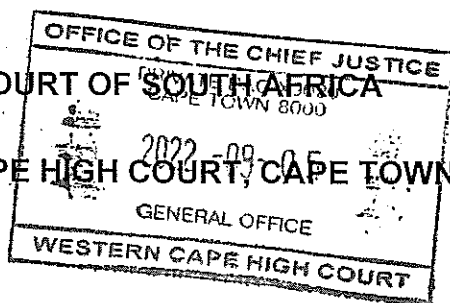


IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)



CASE NO:

14664/22

In the matter between:

COMMUNICARE NPC

Applicant

(Registration number: 1929/001590/08)

and

ACTING MAGISTRATE, MS VENICE BURGINS

First Respondent

NCUMISA MATU

Second Respondent

MANDISA TSHONA

Third Respondent

CITY OF CAPE TOWN

Fourth Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that the applicant intends to make application to the above Honourable Court, on a date to be determined by the Registrar, for an order in the following terms:

1. That the whole of the proceedings, from 21 June 2021 to 3 August 2022, held in the Magistrates' Court for the District of Cape Town, held at Cape Town under case number 2571/2020, presided over by Acting Magistrate Venice Burgins be reviewed and set aside, and declared invalid.
2. That this Honourable Court substitutes the first respondent's decision, and grant an order for the eviction of the second and third respondents and that they be ordered to vacate the premises on a date to be determined by this Honourable Court.
3. In the alternative to paragraph 2 above, that this matter is remitted back to the District Magistrates' Court, held at Cape Town to be heard de novo.
4. That the costs of this review application be against the first respondent. No costs are sought against the second and third respondents, save in the event of opposition.
5. Further and/or alternative relief.

KINDLY TAKE NOTICE FURTHER that:

- a. In terms of. Rule 53(1)(a) of the Uniform Rules of Court, the respondents are called upon to show cause why the proceedings referred to in prayer 1 should not be set aside;
- b. In terms of Rule 53(1)(b) of the Uniform Rules of Court, the first respondent is called upon, within fifteen days of receipt of this notice of motion, to despatch to

the Registrar the full record of the proceedings referred to in prayer 1, together with such reasons as the first respondent is by law required or desires to give or make, and to notify the applicant that she has done so;

- c. In terms of Rule 53(4) of the Uniform Rules of Court, the applicant may, within ten days of receipt of the Record from the registrar, amend, add to or vary the terms of its notice of motion and supplement the founding affidavit, by delivery of a notice and accompanying affidavit.

TAKE NOTICE FURTHER that any respondents who wish to oppose the relief sought are required to:

- a. Within fifteen days of receipt of this notice of motion, or any amendment thereto as contemplated in Rule 53(4) of the Uniform Rules of Court, to deliver a notice to the applicant's attorney that such respondents intend to oppose the application;
- b. To appoint an address within fifteen kilometres of the office of the Registrar at which such respondents will accept notices and service of all process in these proceedings; and
- c. Within 30 days of the time period referred to in Rule 53(4) of the Uniform Rules of Court, to deliver any affidavits to answer to the allegations of the applicant.

KINDLY NOTICE FURTHER that the affidavit of **FAIEDA JACOBS** together with the supporting annexures, will be used in support of this application.

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.

AND TO: **NCUMISA MATU**
3410 Goedehoop Flats
84 – 90 Justin Street
BROOKLYN

AND TO: **MANDISA TSHONA**
3410 Goedehoop Flats
84 – 90 Justin Street
BROOKLYN

AND TO: **THE CITY OF CAPE TOWN**
Fourth Respondent
12 Hertzog Boulevard
Foreshore
CAPE TOWN

AND TO: **THE CHIEF MAGISTRATE**
Magistrates Court
CAPE TOWN

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case Number:

In the matter between:

COMMUNICARE NPC

Applicant

(Registration number: 1929/001590/08)

and

ACTING MAGISTRATE, MS VENICE BURGINS

First Respondent

NCUMISA MATU

Second Respondent

MANDISA TSHONA

Third Respondent

CITY OF CAPE TOWN

Fourth Respondent


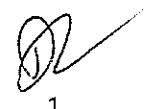
FOUNDING AFFIDAVIT

I the undersigned

FAIEDA JACOBS

do hereby make oath and say:

1. I am an adult female and the General Manager of the Rental Property Management division of the applicant and I am duly authorised to depose to



 
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this affidavit on its behalf. Proof of such authority is attached hereto marked "FJ".

2. The content hereof is both true and correct, and within my personal knowledge, unless explicitly stated or save insofar as may appear from the content or context thereof.
3. Where I rely on hearsay evidence i.e. the probative value of which depends on the credibility of persons other than myself, I shall endeavour to identify such person/s, and will endeavour further to file a confirmatory affidavit deposed to by such person - where this is possible.
4. Where I make submissions of a legal nature, I do so on the advice of the applicant's attorneys, which advice I accept.

