

IN THE EQUALITY COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)  
Before Honourable Justice Fortuin  
Cape Town: 7 September 2022

*[Handwritten signature]*  
11/09/22

Case No: EC09/2020

In the matter between:

**GADIJA ABDULLAH** First Applicant

**WOMEN'S LEGAL CENTRE TRUST** Second Applicant

and

**EBRAHIM ADBULLAH** First Respondent

**ISMAIL ABDULLAH** Second Respondent

**LAFEESAH ABDULLAH** Third Respondent

**CITY OF CAPE TOWN** Fourth Respondent

**REGISTRAR OF DEEDS** Fifth Respondent



*[Handwritten signature]*  
**DRAFT ORDER – RULE NISI**

HAVING HEARD COUNSEL FOR THE APPLICANTS AND FOURTH RESPONDENT, IT IS ORDERED:

1. That a rule *nisi* be and is hereby issued calling upon all interested parties to show cause on 14 February 2023 at 10h00 why an order in the following terms should not be made:

1.1. The sale agreements concluded pursuant to paragraph 4(a) of the housing allocation policy known as the '*Housing Scheme Constructed by the Local*

Filed by: MHI Attorneys  
Tel.: M Bisschoff  
Tel.: 0861919070  
Email: michelle@mhilaw.co.za

*Authority* ('the Policy') with married males are declared to be *contra bonos mores* to the extent that these agreements do not reflect the female spouses (as at the date of allocation) of the married males allocated the delayed transfer units in terms of the Policy ('the housing units') as co-purchasers, in equal shares, of such housing units.

1.2. The Policy is declared to be inconsistent with the Constitution and in particular, discriminatory against women, as contemplated by s 8 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, in that the sale agreements referred to in paragraph 1.1 above concluded with married males, do not reflect the female spouses (as at the date of allocation) of the married males allocated the housing units in terms of the Policy as co-purchasers, in equal shares, of such housing units.

1.3. Directing that all the sale agreements referred to in paragraphs 1.1 and 1.2 above, in respect of which the housing units have not been transferred, shall upon the date of granting this order, be amended and rectified to reflect both the married male beneficiaries and their female spouses (as at the date of allocation) (hereinafter 'the beneficiaries'), as co-purchasers, in equal shares, of the housing units, in terms of the provisions of the addendum agreement attached marked '**Annexure A**'

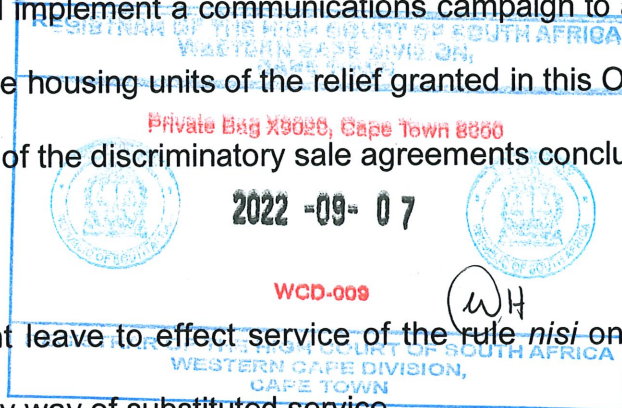
1.4. Directing that the signature of the addendum agreements by the parties is dispensed with.



- 1.5. Directing that the Directive attached marked **'Annexure B'** shall be issued by the Fourth Respondent to all its housing offices forthwith, dealing with the implementation of this order.
- 1.6. Directing that the Fourth Respondent shall pass transfer of the housing units to the co-purchasers in the sale agreements as amended in terms of paragraph 1.3 above, in equal and undivided shares, when transfer of the housing units becomes due in terms of the sale agreements as amended, and upon conclusion of the verification process.
- 1.7. Pending transfer of the housing units as contemplated in paragraph 1.6 above, the Fourth Respondent is interdicted and restrained from passing transfer of such units only to the male beneficiaries when transfer of the housing units become due in terms of the sale agreements.
- 1.8. The Fourth Respondent shall implement a communications campaign to alert the female beneficiaries of the housing units of the relief granted in this Order in respect of the amendment of the discriminatory sale agreements concluded in terms of the Policy.
2. Granting the Fourth Respondent leave to effect service of the rule *nisi* on the male and female beneficiaries by way of substituted service.
3. Directing that such substituted service shall be effected by the Fourth Respondent on or after 8 September 2022 by way of:
- 3.1. Publication of a notice in accordance with the draft attached marked

**'Annexure C'** ('the notice') in the following manner:

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3.1.1. By one publication on the City of Cape Town ('COCT') website,  
<https://www.capetown.gov.za>;

3.1.2. By one publication in the Government Gazette;

3.1.3. By one publication in each of the Argus, the Cape Times, the Daily Voice, Die Son, the Southern Mail, the Plainsman, the Athlone News, the Metro Burger, the Peoples Post, the Weskus Nuus and the Tygerburger newspapers;

3.1.4. By attaching the notice to the monthly statements issued by the Fourth Respondent in respect of the loan accounts for the sale agreements entered into pursuant to the allocation of housing by the Fourth Respondent for 2 consecutive months.

