the respondents on terms and reiterated in finality that the respondents remained in contempt of the two orders of this Court.
6. This letter also demanded the immediate release of proof that our rates and taxes had been cleared. Secondly, that the respondents immediately commenced with the installation of the necessary electricity and water bulk infrastructure in compliance with the two orders of this Court.
7. On 13 May 2024, the respondent's attorneys informed our attorneys that they had final approvals for the writing off of rates and taxes. Further, they were still taking instructions on the other matters.
8. On 15 May 2024, our attorneys informed the attorneys of the respondents that sought finality about all the other aspects by 17 May 2024.
9. It was only on 16 May 2024 could we confirm to our attorneys that some of us had already received invoices that indicated that the debts had been written off.
10. However, we raised discomfort at the fact that the billing will again proceed for as long as we are not in occupation of our property in reiteration of the fact that the installations will be the only ultimate avenue for compliance of the two orders of this Court in finality and for vindication of our rights.
11. It is the conduct of the respondents that continue to delay this matter. Their engagements have been a façade, recalcitrant and in wilful disobedience of this Court’s orders. I submit that this calls for this Court’s intervention.
12. In the various engagements, meetings, and committees established between the parties, there is no indication of any good reason for why the respondents have not complied with both their constitutional obligations nor the court orders. All their engagements have only served to delay this matter further.

# THE CITY’S CONDUCT IS INCONSISTENT WITH THE CONSTITUTION

# The city and its officials are persons and institutions with constitutional obligations. These officials remain in contempt of two court orders. Below I shall set out these constitutional obligations and the extent to which their conduct is inconsistent with such obligations.

# Constitutional supremacy, the rule of law, human dignity, the achievement of equality, and accountability are among the cornerstone values of our constitutional democracy. These founding values are integral to our constitutional democracy in terms of section 1 of the Constitution.

# Section 195(1) of the Constitution states that public administration must be governed by the democratic values and principles enshrined in the Constitution. Public administration attracts an exclusive obligation to these democratic values and principles.

# These values of the Constitution are accompanied by substantive collective and individual rights in the Bill of Rights. The respondents as state institutions of local government *"must protect, promote and fulfill the rights in the Bill of Rights*" in terms of section 7(2) of the Constitution. The respondents' conduct must therefore be consistent with the Constitution's values and be towards the protection, promotion, and fulfillment of rights in the Bill of Rights.

# Where there is inconsistency with these values and any provision of the Constitution including those in the Bill of Rights, I am advised that this Court must act in terms of section 172 of the Constitution and declare such inconsistent conduct invalid and unconstitutional.

# The first respondent is established in terms of sections 151 and 155 of the Constitution, with its functions stipulated in terms of section 156 of the Constitution. These provisions along with the provisions of the Municipal Structures Act also establish the functions of the first, second, fourth, fifth, and sixth respondents.

# The first respondent in terms of the Municipal Structures Act executes all functions of local government as it is a category A Municipality. These functions include seeking to achieve the integrated, sustainable, and equitable social and economic development of its area by “*promoting bulk infrastructural development and services for the district as a whole”* in terms of section 83(3)(b) of the Municipal Structures Act.

# Further, sections 84(b) and (c) of the Municipal Structures Act enjoins the first respondent to the function of “*potable water supply systems”* and “*bulk supply of electricity, which includes for the purposes of such supply, the transmission, distribution and, where applicable, the generation of electricity*” respectively.

# The Municipal Structures Act not only responds to provisions of the Constitution already referred to above but also takes into account the need to provide municipal services in an equitable and sustainable manner in terms of section 155 (4) of the Constitution. The applicants have been denied equitable and sustainable access to municipal services for long over fifteen (15) years if regard is to be had to when some of us first received our title deeds.

# These provisions should go without mention. On several occasions, the first and second respondents have admitted that they have these important functions. Throughout these proceedings, the respondents have confirmed that they were aware of these obligations and how urgent they were.

# This Court has on two occasions directed the respondents to comply with these obligations. A failure to comply with these constitutional obligations is itself inconsistent with the Constitution.

# Beyond this inconsistency our fundamental rights to dignity and equality in terms of sections 9 and 10 of the Constitution are also consistently being infringed upon.

# In the letters our attorneys sent to the respondents’ attorneys since the 10 December 2021 contempt order of this Court, we indicated the prejudice we continue to suffer.

# Further, the respondents' constitutional obligations also require them to be responsive to this Court's orders. Section 165 (4) of the Constitution states that *"organs of the state through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility, and effectiveness of courts*". The willful contempt and non-responsiveness to this Court's orders by the respondents is inconsistent with the Constitution.

# All these facts seen together display recalcitrant conduct which is inconsistent with the Constitution and this Court should declare it invalid and unconstitutional.

# COMMITAL

# It is the respondents’ conduct that is the sole factor delaying the finality of this matter and the administration of justice at large.

# All the respondents are well aware of the 10 December 2021 court order and have failed to comply the order. In particular, the fourth, fifth, and sixth respondents as officials representing the first and second respondents are in wilful disregard of this order including their responsibilities to the residents of the first respondent.

# The fourth, fifth and sixth respondents were joined to this matter by this Court per Karachi AJ for the purposes of “supervision” and implementation” of this Court’s orders. This Court per Karachi AJ highlighted that the fourth, fifth and sixth respondents have a *duty* to undertake for implementing the court order. These respondents have not undertaken this duty in good faith:

* 1. They have continuously failed to give timeous instructions to their legal representatives; and
  2. They have continuously failed to ensure that the first respondent complies with its constitutional obligations to the provision of municipal services in an equitable and sustainable manner; and
  3. They have continuously failed to ensure that this Court’s orders are complied with.

# The fourth, fifth and sixth respondents’ disobedience of this Court’s orders is in bad faith. This is also indicated by their half-hearted and careless approach in dealing with this matter.

# In the face of non-compliance with a contempt order already granted by Karachi AJ, a subsequent contempt order would be pointless. An order for committal will ensure that the court order by Mudau J and Karachi AJ are treated with the urgency they deserve and will lead to their ultimate compliance. The conduct of the respondents cannot be countenanced.

# Accordingly, I pray for an order for a committal of the fourth, fifth, and sixth respondents in terms of the notice of motion.

# COSTS

1. There is no reason as to why the applicants should be saddled with the costs of this application.
2. Contempt proceedings, by their very nature, justify the awarding of punitive costs against the one found to be contemptuous towards the authority bestowed upon our courts. In this case, contemptuous conduct was established by this Court on 10 December 2021 and a cost order was granted to that effect.
3. It requires mention that the recovery of the 10 December 2021 cost order has also been stalled by the respondents despite being served with an invoice and a taxed bill of costs as early as 18 November 2022.
4. The respondents should thus be visited with another cost order on the attorney and own client scale in favor of the applicants.

**WHEREFORE** the applicants pray for an order in terms of the notice of motion, to which this affidavit is attached.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_DEPONENT**

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_this \_\_\_\_\_ day of **…………….. 2024**, the Regulations contained in Government Notice R.1258 published in Government Gazette No. 3619 dated 21st July 1972 (as amended), having been complied with after the deponent raised his right hand and uttered the words: " So help me God".

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**COMMISSIONER OF OATHS**

FULL NAMES :

BUSINESS ADDRESS :

DESIGNATION :

AREA :