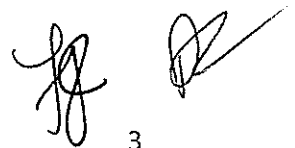
THE PARTIES

5. The applicant is Communicare NPC, a non-profit company (Registration Number: 1929/001590/08), duly incorporated in terms of section 21 of the Companies Act 61 of 1973 ("Act 61 of 1973"), with its principal place of business situated at Block A, Park Lane Office Park, Park Road, Pinelands, Cape Town, Western Cape.
6. The applicant owns and manages a growing residential property portfolio and rental units in Cape Town. Like any business, the applicant depends on good corporate governance and sound business practices to ensure its viability and to sustain its continued existence. Therefore, tenants are accordingly required, as with any other business to settle their due liability to the applicant timeously in order to ensure the applicant's continued functionality and capacity to provide residential property rental units to those persons who qualify to rent from it.

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7. The applicant was also the applicant in the irregular proceedings referred to below.
8. The first respondent is Venice Burgins, and is cited in her official capacity as Acting Magistrate (as she was then) sitting at the Magistrates' Court for the District of Cape Town, held at Cape Town, Western Cape.
9. The first respondent was the presiding officer who presided over the irregular proceedings referred to below. A copy of this application will be served on the Chief Magistrate at the Magistrate's court for the District of Cape Town, held at Cape Town.
10. The second respondent is Ncumisa Matu, and adult female, whose full and particular are to me unknown, currently residing at 3410 Goedehoop flats, 84-90 Justin Street, Brooklyn, Cape Town, Province of the Western Cape.
11. The second respondent was the first respondent in the irregular proceedings referred to below. For ease of reference, the second respondent will hereinafter be referred to as Matu.
12. The third respondent is Mandisa Tshona, an adult female whose full and particular are unknown to me, currently residing at 3410 Goegehoop flats, 84-90 Justin Street, Brooklyn, Cape Town, Province of the Western Cape. The third respondent will hereinafter be referred to as Tshona.
13. The fourth respondent is the Municipality for the City of Cape Town, a metropolitan municipality duly established in terms of the Local Government Structures Act of 1998 read with the Province of the Western Cape Provincial Notice 47912000 dated 22 September 2000, with its principal place of business at 12 Hertzog Boulevard, Civic Centre, Cape Town, Western Cape.

THE NATURE OF THIS APPLICATION



14. This is an application to review the whole of the proceedings from 21 June 2021 to 3 August 2022, presided over by Acting Magistrate Venice Burgins at the Magistrates' Court for the District of Cape Town at held at Cape Town under case number 2571/2022.
15. This application to review is brought in terms of section 22(1) of the Superior Courts Act 10 of 2013 ("Act 10 of 2013") which sets out the grounds upon which the proceedings of any Magistrates' Court may be brought under review before this Honourable Court.
16. For a review, an applicant is required to establish the presence of one of the grounds listed in section 22(1)(a) – (d) of Act 10 of 2013. The applicant in this review application seeks to review, set aside and declare invalid:

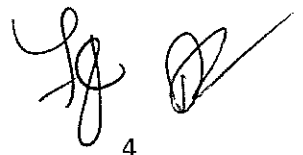
16.1 The whole of the proceedings, namely.

16.1.1 The method and manner in which the first respondent presided over these proceedings;

16.1.2 The method and manner in which the first respondent presided over the matter, when judgment was reserved after the final hearing thereof, to 3 August 2022 when judgment was handed down, which had the effect of dismissing the applicant's application under section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, Act 19 of 1998 ("PIE"), for the eviction of the second and third respondent's and as such, caused the applicant to suffer prejudice. (*"the irregular proceedings"*)

BACKGROUND

Application proceedings instituted



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17. On 8 July 2020, the notice of motion in terms of section 4(1) of PIE was personally served by the sheriff on Ncumisa Matu.¹
18. On 7 August 2020, the court granted an order in terms of serving the required notice under section 4(2) of PIE.²
19. On 12 August 2020, the notice in terms of section 4(2) of PIE, including the applicant's founding affidavit, was served personally on the sister of Matu, namely Mandise Tshona, as Matu was temporarily absent.
20. On 26 May 2021, the application was opposed by both Matu and Tshona, and a notice to appoint Dlova Attorneys as the attorneys of record was filed.³
21. On 26 May 2021, Tshona filed her answering affidavit to the applicant's founding affidavit.⁴
22. On 15 June 2021, the applicant filed its replying affidavit to Tshona's answering affidavit.

First hearing day

23. On 21 June 2021, at the first hearing presided over by the first respondent, the first respondent had before her and in the prepared court bundle the following documents:

23.1 The notice in terms of section 4(1) of PIE;

23.2 The notice in terms of section 4(2) of PIE;

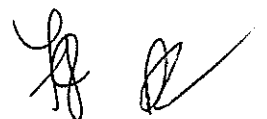
23.3 The founding affidavit of the applicant;

¹ Bundle, pages 6-46, 47.