3.2. Broadcasts on the public broadcasting service and commercial services of the following stations:

3.2.1. Radio 786, Cape Talk, Heart FM, Good Hope, RSG and Voice of the Cape.

3.2.2. Such radio broadcasts are to run for two weeks, with one spot per station per day at different times, alternating mid-morning and mid-afternoons, in English and in Afrikaans, depending on the language in which the particular station broadcasts.

3.2.3. During such radio broadcasts the impact of the proposed addendum agreement (Annexure A) is to be explained and interested parties are



to be directed to the COCT website, where a copy of the notice and relevant application papers will be accessible.

3.3. Display advertising on the Provincial Department of Human Settlements web page; and

3.4. Social media posts and videos on the Fourth Respondent's social media platforms including Facebook and Twitter.

4. Directing the Fourth Respondent to have available for inspection a copy of the founding affidavit in the main application, excluding its annexures, the Policy and the counter-application papers, at the following addresses as set out in the attached 'Annexure D'.

5. Directing that any party that intends opposing this counter-application is required:

5.1. to notify the Fourth Respondent's attorneys in writing on or before 15 November 2022;

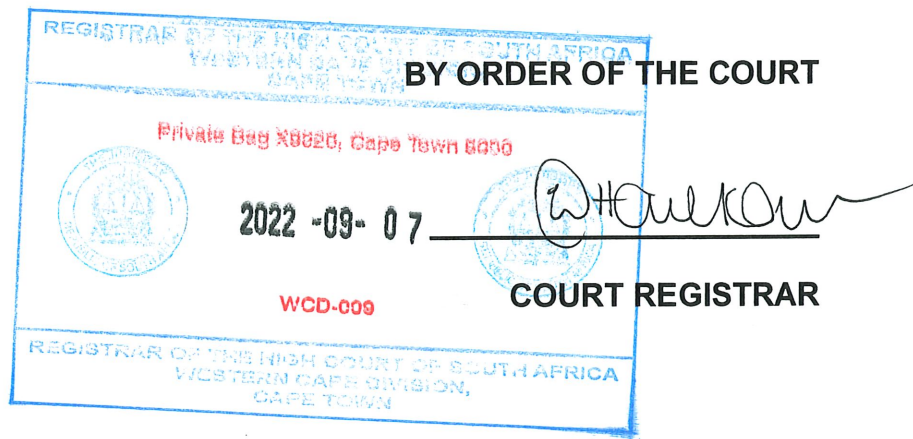
5.2. to appoint, in such notification, an address which is within fifteen (15) kilometres of the office of the Registrar of the High Court at which that party will accept notice and service of any documents and processes;

5.3. to file their opposing affidavit, if any, on or before **8 December 2022**.



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- 6. The Women's Legal Centre undertakes to disseminate this order, through its website and social media platforms, and through its Human Rights Defenders Programme which is a community based feminist movement active across the entire Cape Flats region.



**ADDENDUM TO THE DEEDS OF SALE**

Entered into by and between:

**THE CITY OF CAPE TOWN**

(hereinafter "the seller")

And

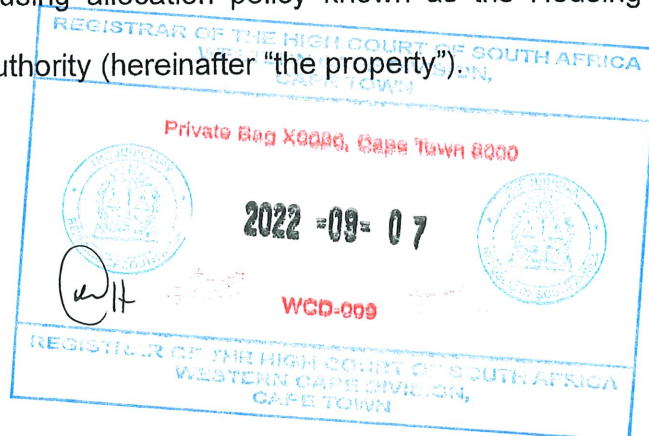
**Beneficiaries of paragraph 4(a) of the housing allocation policy known as the Housing Scheme Constructed by the Local Authority** (hereinafter "the purchaser")

