

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA  
(HELD AT BRAAMFONTEIN, JOHANNESBURG)**

**CC Case No.: 212/17**  
SCA Case No.: 423/17  
WCHC Case No.: 5283/16

In the matter between:

<b>RIAAN MOGAMAT AMARDIEN</b>	First Applicant
<b>TASSANDRA ANNE APRIL</b>	Second Applicant
<b>ASHEEQAH DAMON</b>	Third Applicant
<b>ROEWAYDA JOCHEMS</b>	Fourth Applicant
<b>LOUISE PRIMOE</b>	Fifth Applicant
<b>MARGARETH ROMAN</b>	Sixth Applicant
<b>CASSIEM SAPAT N.O.</b>	Seventh Applicant
<b>CYNTHIA ARENDSE</b>	Eighth Applicant
<b>CRAIG CLOETE</b>	Ninth Applicant
<b>FAIZA GASANT</b>	Tenth Applicant
<b>WARREN KOEN</b>	Eleventh Applicant
<b>KASFICAH SMITH</b>	Twelfth Applicant

and

<b>THE REGISTRAR OF DEEDS</b>	First Respondent
<b>SHAUN WINGERIN N.O.</b>	Second Respondent
<b>GRAEME MICHAEL SCKOLNE N.O.</b>	Third Respondent
<b>NICOLA MARTINE COHEN N.O.</b>	Fourth Respondent
<b>THE CAPE TOWN COMMUNITY HOUSING COMPANY (PTY) LTD</b>	Fifth Respondent

And

<b>DEPARTMENT OF HUMAN SETTLEMENTS</b>	First Amicus Curiae
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**SECOND AMICUS CURIAE'S PRACTICE NOTICE**

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**The Nature of the Proceedings**

This is an application for leave to appeal against the judgment handed down by the Honourable Mr Justice Binns-Ward on 23 February 2017 (case number: 5283/2016). Should the appeal be upheld, the relief sought is for the Order of the High Court to be set aside and replaced; alternatively, the matter is to be remitted to the High Court to determine a factual dispute about whether the section 129 notices, sent out by the Fifth Respondent in terms of the National Credit Act 34 of 2005, included the amount that the Applicants allegedly owed the Fifth Respondent.

**Issues that will be Argued**

1. The merits of the appeal against the judgment handed down by Binns-Ward, J handed down in the Western Cape High Court (Case No. 5383/16)
2. Whether a notice in terms of section 129(1) of the National Credit Act must indicate the amount that a creditor alleges is owed by the debtor.
3. What is the effect of a late recordal of an Instalment Sale Agreement? Consider this with reference to section 26 of the Alienation of Land Act.

Our oral argument will address the above.

## **Portions of the Record Necessary for the Determination of the Matter**

This is a matter for the parties to address.

## **Estimated Duration of Oral Arguments**

The written submissions of the second *amicus curiae* detail extensively arguments focused on women's vulnerability in respect of evictions (which is exacerbated by their vulnerability within relationships); the need for a gendered lens in proceedings that have a broader impact; the impact of the cancellation of a contract in respect of a state subsidised house on women's right to housing; and South Africa's international and regional obligations. Subject to the direction from this Court, the amicus will request no more than ten (10) minutes for oral argument.

## **Summary of Argument**

1. The issues before the Court have been narrowed to the Applicants' factual matrix, however the impact of a judgment handed down in this matter will impact upon all those who have entered into similar contracts, and the right to housing more broadly.
2. The need for a gendered lens in these proceedings, as it affects a population which is predominantly made up of women, and therefore impacts on women's ability to own homes. The intersectional forms of discrimination faced by women, and their vulnerability in relationships. The ongoing discrimination faced by women in respect of access to land, housing and tenure security, and ownership.

3. The position and purpose of the Fifth Respondent, its impact on, and obligation towards the right to housing.
4. An interpretation of section 129 of the National Credit Act that is line with section 26 of the Constitution. The manner in which contracts are cancelled in terms of section 129 of the National Credit Act directly impacts women's right to housing, which therefore requires a degree of caution to be exercised by the Fifth Respondent when cancelling such contracts.
5. The factors that should be considered before contracts which involve state-subsidised houses are cancelled. The current lack of protection provided for those who enter into contracts of this nature, and whose ability to obtain a state-subsidised house in the future, and therefore their right to housing is impacted.
6. South Africa's international and regional obligations in respect of gender equality, women's rights to access to, and control over, land.

### **List of Authorities for Oral Argument**

#### Legislation

1. The Constitution of the Republic of South Africa
2. The National Credit Act 34 of 2005
3. Prevention of Illegal Evictions and Prevention of Unlawful Occupation Act 19 of 1998

#### Cases

1. *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) SA 104 (CC).

2. *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC).
3. *Gundwana v Steko Development and Others* 2011 (3) SA 608 (CC);
4. *Jaftha v Schoeman and Others, Van Rooyen v Stoltz and Others* 2005 (2) SA 140.
5. *Katshwa and Others v Cape Town Community Housing Company (Pty) Ltd* 2014 (2) SA 128 (WCC).
6. *Mphango v Aengus Lifestyle Properties* 2012 (3) SA 531 (CC).
7. *PE Municipality v Various Occupiers* 2005 (1) SA 217 (CC).
8. *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others* 2010 (3) SA 454.

#### International law and regional law instruments

1. Convention on the Elimination of all forms of Discrimination against Women
2. Covenant on Economic Social and Cultural Rights
3. Guiding Principles on Business and Human Rights
4. Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa
5. Sustainable Development Goals
6. Universal Declaration of Human Rights
7. UN CEDAW Committee Recommendation, Forty-eighth session, 'Concluding observations of the Committee on the Elimination of Discrimination against Women' (2011) UN Doc CEDAW/C/ZAF/CO/4.

1. CESCR General Comment No 16: Article 3: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (2005) UN Doc E/C.12/2005/3.

### Secondary Sources

2. Davis, K “Intersectionality as a Buzzword: A Sociology of science perspective on What makes a Feminist Theory Successful” *Feminist Theory* 9 (2008).
3. Spies, A ‘Considering the impact of amicus curiae participation on feminist litigation strategy’ *SAJHR* (2015) 136.
4. Sweetman, C ‘How Title Deeds make Sex Safer: Women’s Property Rights in an era of HIV’ (Oxfam International).
5. Open Society Foundation ‘Securing Women’s Land and Property Rights: A Critical Step to address HIV, Violence and Food Security’ (Briefing Paper) March 2014.
6. UN Food and Agriculture Organisation, ‘The State of Food and Agriculture: 2010 – 2011’ Rome (2011).

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