² Bundle, pages 50-51

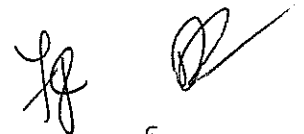
³ Bundle, pages 76-77.

⁴ Bundle, pages 82 – 116.



- 23.4 The answering affidavit of Tshona;
- 23.5 The first respondent searched for the answering affidavit of Matu, as only Tshona's answering affidavit was filed under a filing sheet on 26 May 2021 and included in the court bundle.
- 23.6 The first respondent searched the court file and found an answering affidavit deposed to by Matu. This answering affidavit was not included in the prepared court bundle.⁵
- 23.7 The applicant's replying affidavit.
24. After the first hearing, the first respondent postponed the hearing for purposes of:
- 24.1 Allowing the applicant to file a Company Resolution by the applicant's shareholders and/or directors;
- 24.2 to allow Tshona to file a supplementary affidavit to supplement her answering affidavit to include her personal circumstances, which her attorney erred to place on record;
- 24.3 to allow a social worker to conduct an evaluation on the personal circumstances of Matu and Tshona, and to report her findings to the court;
- 24.4 to allow the City of Cape Town (cited as the second respondent in the eviction application) to conduct an evaluation on the City's available

⁵ Judgment, page 6, paragraph 33.



emergency accommodation, and to report the City's findings to the court.

25. On or about 10 September 2021, Mr Gregory Exford deposed to an affidavit confirming to the court that the City of Cape Town had conducted an evaluation on only Matu. This affidavit was not filed under a filing sheet;⁶
26. On 20 September 2021, Tshona deposed to an affidavit with the heading "*THIRD RESPONDENTS PERSONAL CIRCUMSTANCES AFFIDAVIT.*"⁷
27. On 21 September 2021, Tshona's attorneys filed the following filing sheet, indicating that the following documents were filed:⁸
 - 27.1 Notice of motion for condonation application⁹ and founding affidavit;¹⁰
"CONDONATION APPLICATION NOTICE OF MOTION," dated 1 February 2022;
 - 27.2 Supplementary affidavit;¹¹
 - 27.3 Tshona's supplementary affidavit was deposed to by her on 1 February 2022;
 - 27.4 Tshona supplementary affidavit does not include supplementary personal circumstances, but relates to Tshona's dispute of the applicant's ownership.

⁶ Bundle, pages 159 – 164.

⁷ Bundle, pages 155 – 158.

⁸ Bundle, pages 165 – 167.

⁹ Bundle, pages 168 - 171

¹⁰ Bundle, pages 172 – 177 (Annexures, MN1: pages, 178 – 182; MN2: pages, 183 – 188).

¹¹ Bundle, pages 189 – 193 (Annexures, MN1: pages 194 – 225; MN2: pages 226 – 231).



28. A notice of set down¹² was also filed in the matter, which notice of set down was signed on 1 February 2022. The notice of set down filed, confirmed that the matter was set down for hearing on 8 February 2022.
29. On 21 September 2021, submissions on behalf of Matu and Tshona were filed.
30. On 22 September 2021, heads of argument on behalf of the applicant was filed, as well as a report by the social worker only on Tshona, dated 1 March 2022¹³ was filed. The report was not filed under a filing sheet. An affidavit deposed to by the social worker confirming the content of her report was not filed, and/or included in the bundle of documents before the court.
31. The applicant filed its supplementary replying affidavit, deposed by Ms. Mapule Maragela on 9 March 2022.¹⁴ Ms. Maragela, on behalf of the applicant, replied to:
- 31.1 Tshona's supplementary answering affidavit;
- 31.2 Confirmed the delegation of authority framework of the applicant in response to the first respondent's request, as per the first respondent's reason for postponement of the matter after the first hearing.

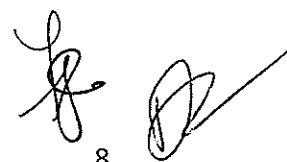
Second and final hearing day

32. On 20 May 2022, at the second and final hearing day presided over by the first respondent, she had before her, in addition to the 21 June 2021 hearing documents referred to above, the following documents:

¹² Bundle, pages 232 – 233.

¹³ Bundle, pages 235-240.

¹⁴ Bundle, pages 241 – 244 (annexures MM1: page 245; MM2, pages 246 – 253).



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- 32.1 Mr Exford's affidavit deposed to in September 2021 on behalf of the City of Cape Town. Mr Exford's affidavit contains the City's report on Matu only, reporting on the availability of any emergency accommodation available to Matu in the event that Matu is rendered homeless if evicted from the premises;¹⁵
- 32.2 Tshona's personal circumstances affidavit, deposed to on 20 September 2021;¹⁶
- 32.3 Tshona's application for condonation for the late filing of her supplementary affidavit, which included a notice of motion, founding affidavit and supplementary affidavit;¹⁷
- 32.4 the report by the social worker, dated 1 March 2022;¹⁸
- 32.5 the applicant's supplementary replying affidavit;¹⁹
- 32.6 amended heads of argument filed on behalf of both parties.
33. The legal representatives on behalf of the applicant, Matu and Tshona addressed the court in argument whereafter the first respondent reserved judgment in the eviction application.

