**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 345**

**DATE OF QUESTION: 26 JULY 2019**

**DATE OF SUBMISSION: 12 AUGUST 2019**

**Mr N S Matiase (EFF) to ask the Minister of Justice and Correctional Services:**

Whether, with reference to the reply to question 1606 on 12 July 2017 regarding the Constitutional Court ruling in 2011 that the practice of repossessing homes without having the claims tested by a judge is illegal, Legal Aid South Africa and Lungelo Letho Human Rights Foundation have been successful in ensuring that the illegal repossession of the house of Mr Ernest Mashaba does not take place; if not, why not; if so, what are the relevant details?

**NW1316E**

**REPLY:**

In July 2017, the Impact Litigation Unit of Legal Aid South Africa made contact with Lungelo Lethu Human Rights Foundations (LLHRF) who were assisting Mr Mashaba in order to start the process to apply for legal aid. We were informed that legal counsel, Advocate Douglas Shaw was already instructed to act on behalf of Mr Mashaba and 243 other persons in the same position as Mr Mashaba. Further, that counsel is considering a Class Action against 4 major banks and that Advocate Alexandra Benjamin is acting as amicus.

We further reiterated that should they require legal assistance herein they can contact Legal Aid South Africa. We have not received any further requests for assistance from Mr Mashaba or Lungelo Lethu Human Rights Foundations (LLHRF).

Legal Aid SA has in the past been involved in the litigation to protect the rights of the poor people who are set to lose their home due to foreclosure of the bond.

In the following two (2) cases Legal Aid SA was admitted as an amicus.

1. **ABSA vs Mokebe**

Firstly, **Absa Bank Limited v Mokebe and Other Related Cases 2018 (6) SA 492 (GJ)** is a landmark ruling in the protection of the Constitutional right to housing set out in section 26 of the Constitution. Legal Aid South Africa made a submission which was accepted by the full court that the monetary judgment, special execution order and the setting of a reserve price should be heard and adjudicated upon simultaneously to reduce litigation costs which may be incurred by the indigent and poor if those applications were to be heard separately in 2 or 3 separate applications. [para 26]. This court for the first time made a ruling that courts have a discretion when considering the monetary judgment and special execution order to set a reserve price in terms of the Rules of Court. This means that the risk of selling the repossessed house on auction for trifling amounts and at far less than the market value has been reduced tremendously as a result of this judgment. Any reduction in the reserve price would have to be motivated to the Court that set the original reserve price. This procedure has been documented in the Practice Directives of this Court.

1. **Std. Bank vs Hendricks**

Secondly, the matter of **Standard Bank of South Africa v Hendricks and another and related matters 2019 (2) SA 620 (WCC).** The matter dealt with seven Foreclosure matters where the Standard Bank and Absa Bank sought an order of execution against immovable property which was the primary resident of the judgement debtor. Legal Aid South Africa made important submissions where the proposed practice directive of Western Cape was developed to align with the Practice Directive in Gauteng to include the necessary factors for consideration in Foreclosure applications which was in line with Mokebe’s decision. The Full Court followed the Mokebe’s decision on the question of whether or not a reserve price should be set. The court further held setting a reserve price outweighs any prejudice that may arise and that only in exceptional circumstances that the court should exercise its discretion to not make such an order.