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SOUTH AFRICAN HUMAN RIGHTS COMMISSION**FILE REFERENCE NO : FS/1415/0057****APPEAL NO :**

In the matter between :

SOUTH AFRICAN HUMAN RIGHTS COMMISSION**(on behalf of BOKAMOSO RESIDENCE, QWA-QWA)**

Complainant

and

MALUTI-A-PHOFUNG LOCAL MUNICIPALITY

Respondent

REASONS FOR APPEAL

1.

BACKGROUND INFORMATION :

- 1.1 The Government of the Republic of South Africa is the registered owner of the farm known as the Remaining Extent of the farm "**Bluegumbosh 199**", **HARRISMITH** (hereinlater referred to as "**the farm Bluegumbosh**").
- 1.2 During **January 2012** it came to the knowledge of the Maluti-A-Phofung Municipality (hereinlater referred to as "**the municipality**") that certain

properties and erven were being sold as residential and business sites at the farm Bluegumbosh by the Chairperson of the Maboela Traditional Council being one Morena Tsholo Mopeli. From allegations made by residents in the surrounding area it was confirmed that the sites concerned were sold at a fixed amount of **R500.00** per site and that the funds were deposited into an account opened at the South African Post Office, PHUTHADITJHABA branch.

- 1.3 As a result of this information received a meeting was set up between representatives of the municipality and the Maboela Traditional Council as well as the said Tsholo Mopeli referred to.

- 1.4 During **February 2012** officials of the municipality further learned that sites were being allocated and some people were erecting shacks regardless of pending talks between the municipality and the said Tsholo Mopeli on the same issue of the farm concerned. Shortly thereafter the formal settlement officers of the municipality went to the site to assess the situation. Based on what they found there they then made arrangements to go and evict all the people that were busy erecting the informal structures in preparations for settlements using the municipality's impoundment policy bylaws. Such officials invited members of the South African Police Services to accompany them for security purposes. On arrival at the farm the police service indicated that they were not aware of the magnitude of the problem and suggested that they would need more manpower to assist the municipal workers with the removal of the illegal occupants' building materials.

1.5 A team was therefore then also tasked by the municipality to do a site inspection at the farm. Upon their arrival there they saw various structures on the property and on closer inspection of the structures it appeared that they were not complete. No persons were found to be in occupation of the structures.

1.6

1.6.1 The municipality identified the farm Bluegumbosh for future extension of PHUTHADITJHABA and has already made written request to the Department of Land Affairs to transfer this land into the name of the municipality so that a township can be established and registered.

1.6.2 The process of township establishment commenced during 2007 and could not be approved at the township's board level as the landownership was a concern. The transfer of land from the National Department of Rural Development and Land Reform to the Respondent herein could however not proceed as there was a claim registered against the same land.

1.6.3 During **August 2011** the Land Claims Commission Division within the Department of Rural Development and Land Affairs reached an agreement with both the claimants and the municipality to the effect that the municipality will set aside sites on the identified portion of the proposed layout plan of the township for restitution claimants who had registered a claim against property.

1.6.4 The invasion of the land referred to occurred just as the municipality was about to commence with the township establishment project. It was also

evident that the invasion was not being done only by the local residents in the area but from what could be ascertained from the officials concerned also by persons from other provinces which could be ascertained from the registration numbers and letters of expensive vehicles in the area concerned.

- 1.7 During **February 2012** Mr Gawie Rossouw, the attorney acting on behalf of the municipality, visited the site concerned and found approximately 50 people in the process of erecting dwellings and shacks on the property concerned.
- 1.8 During **June 2012**, the Respondent together with the Minister of Rural Development and Land Reform, launched an application in the Free State High Court on an urgent basis, the reasons for such urgency being :
 - (i) It was believed that further people whose identity were unknown may further attempt to occupy the Bluegumbosh farm and the structures already erected on the farm shortly and further attempt to erect further structures to occupy the land;
 - (ii) If an order was not granted as sought, the unlawful occupiers may take occupation of the property which will result that more and more people will take occupation which will further result in unhealthy and unhygienic circumstances whereas no services had been connected at the property concerned, being the farm Bluegumbosh. It was contended further that no hardship were to be suffered by the unlawful occupiers as they have at the time of disposing to the affidavit, being

February 2012, not yet taken occupation of any of the sites concerned, alternatively had not been in occupation of such sites for a long period of time;

- (iii) Furthermore, if the Maboela Traditional Council and Morena Tsholo Mopeli were not interdicted from selling the property as described, the situation will only worsen in the result that the establishment of the township by the Respondent for the benefit of the people of PHUTHADITJHABA might not take place.