And

**The female spouses of the beneficiaries of paragraph 4 (a) of the housing allocation policy known as the Housing Scheme Constructed by the Local Authority**

(hereinafter "the co-purchaser")

**WHEREAS** the seller's predecessor in title entered into a deed of sale with the purchaser (hereinafter "the deed of sale") for the sale of a property in terms of paragraph 4 (a) of the housing allocation policy known as the Housing Scheme Constructed by the Local Authority (hereinafter "the property")



**AND WHEREAS** the deed of sale was entered into by and between the seller and the purchaser in terms of a housing policy that was operative at the time of signature thereof.

**AND WHEREAS** the co-purchaser, despite being a beneficiary of the property in terms of the housing policy, is not reflected in the deed of sale as co-purchaser of the property.

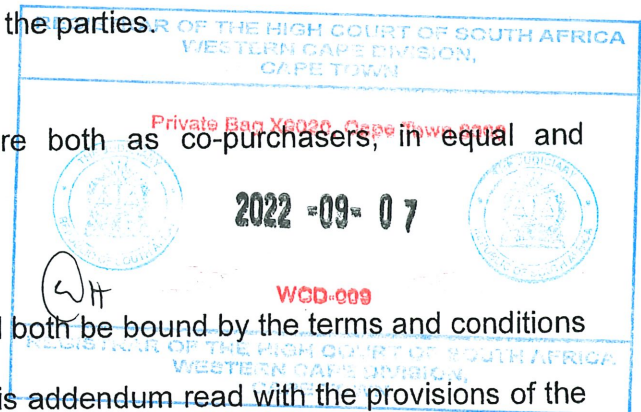
**AND WHEREAS** the Court has directed that the deed of sale ought to reflect the co-purchaser as a party to the deed of sale.

**NOW THEREFORE THE COURT DIRECTS THAT THE DEED OF SALE BE AMENDED AND RECTIFIED ACCORDINGLY:**

1. This addendum together with the deed of sale constitutes the whole agreement between the seller, the purchaser and the co-purchaser and no agreements, representations or warranties between the parties regarding the subject matter hereof other than those set out herein and in the deed of sale as read with the provisions of the Order of Court granted by the Equality Court under case number EC09/2020 dated [xxx] are binding on the parties.

2. The purchaser and co-purchaser are both as co-purchasers, in equal and undivided shares of the property.

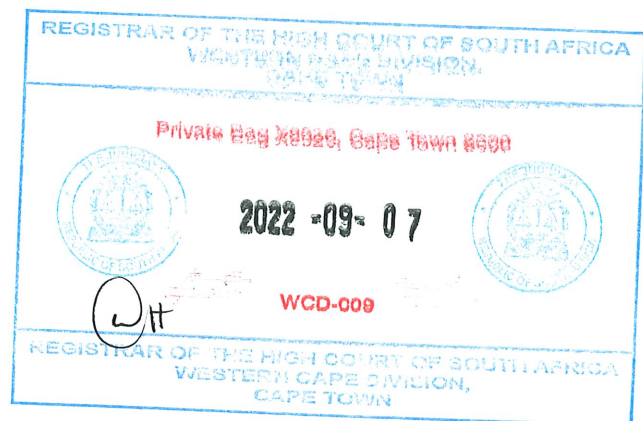
3. The purchaser and co-purchaser shall both be bound by the terms and conditions of the deed of sale as amended by this addendum read with the provisions of the





Order of Court granted by the Equality Court under case number EC09/2020 dated [xxx].

4. The purchaser and co-purchaser are both entitled to full and equal rights of occupation, use of and access to the property.
5. When transfer of the property becomes due in terms of the deed of sale, the purchaser and co-purchaser shall be entitled to take transfer of the property in equal and undivided shares, upon conclusion of the verification process.
6. As provided for in the Order of Court granted by the Equality Court under case number EC09/2020 dated [xxx], neither party is required to sign this addendum.
7. No addition to or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from the deed of sale, as amended by this addendum read with the provisions of the Order of Court granted by the Equality Court under case number EC09/2020 dated [xxx], or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives.