Judgment reserved

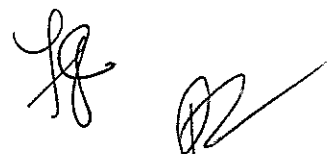
¹⁵ Bundle, pages 159 – 164.

¹⁶ Bundle, pages 155 – 158.

¹⁷ Bundle, pages 165 – 231.

¹⁸ Bundle, pages 235 – 240.

¹⁹ Bundle, pages 241 – 253.



34. After the second and final day of hearing, the matter stood reserved for judgment. During 20 May 2022 to 3 August 2022, the first respondent reserved judgment and finally delivered her judgment on 3 August 2022.

34.1 First respondent's ruling:

34.1.1 The first respondent ruled that she was not satisfied that the deponent to the applicant's founding affidavit has the required locus standi; and

34.1.2 That she was satisfied, on a balance of probabilities, that the interest of the respondents, outweighs that of the applicant.



34.2 First respondent's order:

34.2.1 the first respondent dismissed the applicant's application for the eviction of the respondents, and further ordered that costs should follow the cause, with costs being awarded to the respondent on a party-party scale to be taxed.

GROUNDS OF REVIEW

35. As mentioned in paragraph 14 above, this application to review is brought in terms of section 22(1) of the Act 10 of 2013 which sets out the grounds upon which the proceedings of any Magistrates' Court may be brought under review, which are:

- (a) *absence of jurisdiction on the part of the court;*
- (b) *interest in the cause, bias, malice or corruption on the part of the presiding judicial officer;*
- (c) *gross irregularity in the proceedings; and*

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(d) *the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence.*

36. The applicant relies on the grounds for review provided for in section 22(1)(b); (c) and (d) of Act 10 of 2013.



First ground: interest in the cause, bias, malice or corruption on the part of the presiding judicial officer

37. Unbeknown to the applicant, at the time when the matter was presided over by the first respondent and even after judgement was handed down, the first respondent had a dual interest in the applicant and the outcome of the proceedings.
38. This only came to the knowledge of the applicant, on or about 12 August 2022 when a package marked "Attention: Anthea Houston; RE: Ncumisa Matu v Communicare", was anonymously delivered to its offices. After consideration of these documents and the applicant's own further research (on social media), Communicare realised that a reasonable apprehension of bias existed on the part of the first respondent, in that the first respondent had, and indeed still has an interest in the applicant, which I submit for the following reasons:

- 38.1 On 3 November 2018, the first respondent participated in a social media post which published a post which included the following reference to the applicant:

"#CommunicareMustFall";

- 38.2 A copy of this post is attached hereto marked "FJ1".



38.3 On 3 December 2020 the first respondent shared a social media post by one Colin Arendse, which included the following in reference to the applicant:

“STOP COMMUNICARE.”

38.4 A copy of this post is attached hereto marked “FJ2”.

38.5 The first respondent is a member of a social media group under the group name of “**UNITED ACTION GROUP**” (*“the group”*). The group functions as a platform where members can share information and discuss matters important to the underlying cause of the group, and that such cause includes sharing and discussing matters relating to the applicant. The first respondent has been the admin of the group since 15 February 2021, to the best of my knowledge, is still the admin of the group.

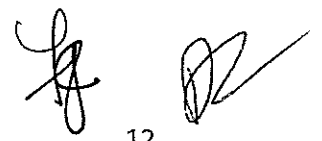
38.6 A copy of this post is attached hereto marked “FJ3”.

38.7 The first respondent posted a comment to a post by one Brian Alcock on social media, by commenting:

“The struggle continues and we shall EXPOSE the Communicare Rot Exploiting our people”.

38.8 A copy of this post is attached hereto marked “FJ4”.

39. I further submit that a reasonable apprehension of bias exists on the part of the first respondent, in that the first respondent held an interest in the outcome of the matter. This submission is based on the following:



- 39.1 On the 12 August 2020, the first respondent commented on a post shared by one Colin Arendse, by commenting:

*"Com Colin Arendse this is Absurd
We must expose Communicare and its Cabal and safeguard our
people against this pandemic called...GREED
Why are these colonized activities still continuing during our
lifetime?
Is this the city that's supposed to work for us?"*

- 39.2 A copy of this post is attached hereto marked "FJ5".



40. On 9 September 2020, the first respondent commented on a post shared by the same Colin Arendse, by posting the following comment:

*"In RSA we still have courts which are competent and hopefully
some of our judiciary who are not captured.
The shocking revelations and investigation with evidence
gathered is sufficient*

*Take Communicare to court and make an application to
deregister Communicare*

This must seriously STOP Its exploiting the most vulnerable."