1.9 In opposition to such application, the Chairperson of the Maboela Traditional Council disposed to an affidavit on behalf of the latter Traditional Council, containing the following most important aspects :

1.9.1 That none of the members of the Council of the said Traditional Council has authority to act for or on behalf of such Traditional Council outside Council. A member of such Traditional Council may only act for such Council in terms of a resolution or agreement of the Council of the said Traditional Council.

1.9.2 Morena Tsholo Mopeli was never authorised by the Maboela Traditional Council to act for such Council in respect of the conduct complained of, namely the allocation of the sites concerned. The said Tsholo Mopeli had no power or authority to allocate stands in the area where he did as the area does not fall under his village or jurisdiction. The said Tsholo Mopeli is the headman of the Bochabela Village.

- 1.9.3 At some stage the Maboela Traditional Council admonished the said Tsholo Mopeli to desist from his conduct to which he responded by saying he takes personal responsibility of whatever may come or happen.
- 1.9.4 It came to light that the said Tsholo Mopeli opened an account at the Post Office which account he used to deposit the money which he received for the allocation of the lands concerned, but he was also not authorised by the Maboela Traditional Council nor its Chairperson for opening this account.
- 1.9.5 Tsholo Mopeli was also reprimanded by the King's Council for the particular region of which Tsholo Mopeli's village formed part of to desist from further allocation of such sites.
- 1.10 During **April 2012** Ogane Ramagaga, the Provincial Chief Director for the Provincial Shared Service Centre, Free State Province, for the Department of Rural Development and Land Reform, deposed to an affidavit and indicated at that stage that the numbers of people who were invading the particular area were still increasing in spite of an announcement on the local radio station by the authorities concerned urging people to desist from further occupying the farm Bluegumbosh and the alleged intervention by the Maboela Traditional Council. He also referred to the fact that the Respondent herein as a local authority has certain duties and responsibilities in terms of certain legislation, in particular the Constitution of the Republic of South Africa, the Health Act as well as certain Commonage Bylaws of the said municipality.

- 1.11 What is of importance at this stage is that the fact that Tsholo Mopeli did not have the necessary authority to allocate certain lands by the said Mabohele Traditional Council was not contested or disputed by Tsholo Mopeli, in his opposing affidavit which was later filed.
- 1.12 During **April 2012** the Honourable **Justice C G van der Merwe** granted a *Rule Nisi* in regards to the relief as sought by the Respondent herein as well as the Minister of Rural Development and Land Reform referred to.
- 1.13 In an opposing affidavit deposed to by Tsholo Mopeli during **May 2012** he stated, amongst others, as follows :
- 1.13.1 He disputed that the said occupiers of the farm Bluegumbosh 199 were unlawful occupiers;
- 1.13.2 It was evident that the need to adequate housing was not only a social as well as a constitutional problem. There existed a serious need for adequate housing and space to live;
- 1.13.3 He did not dispute that the farm Bluegumbosh is at present registered in the name of the Government of the Republic of South Africa;
- 1.13.4 According to him the eventual transfer of the farm Bluegumbosh is due to a historical mistake;

1.13.5 He accepted that a lands claim should have been instituted in regards to the farm Bluegumbosh and stated that he has already instructed his legal representatives for the filing of such lands claim with reference to the said farm.