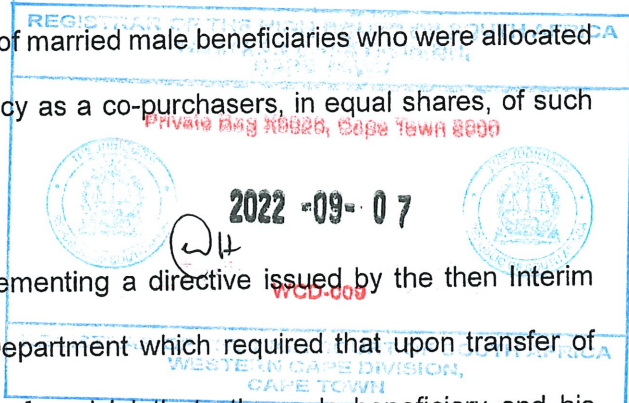


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DIRECTIVE - CITY OF CAPE TOWN

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1. In a court order granted on [xxx], the City of Cape Town ('the City') obtained an order in the Equality Court under case number EC09/2020 in relation to sale agreements in respect of City housing stock concluded historically pursuant to paragraph 4(a) of the Housing Allocation Policy known as '*Housing Scheme Constructed by the Local Authority*' ('the Policy'), for the purchase of so called 'delayed transfer units' ('the housing units').
2. The court order concerns sale agreements which were historically concluded with married male beneficiaries in terms of the Policy, and which did not reflect the female spouses (as at the date of allocation) of married male beneficiaries who were allocated the housing units in terms of the Policy as a co-purchasers, in equal shares, of such housing units.
3. Since 2002, the City has been implementing a directive issued by the then Interim Manager of the Housing Services Department which required that upon transfer of such properties, the property is transferred jointly to the male beneficiary and his spouse, and title registered in both parties' names, regardless of the fact that the female spouse was not party to the sale agreement.
4. Pursuant to the court order, in the case of housing units which have not been transferred, the sale agreements have been amended and rectified to reflect that that both the married males (the original beneficiary) and their female spouses (as at the date of allocation) are co-purchasers in equal shares of the housing units, in terms of the provisions of the addendum agreement annexed to the court order, marked 'Annexure A'.

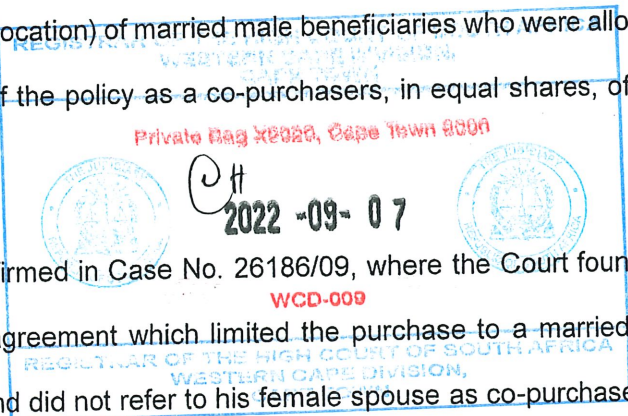


5. The amended sale agreement provides the co-purchasers with full and equal rights of occupation, use of and access to the housing unit.
6. When a co-purchaser approaches the City regarding the property, they must be provided with a copy of the court order and Annexure A, and the relevant SAP record/profile must be updated to reflect both the co-purchasers as co-debtors responsible for payment in terms of the delayed transfer transaction.
7. Pending transfer of the housing units, the City shall not pass transfer of such units only to the male beneficiaries when transfer of the housing units become due in terms of the sale agreements.
8. At transfer stage, the City shall pass transfer of the housing units to the co-purchasers in the sale agreements as amended, in equal and undivided shares, when transfer of the housing units becomes due in terms of the sale agreements as amended, and upon conclusion of the verification process.