41. A copy of this post is attached hereto marked "FJ6".
42. On 15 November 2020, a post was shared by one Colin Arendse with the headline "Cape Town- A spotlight has been shone on the financial dealings of social rental housing company Communicare by a group of its tenants."
43. One Deon Carelse posted a comment to the above post, by commenting:



"We needed an urgent Audit on All Community Care matters ASAP. We can't let greed and profits be above human kindness...as its government assits. And government resources were used for self-gain and not the plight of the poor to have a right for housing. Fuck Community Care."

44. The first respondent replied to the above comment, by posting the following comment in reply:

"Deon Carelse unfortunate REALITY have there even been any asset or land audit (question face emoji)."

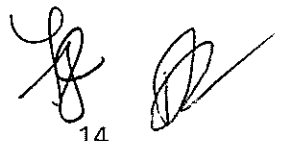
45. A copy of this post is attached hereto marked "FJ7".
46. On 26 January 2021, one Colin Arendse published a post on social media again, referring to Communicare. The first respondent replied the above post, by posting the following comment:

"Indeed overwhelming jubilation in justice prevailed when we collectively stand up against these atrocities



Transferring knowledge to our people do not cost a cent as we believe in Each One Teach one is this empowering all people

Power to our cause

Together we can conquer the impossible."



47. A copy of this post is attached hereto marked "FJ8".
48. Colin Arendse, responded to this post - dated 21 January 2022 by posting:
- "Well done Advocate Venice Burgins.
Power to our cause!"*
49. A copy of this post is already attached hereto marked "FJ8".
50. The first respondent's participation on social media, including her being the group admin of the group, is indicative that she had both an interest in the applicant and an interest in the outcome of the matter she was presiding over.
51. In light of the above interest of the first respondent, it cannot reasonably be assumed that the first respondent, in her capacity as presiding officer, and the person who presided over the matter, could have disabused her mind of any irrelevant personal beliefs or predispositions, which reasonably led to her continuing to preside over the matter, instead of recusing herself from hearing the matter.
52. The first respondent presided over the hearing of the matter in such a manner as to go beyond any suggestion of mere irritation and that the manner she presided over the hearing, established a pattern of conduct sufficient to dislodge the presumption of impartiality and replace it with a reasonable perception of bias.
53. Of greater concern to the applicant is the fact that 3 August 2022, when the first respondent handed down judgement, advocate Dondolo and Colin Arendse was in court (even though they had no matters before the court), and attended court to listen to the judgement being delivered by the first respondent.





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54. To the best of the applicant's knowledge, no *lis* exists between Communicare, Matu, Tshona and in particular Colin Arendse, and there was no reason for advocate Dondolo and Colin Arendse to know that judgement would be handed down, nor would there be any compelling reasons for him to attend at court to hear the outcome of the eviction application - unless he was privy to something which the other parties were not (being that an adverse finding would be made against Communicare) - as this was just one of many eviction applications Communicare has in our courts.
55. In fact, I am advised that the date on which judgement would be handed down, was only communicated to the legal representatives of the parties. A copy of the "WhatsApp" messages exchanged between the first respondent and the legal representatives representing the parties is attached hereto marked "FJ9".
56. And what further set this matter apart from other matters is that the first respondent spent 3 hours reading her judgement in open court.
57. This resulted in Colin Arendse publishing a post, in which he celebrated the judgement handed down by the first respondent. A copy of his post is attached hereto marked "FJ10".

Second ground: gross irregularity in the proceedings

58. The first respondent posted comments on social media to the effect of "#CommunicareMustFall" and "STOP COMMUNICARE" and "Take Communicare to Court."
59. The fact that the first respondent did not recuse herself from hearing the matter when she first became aware of the identity of the parties or at any time during the proceedings, amounts to the existence of an irregularity that was calculated to prejudice the applicant.

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60. The first respondent presided over the matter in an irregular manner, and although not all irregularities by the first respondent were gross, it is submitted that the cumulative effect of all the irregularities, render the whole of the proceedings grossly irregular. The first respondent presided over the proceedings, which gave rise to the following irregularities:
- 60.1 The first respondent conducted the proceedings in an irregular manner by importing into the case, her own personal preconceived notions of Communicare. The first respondent did not bring her own belief of certain facts to the attention of the parties, nor did she grant them an opportunity to ascertain nor challenge the correctness of such belief or notions.
- 60.2 The first respondent entertained various allegations against the applicant by Matu and Tshona respectively, none of which were relevant to substantiate as a defence against an application for eviction.
- 60.3 The first respondent entertained the allegations made by Matu and Tshona that the applicant was not the registered owner of the property.
- 60.4 The first respondent entertained the allegations by Matu and Tshona that the applicant's company does not exist.
- 60.5 The first respondent entertained the allegations by Matu and Tshona that they are not unlawful occupiers of the property. The first respondent ignored documentary evidence produced by the applicant in the form of a lease agreement, entered into by Matu and the applicant on 15 July 2015.