1.14

1.14.1 In a further affidavit deposed to by Ogane Ramagaga referred to above, during **June 2012**, he referred to the fact that the portion of the farm Bluegumbosh concerned is not included in the boundaries of the Maboleta Traditional Council and therefore also not in that of the Bochabela Village. In this regard he referred to a confirmatory affidavit by Mr Rheeder, an Independent quantity surveyor who has been appointed to ascertain the exact boundaries of the Maboleta Traditional Council in accordance with the relevant legislation in this regard. He further disputed that the Maboleta Traditional Council nor Tsholo Mopeli ever had control over the area concerned. He further stated that the Minister of Rural Development and Land Reform had already approved the proposed development of the property as well as the transfer of the property in the name of the Respondent herein. Since **August 2011** the process of having the property concerned transferred into the name of the Respondent herein has commenced, which process has not yet been finalised. The transfer of such land by the Government needs to be approved by various departments and officials at various levels, which is a lengthy process and which takes time. He further confirmed that Tsholo Mopeli needed a resolution from

the Maboela Traditional Council authorising him to allocate such sites which has not been done.

- 1.14.2 What is of importance is that at that stage already he indicated that a very small percentage of the structures erected on the property were indeed being inhabited. The structures erected were only made from corrugated iron and were not houses as alleged by Tsholo Mopeli.
- 1.15 During **June 2012** Machela Hleli, at that stage the Director : Housing and Planning in the employment of the Respondent herein stated that, to her knowledge, the allocation fee in regards to sites being allocated by tribal authorities amounts to **R50.00** per site. The **R500.00** payments per site, which Tsholo Mopeli admits, having received, were therefore extravagant amounts.
- 1.16 On the **22nd of June 2012** **Acting Justice Snellenburg** confirmed the *Rule Nisi* previously granted and further granted leave to proceed with an application for the eviction of the unlawful occupiers in terms of Section 5(2) read with Section 6 of Act 19 of 1989. The Respondent herein as well as the Minister were also directed to serve the Section 5(2) and 6 notice which notice was compiled in agreement with the legal representatives of both the Respondent herein, the Minister as well as the unlawful occupiers on the farm Bluegumbosh. Subsequent to this order Me Hleli referred to above, also filed a supplementary affidavit in which Me Hleli indicated that a certain piece of land which is in the jurisdiction of the Respondent herein, was identified and was indeed available for the unlawful occupiers of the land after their eviction. Having regard to the availability of the land set out in this affidavit **Judge**

Daffue ordered on the **12th of July 2012** that all the occupiers on the said land be evicted from the property and that such illegal occupiers should vacate this property on or before the **17th of August 2012**. **Judge Daffue** further ordered that should such unlawful occupiers fail to vacate the property as stated, the Respondent herein as well as the Deputy Sheriff for the district HARRISMITH, be authorised to demolish the structures on the farm and to give effect to the court order. The Honourable Court further ordered that the order must be served on the unlawful occupiers by affixing a copy thereof in Afrikaans, English and Sesotho on three notice boards erected by Second Applicant on the farm and by informing the alleged unlawful occupiers per loudhailer of the contents of the order and personally where possible. This was done shortly after the *Rule Nisi* had been granted.

- 1.17 Subsequent to the orders of both **Acting Justice Snellenburg** as well as **Judge Daffue**, the unlawful occupiers of the farm as well as Tsholo Mopeli applied for leave to appeal against such orders which application was dismissed. It needs to be mentioned that this application for leave to appeal was not supported by the Mabolela Traditional Council mainly because, after it came to light that the Mabolela Traditional Council did not authorise the allocation of the sites concerned, proceedings did not continue against this Traditional Council. The application for leave to appeal was dismissed.
- 1.18 Thereafter the unlawful occupiers as well as Tsholo Mopeli applied for leave to appeal to the Supreme Court of Appeal, which application was also dismissed by the Supreme Court of Appeal.

- 1.19 The unlawful occupiers of the farm concerned as well as Tsholo Mopeli further then also applied for leave to appeal to the Constitutional Court which application was also dismissed by the Constitutional Court.
- 1.20 In regards to the background facts which necessitated the application by the Respondent herein, the following is of importance :
- 1.20.1 The majority of the sites concerned were not occupied, but were apparently erected after such sites were allocated by Tsholo Mopeli. The reason for the erection of these sites is up to date unknown to Respondent herein. The involvement of people with expensive motor vehicles with, amongst others, registration plates from Gauteng, clearly indicates that this is not a matter where people who did not have other places available to stay were occupying such land. Furthermore as indicated, the unlawful occupiers paid extravagant fees in regards to the allocation of such sites.
- 1.20.2 Tsholo Mopeli did not have the necessary authorisation to allocate such sites from the Mabohele Traditional Council.
- 1.20.3 No lands claim has been lodged up to date in regards to the land concerned in spite of Tsholo Mopeli's allegations to the effect that people are entitled to that land.