NOTICE - CITY OF CAPE TOWN

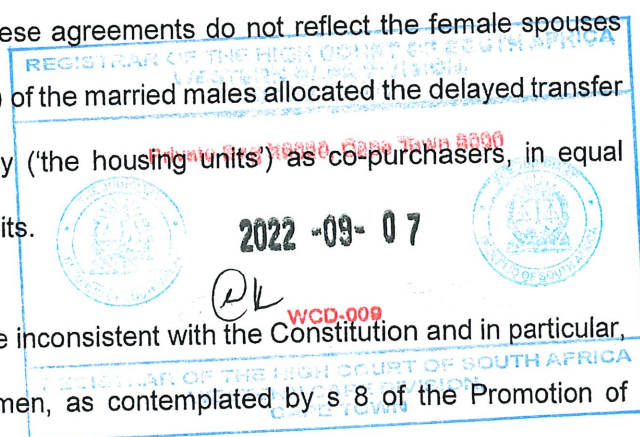
1. In a court order granted on [7 September 2022], the City of Cape Town ('the City') has sought an order in the Equality Court under case number EC09/2020 in relation to sale agreements in respect of City housing stock concluded historically pursuant to paragraph 4(a) of the Housing Allocation Policy known as '*Housing Scheme Constructed by the Local Authority*' ('the Policy'), for the purchase of so called 'delayed transfer units' ('the housing units'). These sale agreements were concluded prior to September 2000, when the City of Cape Town Municipality was established.
2. The court order concerns sale agreements which were historically concluded with married male beneficiaries in terms of the Policy, and which did not reflect the female spouses (as at the date of allocation) of married male beneficiaries who were allocated the housing units in terms of the policy as a co-purchasers, in equal shares, of such housing units.
3. This legal position was confirmed in Case No. 26186/09, where the Court found that the provisions of the sale agreement which limited the purchase to a married male beneficiary as purchaser, and did not refer to his female spouse as co-purchaser, are contrary to public policy and unenforceable.
4. The City is now seeking to remedy the historic contractual position and to ensure that the sale agreements are rectified with immediate effect, to reflect that both the married males (the original beneficiary) and their female spouses (as at the date of allocation) are co-purchasers in equal shares of the housing units, in terms of an order which is in effect an addendum to the sale agreement which is to be approved by the Equality Court. This amended sale agreement will also provide the co-purchasers with full and



equal rights of occupation, use of and access to the properties, to deal with the position prior to transfer.

5. This notice serves to notify individuals that are beneficiaries of the Policy that a counter application has been made in the Equality Court of South Africa (Western Cape Division, Cape Town) for an order in the following terms:

5.1.1. The sale agreements concluded pursuant to paragraph 4(a) of the housing allocation policy known as the 'Housing Scheme Constructed by the Local Authority' ('the Policy') with married males are declared to be *contra bonos mores* to the extent that these agreements do not reflect the female spouses (as at the date of allocation) of the married males allocated the delayed transfer units in terms of the Policy ('the housing units') as co-purchasers, in equal shares, of such housing units.

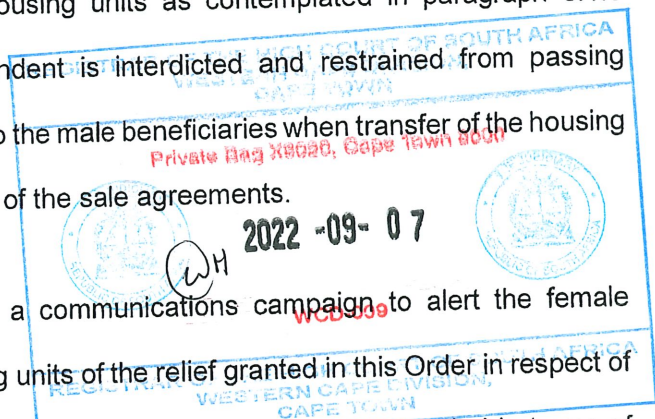


5.1.2. The Policy is declared to be inconsistent with the Constitution and in particular, discriminatory against women, as contemplated by s 8 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, in that the sale agreements referred to in paragraph 6.1.1 above concluded with married males, do not reflect the female spouses (as at the date of allocation) of the married males allocated the housing units in terms of the Policy as co-purchasers, in equal shares, of such housing units.

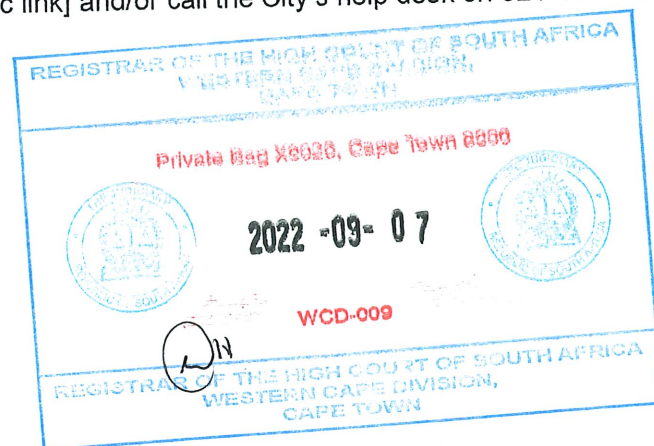
5.1.3. Directing that all the sale agreements referred to in paragraphs 6.1.1 and 6.1.2 above, in respect of which the housing units have not been transferred, shall upon the date of the granting this order, be amended and rectified to reflect both the married male beneficiaries and their female spouses (as at the date of allocation) (hereinafter 'the beneficiaries'), as co-purchasers, in equal shares,

of the housing units, in terms of the provisions of the addendum agreement annexed hereto marked 'Annexure A'.