- 60.6 The first respondent ignored documentary evidence produced by the applicant that the lease was cancelled on grounds of Matu's breach thereof in the form of the section 4(2) notice order granted.
- 60.7 The first respondent entertained the allegations of Tshona that if evicted, she would be homeless. The report submitted by the social worker clearly indicated that Tshona was employed from August 2021, resided with her two minor children, and that Tshona could afford rent, although a lower amount, and that Tshona would prefer to continue residing in the Brooklyn area.
- 60.8 The first respondent ignored that the applicant raised the issue that there are a number of alternative properties to rent in the Brooklyn area, and that such properties are frequently advertised in accessible sources.
- 60.9 The first respondent entertained a dispute which arose on whether the applicant is a social housing entity or not. The issue of whether the applicant is a social housing entity or not is and was not relevant to the eviction application the court was seized with.
61. On 20 May 2022, after the second and last day of the hearing, the first respondent reserved her judgment. During the period when the matter stood reserved for judgment, the first respondent conducted her own research and consulted sources which were not sources on legal authorities.
62. The first respondent conducted her own research by consulting the website of the Western Cape Government which had information regarding the



applicant.²⁰ From the first respondent's above own research, she made a finding that the applicant is a social housing entity.

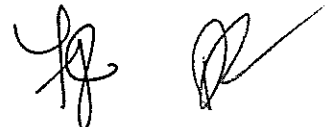
63. The first respondent also conducted her own research by consulting a thesis by Annika Bjornsdotter Teppo, titled "The making of a good white," which were completed during the course of academic studies in anthropology.²¹
64. The first respondent also conducted her own research by consulting the applicant's own website.²²
65. The first respondent also conducted her own research by consulting an article published by the Cape Argus/ IOL on 23 July 2019, which refers to an investigation into the applicant's financial disbursements and property transfers.²³
66. In the first respondent's judgment, it appears that this article was important to her due the status of the investigation, although irrelevant to the real issues in dispute and the proceedings the court was seized with.
67. The first respondent's research conducted personally, and after the matter stood reserved for judgment, was not shared with the legal representatives of the parties, nor were the legal representatives provided an opportunity to challenge the authorities consulted and irregularly relied on by her in her judgment.
68. The grounds of gross irregularity raised by the applicant in this review application relate to the manner in which the first respondent conducted the enquiry to determine the issues in dispute and ultimately informed her final

²⁰ Judgment, page 56, paragraphs 161 – 161.2.

²¹ Judgment, page 57, paragraph 161.3.2.

²² Judgment, page 57 -58 , paragraphs 161.3 – 161.3.1.

²³ Judgment, page 58, paragraphs 161.3.6.



decision, all of which was informed and motivated by her own bias and interest in the cause of the applicant, Communicare.

Third ground: the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence

69. The first respondent admitted inadmissible or incompetent evidence on behalf of Matu and Tshona, as a result of which the applicant suffered actual or probable prejudice.
70. By the same token, first respondent rejected admissible or competent evidence on behalf of the applicants, which had the result of the applicant suffering actual or probable prejudice.
71. Even though the first respondent rejected admissible or competent evidence on behalf of the applicant, the evidence that was in fact so admitted, was sufficient to justify an order to evict Matu and Tshona.
72. The first respondent further imported into the case her own preconceived notions and knowledge of the applicant relating to other eviction proceedings brought by the applicant against other unlawful occupiers of the applicant's premises, and did so in order to corroborate the first respondent's own opinion, and to advance her own agenda she secretly harboured against the applicant.
73. She further conducted the proceedings in such a manner as to indulge Matu and Tshona to file multiple supplementary affidavits, which were unrelated to the issues in dispute for the purpose of an eviction application.



74. In paragraph 44 above, I referenced the fact that first respondent posted a comment on social media stating that an urgent audit of the applicant's registered properties are required. In this regard, it will be noted that the first respondent indulged Tshona to file a supplementary answering affidavit, ignoring the fact that the purpose of the supplementary answering affidavit was to put Tshona's personal circumstances on record. Instead, the court allowed Tshona to place on record documents pertaining to a matter in the Land Claims Court where no order has been made, and in so doing, allowed Tshona to place before the court, affidavits to matters unrelated to the eviction application before the court.

The cumulative effect of all three grounds of review resulting in prejudice to the applicant.



75. The first respondent, in her official capacity as Acting Magistrate and presiding officer of the court has a duty:

75.1 to hear every case that comes before her; and

75.2 to apply the law impartially, without fear, favour or prejudice.

76. The first respondent should have recused herself from hearing the matter, as a reasonable person in the position of the applicant, would view her interest in the applicant as shared on social media, and in the outcome of the matter, as reasonable grounds for her recusal and/or an apprehension of bias.