- 1.20.4 The eviction of the unlawful occupiers as well as the demolition of the structures was ordered after the High Court had been satisfied that the requirements of the PIE-Act had been met by Respondents herein.
- 1.20.5 Both the Supreme Court of Appeal as well as the Constitutional Court confirmed the findings of the Free State High Court.
- 1.20.6 After the *Rule Nisi* had been granted during 2012 the order of court had already been served on the unlawful occupiers concerned by affixing a copy thereof in Afrikaans, English and Sesotho on three notice boards erected by the Respondent herein on the farm and by informing the unlawful occupiers per loudhailer of the contents of the order and where possible personal service.
- 1.20.7 After the application for leave to appeal had been dismissed by both the Supreme Court of Appeal as well as the Constitutional Court, the latter Courts did not make any further orders in regards to the service of the order.
- 1.20.8 The unlawful occupiers had the privilege of both an attorney as well as counsel in their representation. It can therefore be accepted that the unlawful occupiers were being informed about the outcome of the applications for leave to appeal referred to.

2.

ALTERNATIVE ACCOMMODATION :

- 2.1 As stated, subsequent to the *Rule Nisi* being confirmed by **Acting Justice Snellenburg**, Me Hleli stated in a supplementary affidavit that a portion of land in the jurisdiction of the Respondent herein has indeed been identified as being available for alternative accommodation for the unlawful occupiers being evicted. On this portion of land, the necessary sanitary services were indeed available for such occupiers. A copy of the affidavit is annexed hereto as annexure "A". The procedure which had to be followed was that the occupiers that were to be evicted, had to show that they were indeed indigent. It speaks for itself that if an unlawful occupier is indeed the owner of registered immovable property in the area concerned or any other area in South Africa, such a person will not be entitled to such alternative accommodation. The attention is again drawn to the involvement of apparently other people outside the area of PHUTHADITJHABA who were not indigent. For that reason the particular applicant for a site on the portion of land as identified, had indeed to show that he / she was indigent.
- 2.2 After the Respondent herein had been satisfied that a particular applicant was indeed part of the unlawful occupiers of the farm Bluegumbosh and was indeed indigent, he / she will then be allocated a site where as stated, the necessary services were and still are available.

3.

THE EVICTION ITSELF :

- 3.1 After receipt of the Court Order, Respondent herein conducted numerous meetings regarding the manner in which the eviction was to take place. In this regard I refer to several Minutes of the Respondent and a report by the Respondent herein regarding the eviction attached hereto as annexures “B”, “C”, “D”, “E” and “F”. Furthermore the Minutes in regards to the Phuthaditjhaba Cluster Eviction Meeting and Attendance Register is attached hereto as annexures “G” and “H”. Furthermore the returns of service and the relevant notes by the Sheriff for the district of PHUTHADITJHABA are attached hereto as annexures “I”, “J”, “K”, “L”, “M”, “N”, “O”, “P”, “Q”, “R” and “S” hereto.
- 3.2 From annexure “K” it is evident that the order was served by the Sheriff on the **9th of June 2014**. The order referred to, is of course that of the Constitutional Court dismissing the unlawful occupiers’ application for leave to appeal.
- 3.3 On the **9th of June 2014** a meeting was held between the representatives of the Respondent herein, the attorney acting on behalf of the Respondent herein, Iceberg, being a private security company, as well as members of the security services, in particular the police services. The meeting was indeed chaired by the Director of Public Safety of the municipality. The purpose of the meeting was to decide how the eviction of the unlawful occupiers was to be

effected. Amongst others, the following was discussed and decided during the meeting :