- 5.1.4. Directing that the signature of the addendum agreements by the parties is dispensed with.
- 5.1.5. Directing that the Directive annexed hereto marked 'Annexure B' shall be issued by the Fourth Respondent to all its housing offices forthwith, dealing with the implementation of this order.
- 5.1.6. Directing that the Fourth Respondent shall pass transfer of the housing units to the co-purchasers in the sale agreements as amended in terms of paragraph 6.1.3 above, in equal and undivided shares, when transfer of the housing units becomes due in terms of the sale agreements as amended, and upon conclusion of the verification process.
- 5.1.7. Pending transfer of the housing units as contemplated in paragraph 6.1.6 above, the Fourth Respondent is interdicted and restrained from passing transfer of such units only to the male beneficiaries when transfer of the housing units become due in terms of the sale agreements.
- 5.1.8. The City shall implement a communications campaign to alert the female beneficiaries of the housing units of the relief granted in this Order in respect of the amendment of the discriminatory sale agreements concluded in terms of the Policy.
6. All interested parties are called upon to show cause why, on 14 February 2023 at 10h00, an order in the terms set out in paragraph 5.1.1 to 5.1.8 above should not be granted.



7. A full copy of the founding papers in the application made by Gadija Abdullah and the Women's Legal Centre Trust, the Policy, the counter application and the order, is available on the official website of the City of Cape Town at [www.capetown.gov.za](http://www.capetown.gov.za).
8. Should a final order be granted on the terms set out in paragraphs 5.1.1 to 5.1.8, the amendment to the sale agreements, by way of the addendum agreement, will be of immediate effect and the order will be published on the website of the City of Cape Town. The City of Cape Town will also conduct a communications campaign to advise the public of the order.
9. In the event that a final order is not granted in the terms as set out in paragraphs 5.1.1 to 5.1.8 above, this will also be published on the website of the City of Cape Town and interested parties will be advised of the steps to be followed in that case.
10. In light of the order sought in paragraphs 5.1.1 to 5.1.8 above, interested parties are directed to check the website of the City of Cape Town on a regular basis.
11. For further information or queries, please log on to [to insert Cape Town website address with the specific link] and/or call the City's help desk on 021 444 0333.

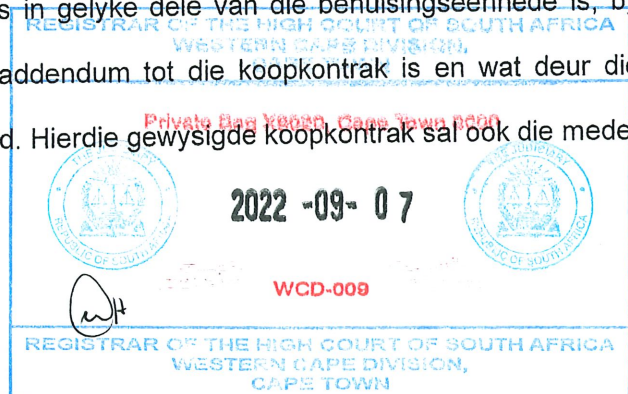


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**KENNISGEWING- STAD KAAPSTAD**

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1. Ingevolge 'n hofbevel toegestaan op [7 September 2022] het die Stad Kaapstad ('die Stad') 'n bevel in die Gelykheidshof versoek onder saaknommer EC09/2020 met betrekking tot koopkontrakte vir behuising ingevolge paragraaf 4(a) van die behuisingstoekenningsbeleid bekend as die '*Housing Scheme Constructed by the Local Authority*' ('die Beleid'), vir die aankoop van sogenaamde 'uitgestelde oordragseenhede' ('die behuisingseenhede'). Hierdie koopkontrakte is gesluit voor September 2000, toe Stad Kaapstad Munisipaliteit gestig is.
2. Die hofbevel het betrekking op koopkontrakte wat histories met getroude manlike begunstigdes ingevolge die Beleid gesluit is, en welke kontrakte nie die vroulike gades (soos op die toekenningsdatum) van getroude manlike begunstigdes aan wie die behuisingseenhede toegeken is, weerspieël het as mede-kopers, in gelyke aandele, nie.
3. Hierdie regsposisie is bevestig in Saak No. 26186/09, waartydens die Hof bevind het dat die bepaling van die koopkontrak wat die transaksie beperk tot 'n getroude manlike begunstigde as koper, en nie na sy vroulike gade as mede-koper verwys het nie, teenstrydig is met die openbare beleid en onafdwingbaar is.
4. Die Stad beoog nou om die historiese kontraktuele posisie aan te spreek en om te verseker dat hierdie koopkontrakte met onmiddellike effek reggestel word, om te bevestig dat beide die getroude mans (die oorspronklike begunstigde) en hul vroulike gades (soos op die datum van toekenning) mede-kopers in gelyke dele van die behuisingseenhede is, by wyse van 'n bevel wat in wese 'n addendum tot die koopkontrak is en wat deur die Gelykheidshof goedgekeur moet word. Hierdie gewysigde koopkontrak sal ook die mede-