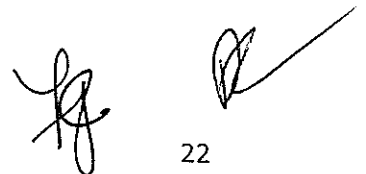
77. To be clear and for the avoidance of any doubt, at no stage prior to the 12th of August 2022, was Communicare aware that the first respondent had an interest in the applicant, or that she was vocal against it. Had we known, we would have asked for her recusal.

 21 

78. As a result of the above, due to the first respondent failing to alert the parties to her interest in the applicant and her negative *animus* she had towards it, as well as her failure to disclose recuse herself from hearing the matter, as a reasonable person in the position of the applicant, it would view the first respondent's failure to her interest in the applicant and her active campaign against it and her further failure to recuse herself and continued presiding over the matter, to amount to calculated prejudice to the applicant, which *Communicare* does.

REMEDY

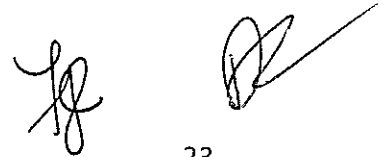
79. For these reasons, I pray that:
- 79.1 The whole of the proceedings presided over by Acting Magistrate Venice Burgins be reviewed, set aside and declared invalid; and
- 79.2 This Honourable Court substitutes the first respondent's decision, and grant an order for the eviction of the second and third respondent.
- 79.3 Further, that the second and third respondents be ordered to vacate the premises on a date to be determined by this Court.
- 79.4 In the alternative, that this matter be remitted back to the District Magistrates' Court, held at Cape Town to be heard *de novo*; and
- 79.5 That the costs of this review application be against the first respondent. No costs are sought against the second and third respondent save in the event of opposition.



79.6 Further and/or alternative relief.

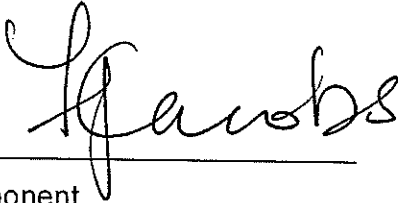
CONCLUSION

80. The first applicant reserves its right in terms of Rule 53(4) of the Uniform Rules of Court, that the applicant may, within ten days of receipt of the record from the Registrar, amend, add to or vary the terms of its notice of motion and supplement the founding affidavit, by delivery of a notice and accompanying affidavit.
81. The applicant also institutes these proceedings out of concern for the public interest and for protecting access to justice. Accordingly, the applicant should not be held liable for any costs arising from this application.
82. I am advised by my attorneys of record, which advice I accept, that Acting Magistrates, such as the first respondent, are appointed by the Minister of Justice, upon request by the head of the relevant court, or Magistrate's Commission (as the case may be).
83. This appointment, I am advised, is generally done after consulting with the head of the relevant court. Any such person appointed, must be a fit and proper person, who will bring an independent and impartial mind to the matter before them.
84. The manner in which the first respondent dealt with this matter, is of concern to Communicare, because it owns a number of properties in various jurisdictions throughout the Western Cape. In the events that one of our matters are in a court where the first respondent resides at, it may be prudent for the head of the relevant court, to know that no matter in which Communicare is involved in, should come before her. Coupled with this, the





first respondent's judgement also appeared in the media, on an online news website called IOL. A copy of this article is attached hereto marked "FJ11".

85. In this regard, our concern lies in the fact that this judgement may in variably have a bearing on the decision made by other magistrates in other jurisdictions where Communicare has matters pending. Given the wide distribution and dissemination of this tainted judgement, as well as what we consider to be "unethical and unbecoming conduct" on the part of the first respondent, consideration should be had to bring the first respondent's conduct to the attention of the Magistrates Commission.
86. Given not only the breach to the oath office as indicated and set out above, it should be considered whether, given the importance society places in the impartiality of its judiciary and the proper administration of justice whether the first respondent is indeed a fit a proper person to hold office as an acting magistrate.
87. I submit that I have made out a case for the relief which I seek and pray for an order in terms of the Notice of Motion.

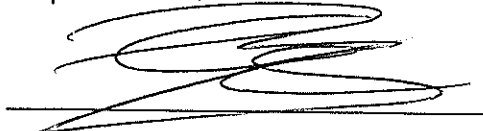


Deponent


Signed and sworn before me at Cape Town by the Deponent on this the 2ND day of ~~SEPTEMBER~~ August 2022, after the Deponent declared that:

- 
A. She knows and understands the contents of this affidavit;
B. She has no objection to taking the prescribed oath;
C. She regards the oath as binding on her conscience;

Whereafter, she uttered the words, "I swear the contents of this affidavit is true, so help me God".