- 3.3.1 A certain route of entrance had to be used due to the fact that the security services have received information to the effect that the unlawful occupiers dug trenches to prevent large vehicles and horses from entering the area concerned;
- 3.3.2 The people who were to conduct the eviction of the unlawful occupiers were to remove all the possessions of the unlawful occupiers which were to be found in the shacks. Such possessions were then to be specified in an inventory and then taken to an identified store in PHUTHADITJHABA on behalf of such occupiers up until such occupiers then occupied the alternative accommodation referred to.
- 3.3.3 The necessary emergency services such as the medical services, an ambulance as well as the fire brigade were to be present during such eviction.
- 3.3.4 The Respondent herein had to provide transport for such evicted unlawful occupiers where they first had to be accommodated in the fire department building in PHUTHADITJHABA up until the alternative accommodation was ready to occupy. It was anticipated that at the most two nights were necessary in this regard.
- 3.3.5 The evicted unlawful occupiers were to be provided with food during their stay at the fire department.

- 3.3.6 Because of the large number of shacks to be demolished a bulldozer was to be used after the relevant occupiers' belongings had been removed as referred to.
- 3.4 What is of importance is that the order of the Constitutional Court had already been sent to the relevant attorneys, being the attorneys representing the Respondent herein as well as the Minister referred to and the unlawful occupiers on the **23rd of May 2014**. This explains the fact that the unlawful occupiers commenced with the digging of trenches referred to prior to the eviction which actually took place on the **11th of June 2014**. This is of the utmost importance regarding to the fact that the unlawful occupiers were not caught off guard when they were evicted from the property concerned.
- 3.5 Furthermore, the returns of service by the Sheriff indicating that the unlawful occupiers were again notified about the eviction on the **9th of June 2014**, is also relevant.
- 3.6 It needs also to be mentioned that since the first provisional order had been granted during 2012 which was then later confirmed the mood regarding the eviction of the people was everything but peaceful. Since the first court order the occupiers concerned were very intimidating. As stated above in the background facts when the police services first went there to try and evict the approximately 50 people who occupied the land at that stage, it was not peaceful. Attention is again drawn to the fact that a very small percentage of the shacks were actually indeed occupied.

- 3.7 On the **11th of June 2014** at 03:00 the morning a final planning meeting was held with the police before commencing with the eviction process. Thereafter the police, security as well as the sheriff proceeded as planned by removing the occupiers' belongings, transporting such occupiers and by demolishing the shacks by bulldozer as indicated. The occupiers were given the opportunity to remove their own possessions and if they needed assistance the Respondent herein assisted such occupiers by transporting their belongings to the store as indicated.
- 3.8 The evictions took place peacefully and there were no resistance by the occupiers concerned. The emergency services were also present at all times. At approximately 18:00 forty families indicated that they had nowhere else to go. These people together with their portable luggage was then transported to the fire department in PHUTHADITJHABA where they were as stated, to be accommodated for one or two nights pending the preparation of the alternative accommodation as identified. In this regard attention is again drawn to the fact that the portion of land which was indeed identified and made available for alternative accommodation was indeed an improvement to the sites which was occupied by the unlawful occupiers in view of the fact that at the particular portion of land the necessary services, which did not cause health risks, were made available whereas none was available on the sites as occupied by the unlawful occupiers.
- 3.9 Upon their arrival at the fire department the 40 families referred to who were evicted from the farm was provided with food, water, blankets and heaters.

There were sufficient toilet facilities for the people and it was for that purpose that the fire department was indeed identified as a suitable temporary accommodation for the time of period referred to.