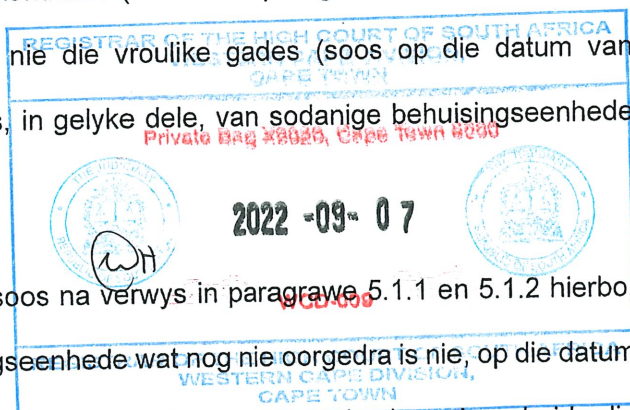
kopers bekleë met volle en gelyke regte tot okkupasie, gebruik van en toegang tot die eiendomme, om die posisie voor oordrag ook aan te spreek.

5. Die doel van hierdie kennisgewing is om individue wat begunstigdes van die Beleid is in kennis te stel dat 'n teenaansoek in die Gelykheidshof van Suid-Afrika (Wes-Kaap Afdeling, Kaapstad) geloods is vir 'n bevel in die volgende terme:

5.1.1. Dat die koopkontrakte wat gesluit is met getroude mans ingevolge paragraaf 4(a) van die behuisingstoekenningsbeleid bekend as die '*Housing Scheme Constructed by the Local Authority*' ('die Beleid'), as *contra bonos mores* verklaar word tot die mate wat hierdie koopkontrakte nie die vroulike gades (soos op die datum van toekenning) van die getroude mans wat sogenaamde 'uitgestelde oordragseenhede' ('die behuisingseenhede') toegeken is as mede-kopers, in gelyke dele, van sodanige behuisingseenhede weerspieël nie.

5.1.2. Dat die Beleid as teenstrydig met die Grondwet en spesifiek as diskriminerend teenoor vroue verklaar word, soos uiteengesit in Artikel 8 van die Wet op die Bevordering van Gelykheid en Voorkoming van Onbillike Diskriminasie, Wet 4 van 2000, deurdat die koopkontrakte (waarna in paragraaf 5.1.1 verwys word) gesluit met getroude mans nie die vroulike gades (soos op die datum van toekenning) as mede-kopers, in gelyke dele, van sodanige behuisingseenhede insluit nie.

5.1.3. Dat al die koopkontrakte soos na verwys in paragrawe 5.1.1 en 5.1.2 hierbo, ten opsigte van die behuisingseenhede wat nog nie oorgedra is nie, op die datum van die toestaan van hierdie bevel gewysig en reggestel sal word om beide die getroude manlike begunstigdes en hul vroulike gades (soos op die datum van toekenning) (hierna 'die begunstigdes'), as mede-kopers, in gelyke dele van die



behuisingseenhede in te sluit, ingevolge die bepalings van die addendum tot die koopkontrak hierby aangeheg as Aanhangsel "A".

5.1.4. Dat die vereiste vir ondertekening van die addendum tot die koopkontrak deur die partye mee weggedoen word.

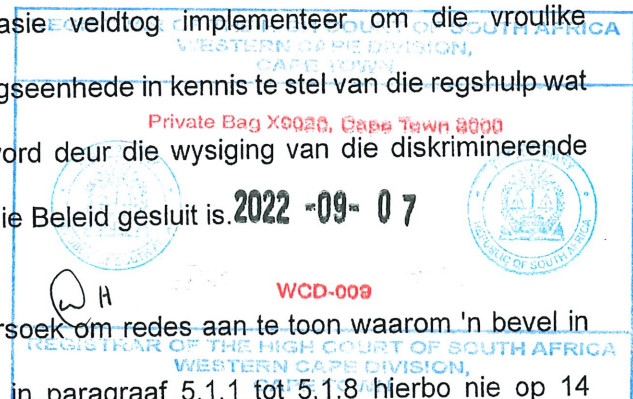
5.1.5. Dat die Direktief hierby aangeheg en gemerk as Aanhangsel "B", wat handel met die implementering van hierdie Bevel, met onmiddellike effek deur die Vierde Respondent aan al sy behuisingskantore gestuur sal word.

5.1.6. Dat die Vierde Respondent die behuisingseenhede aan die mede-kopers in die koopkontrakte, soos gewysig ingevolge paragraaf 5.1.3 hierbo sal oordra, in gelyke dele, wanneer oordrag van die behuisingseenhede moontlik word ingevolge die koopkontrakte soos gewysig, en na afloop van die verifikasie proses.

5.1.7. Dat hangende oordrag van die behuisingseenhede soos na verwys in paragraaf 5.1.6 hierbo, die Vierde Respondent verbied word om sodanige eenhede slegs aan die manlike begunstigdes oor te dra wanneer oordrag van die behuisingseenhede ingevolge die koopkontrakte moontlik word.

5.1.8. Dat die Stad 'n kommunikasie veldtog implementeer om die vroulike begunstigdes van die behuisingseenhede in kennis te stel van die regshulp wat in hierdie Bevel toegestaan word deur die wysiging van die diskriminerende koopkontrakte wat ingevolge die Beleid gesluit is. **2022-09-07**

6. Alle belanghebbende partye word versoek om redes aan te toon waarom 'n bevel in terme van die bepalings uiteengesit in paragraaf 5.1.1 tot 5.1.8 hierbo nie op 14 Februarie 2023 om 10h00 toegestaan moet word nie.



7. 'n Volledige afskrif van die funderende stukke in die aansoek van Gadija Abdullah en die Women's Legal Centre Trust, asook die Beleid, die teenaansoek en die bevel, is beskikbaar op die amptelike webwerf van die Stad Kaapstad by [www.capetown.gov.za](http://www.capetown.gov.za).
8. Indien 'n finale bevel toegestaan word in die terme soos uiteengesit in paragrawe 5.1.1 tot 5.1.8, sal die wysiging van die koopkontrakte, by wyse van die addendum-ooreenkoms, onmiddellik van krag wees en die bevel sal gepubliseer word op die webwerf van die Stad Kaapstad. Die Stad Kaapstad sal ook 'n kommunikasie veldtog voer om die publiek van die bevel in kennis te stel.
9. Indien 'n finale bevel nie toegestaan word in die terme soos uiteengesit in paragrawe 5.1.1 tot 5.1.8 nie, sal die uitkoms ook op die webwerf van die Stad Kaapstad gepubliseer word en belanghebbendes sal in kennis gestel word van die stappe wat in daardie geval gevolg moet word.
10. In die lig van die regshulp wat in paragrawe 5.1.1 tot 5.1.8 hierbo gevra word, word belanghebbendes versoek om die webwerf van die Stad Kaapstad op 'n gereelde basis te besoek.
11. Vir verdere inligting of navrae, besoek asseblief [Kaapstad-webwerfadres met die spesifieke skakel om ingevoeg te word] en/of skakel die Stad se hulplyn by 021 444 0333.



# ANNEXURE D

HOUSING OFFICE NAME	LOCATION/ADDRESS
Parow Homeownership Office	1st Floor, Parow Centre, Cnr Voortrekker and De La Rey Roads, Parow
Melton Rose	c/o Kool & Ganna Street, Melton Rose
Scottsdale	Eoan Avenue, Scottsdale
Mitchells Plain	42 Chrysler Crescent, Beacon Valley
Strand	62 Lower Gordonsbay Road, Strand
Athlone	Avenue Dr Abdurahman, Kewtown, Athlone
Grassy Park	c/o Linda & Olga Roads, Grassy Park
Hanover Park	Lansdowne Corner Mall, cnr Jan Smuts Drive and Govan Mbeki Road
Retreat	78 Joe Marks Boulevard, Retreat
Adriaanse	c/o Adriaanse & Seboa Street, Adriaanse
Ravensmead	Edgar Bullock Street, Ravensmead
Belhar	c/o Huguenot & Alabama Square, Belhar
Wesfleur	Wesfleur Circle, Atlantis
Manenberg	cnr Vygekraalweg and Wye Rd, Manenberg
Bonteheuwel	Kiaat Way, Bonteheuwel
Bishop Lavis	Lavis Drive, Bishop Lavis
Valhalla Park	94 Angela Street, Valhalla Park
Heideveld	167 Heideveld Avenue, Heideveld
Ocean View	Carina Close, Ocean View
Leonsdale	12th Avenue, Elsie's River
Bellville South	Kasselsvlei Rd, Bellville South