- 3.10 The next day on the **12th of June 2014** twenty-eight corrugated shacks were then erected by the Respondent on the portion of land as identified for purposes of relocation of the families concerned. These shacks were erected and the sanitary services were also connected. The shacks were erected approximately 4 meters apart. The reason why only 28 shacks were erected was because some of the families who were relocated and accommodated at the fire department indicated that their husbands, being the head of the family, were not present and that they wanted to wait for them.
- 3.11 The process of putting up more shacks for these evicted occupiers was interrupted due to the fact that local residents of Bluegumbosch who were not part of the unlawful occupiers of the farm Bluegumbosh, arrived and started demanding also to be provided with accommodation by the Respondent herein. This led to the increase of the number of people at the fire department and which eventually necessitated the relocation of those people from the fire department to the Youth Centre in Makwane. The unrest amongst the local residents also necessitated the Mayor of the Respondent herein as well as the MEC to try and solve the problem.
- 3.12 In the report by the Human Rights Commission, reference is amongst others made to complaints regarding blocked toilets. This problem was caused as stated by the increased number of people who arrived at the fire department

and later the Youth Centre and over which the Respondent herein had no control. The Respondent herein did not foresee the problem which arose as indicated.

- 3.13 Eventually all the people (save for three families who refused to go anywhere) who were at the Youth Centre were provided with alternative accommodation which accommodation had indeed then been negotiated properly with the relevant traditional council in accordance with their structures and procedures.

4.

RESPONSE : HUMAN RIGHTS REPORT :

In regards to the contents of the report of the Human Rights Commission, being the Complainant, the following pertinent issues need to be responded to :

4.1 Ad paragraph 4.4 thereof :

At the stage when the e-mail was sent by the Commission, all the arrangements had already been made by the Respondent for the eviction. Furthermore, considerable expenses had already been incurred as is evident from the relevant reports by the Respondent herein and which is attached hereto. The eviction of the unlawful occupiers was long overdue since 2012 and had to be effected as soon as possible. The longer the people stayed on the farm Bluegumbosh and unlawfully occupied this portion of land, the risk of further people occupying the land increased. As stated, the occupation of the

land caused a health risk and for that reason the eviction process could not be halted.

4.2 Ad paragraph 6.1.5.1 thereof :

As stated, this particular portion of land did not fall in the jurisdiction of the village council as alleged. This was confirmed by both Mr Rheeder as well as Mr Ramagaga referred to above.

4.3 Ad paragraph 6.1.5.2 thereof :

As stated, these sites were not allocated by the village council but by Tsholo Mopeli himself. The said Tsholo Mopeli did not have the necessary authorisation in this regard.

4.4 Ad paragraph 6.1.5.3 thereof :

On the particular day referred to, the Sheriff again gave instructions as per loudhailer. Prior to this the Mayor of PHUTHADITJHABA also went on radio and informed the occupiers of their right to apply for alternative accommodation.

4.5 Ad paragraph 6.1.5.13 thereof:

As stated, the Mayor informed the unlawful occupiers of their right to alternative accommodation or land. Furthermore as indicated, at the end of the day on the **11th of June 2014** the people who indicated that they were in

need of alternative accommodation were indeed provided with such accommodation.

4.6 Ad paragraph 6.1.5.18 thereof :

As stated, 40 families were taken to the fire department and given food by the municipality. Those were the only people who indicated that they wished to be transported to the fire department and were in need of alternative accommodation.

4.7 Ad paragraph 6.1.5.19 thereof :

The Chief referred to, is presumably Tsholo Mopeli. He however has his own house in MABOLELA itself and therefore was not in need of alternative accommodation.

4.8 The remainder of the contents of paragraph 6.1 have been dealt with above.

4.9 Ad paragraph 6.2.5.3 thereof :

The residents at the so-called "*Snake Park*" (the origin of the name is unknown to the Respondent herein), known to the Respondent as Phuthaditjhaba Ex 10 had toilets to their disposal from the beginning.

4.10 Ad paragraph 6.2.5.6 thereof :

Attention is drawn to the fact that these people did in fact have alternative accommodation before Tsholo Mopeli started with the allocation of the sites.

4.11 Ad paragraph 6.2.5.8 thereof:

The Respondent respected and confirmed the residents' right to vote and for that reason a voting station was erected.

4.12 Ad paragraph 6.2.5.10 thereof :

It is difficult to see which counselling is necessary in this regard.

4.13 Ad paragraph 6.2.5.13 thereof :

There was a need for the people to safeguard their belongings and the relevant persons' failure in this regard cannot be attributed to the municipality.

4.14 Ad paragraph 6.2.5.14 thereof :

The farm Bluegumbosh which the occupiers occupied unlawfully, is not any closer to schools as the so-called "Snake Park" (Phuthaditjhaba Ex 10).

4.15 Ad paragraph 6.2.5.16 thereof :

As already indicated the people have already paid enormous fees in regards to the sites concerned to Tsholo Mopeli.

4.16 Ad paragraph 6.2.5.17 thereof:

The Respondent herein has not received any complaints in this regard.

4.17 Ad paragraph 6.2.6 thereof :

The Respondent has fully complied with the provisions of Section 4(2) of the PIE-Act in regards to the elderly, persons with disabilities as well as women.

4.18 Ad paragraph 6.2.11.2 thereof :

The condition of diarrhoea cannot be attributed to the Respondent herein whereas there were no general complaints in this regard.

4.19 Ad paragraph 6.2.11.3 thereof:

It is difficult to see how the Respondent herein can be blamed for the fact that people did not take their medication on time.

4.20 Ad paragraph 6.2.11.8 thereof :

The Respondent herein has not received any complaints in this regard.

4.21 Ad paragraph 6.2.11.11 thereof :

Again the Respondent herein cannot be blamed for the children not attending school.

4.22 Ad paragraph 6.2.11.12 thereof :

The Respondent herein cannot be blamed for the particular evictee who now complains about the eviction hampering his preparation for the June exams.

4.23 Ad paragraph 6.2.11.14 thereof:

At all relevant times whilst the occupiers were accommodated at the fire department as well as the Youth Centre they were provided with food.

4.24 The remainder of the contents of paragraph 6.2 have been dealt with above.

4.25 Ad paragraph 9.2 thereof :

The place where the evictees had been relocated to is far more habitable than the place in Bluegumbosh which they occupied. It is closer to public amenities and it is indeed situated in a proclaimed township. Presently those evictees are better off than previously.

4.26 Ad paragraph 9.3 thereof :

Numerous community meetings were held. The matter was published both in the printed media as well as the radio. The Respondent as well as the Mayor

for MALUTI-A-PHOFUNG met on numerous occasions with the evictees and as stated, all the evictees have been accommodated up to date.

5.

The Respondents confirm and take note of all the relevant legislation as well as authorities referred to in the report by the complainant. In view of the above it is the contention of the Respondents that all the principles as contained in the said legislation and authorities have been met by the Respondent herein.

6.

REASONS FOR OCCUPATION :

- 6.1 From the above it is clear that this is not a typical case where the occupiers of the land concerned were there because they were indigenous people. The majority of the shacks even at the stage when the eviction was effected were not occupied. From the start one gained the impression that the shacks were erected and the people were placed there on the land for some peculiar reason.
- 6.2 Shortly after the evictions had taken place, a local newspaper, *The Weekly*, reported that the reasons for the occupation of the land on the farm Bluegumbosh were apparently because of a business venture which was anticipated to build hostels for the students attending the Free State University which is situated across the road from the land concerned. This fact could however not be confirmed but will explain the presence of the apparent

expensive vehicles at the stage when the occupation commenced. In this regard I refer to a copy of such article attached hereto as annexure "T".

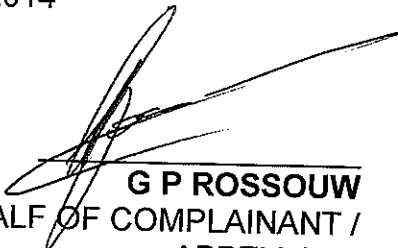
- 6.3 Whatever the reason may be it has been shown that the Respondent had done everything in its power in recognition of the human rights of the unlawful occupiers concerned. In view thereof the finding by the Human Rights Commission to the effect that the Respondent herein has violated such persons' human rights are appealed against.

7.

CONCLUSION :

In view of the above it is contended on behalf of the Respondent herein that everything had been done by the Respondent to honour all the evictees' human rights. The complaints as voiced by some of the evictees referred to for example the loss of identification documents is inevitable in any eviction. Therefore the violation as held by the Commission is not correct.

DATED at HARRISMITH on this 12th day of NOVEMBER 2014


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ATTORNEY ON BEHALF OF COMPLAINANT /
APPELLANT
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