Commissioner of Oaths

ADAM ISMAIL ADAMS
ADMITTED ATTORNEY OF THE HIGH COURT
OF RSA
NORTON ROSE HOUSE
8 RIEBEEK STREET
12TH FLOOR ZS INC, CAPE TOWN
073 562 5881



'FJ'



Communicare

1 September 2022

Mr M Toefy
Toefy Attorneys
Greenford Office Estate
Building XG01 & XG02
Punter's Way
Kenilworth
7700

Dear Muzzamil

DELEGATION OF AUTHORITY

This letter serves to confirm that Ms Faieda Jacobs, ID Number 580513 0085 084, in her capacity as GM: Rental Property Management, is duly authorised to initiate or defend any legal proceedings on behalf of the Company in terms of Clause 6.5.2.1 of the Company's Delegation of Authority Framework (as per attached extract) as approved by the Board of Directors pertaining specifically to the immovable properties leased by Communicare NPC and any of its subsidiaries, and to perform those functions and sign all such documentation which are incidental to the institution or defense of such legal proceedings.

Yours sincerely

Francois Theron
Company Secretary

Communicare NPC
Block A, Park Lane Office Park, Park Road
Pinelands
PO Box 259, Cape Town, 8000
T: 021 421 6008 F: 021 421 6094
Call centre toll free 0800 285 737
sa@centre@communicare.org.za

Directors: Van Der Merwe, C.K Zama (Chairperson), A Chowan, A R Jones, M G Kearns
G J E Khan, L N Ntshenzhe, E J Steyn, I M Swafa, M van Wyk
Directors Executive: A Houston (CEO) Company Secretary: F Theron

Registered in terms of the Companies Act, 71 of 2008


'FJI'

10:12

77%

← Q communicate in Venice Burgins' X

FILTERS POSTS YOU'VE SEEN MOST RECENT TAGS

 Jerry Manuel is with Venice Burgins and 21 others
03 Nov 2018

#CommunicareMustFall

Today at a public meeting with HON. MPL Gopie , ADV Burgins , ADV Erasmus and broader community members of Ruyterwacht

After observing first hand and listening to the testimonials how our most vulnerable people are exploited by COMMUNICARE I was in total disbelief.

The DIVIDE AND RULE tactics which Communicare apply is an exposure of capitalist gluterrism.

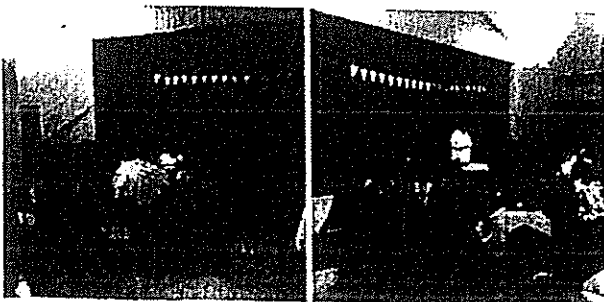
Communicare mislead the public through the tabloids wanting us to belief the 8 suspended employees are to blame, what the tabloids do not reveal is on what basis these employees were suspended, what charges were brought against them.

Communicare perceive themselves above the Constitution of Country in that they violate Human rights and dignity.

The intimidation tactics and fear they instilled must be dealt with immediately.

I make a clarion call to all cadres; activist to advance and defend the Plight of our people in Ruyterwacht, who are victims and traumatised through Communicare
#CommunicareMustFall

João Jardim



22

12 comments • 6 shares

'FJ2'

14:38

14:38

communicare
Filters Posts you've seen Most recent Tagge

communicare
Filters Posts you've seen Most recent Tagge

UNITED ACTION GROUP - Join
Venice Barquis
Colin Arendse
Media Release
Immediate - No emb...

Strand Action Group - Join
Venice Barquis
Colin Arendse is with Deon Carelse and 17 others.
So, according to Communicare, "the company has not yet been served with the interdict against the eviction, but is aware of the c... See more

STOP COMMUNICARE

GroundUp
TOPICS ABOUT DONATE

Like Comment Share

Court sets aside eviction of social housing occupiers, for now

UNITED ACTION GROUP - Join
Venice Barquis
Colin Arendse
OPEN LETTER TO CARTE BLANCHE

The matter is expected to be heard in court in March

21 December 2020 By

Home Friends Watch Marketplace Notifications Menu

Home Friends Watch Marketplace Notifications Menu

'FJ3'

14:41

< Venice Burgins in UNITED ACTION GROUP



Venice Burgins

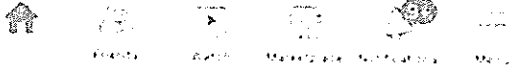
Message

Admin of UNITED ACTION GROUP since 15 February 2021

Recent activity

Venice Burgins liked her own post: "Brightening every corner anytime anywhe..."

Venice Burgins liked Charles Abrahams's comment: "I like it when they..."



14:40

< UNITED ACTION GROUP

recently seen

Venice Burgins shared a post.

Colin Arendse

'Media Release'

Immediate - No emb... See more

STOP COMMUNICARE

Like Comment Share

Write a comment...

Most relevant

Venice Burgins shared a post.

Join Group




Handwritten signatures

'FJ4'


14:31




<  Colin Arendse is with Anele Zwelonke and 7 others.

mapped out a way forward in terms of our Struggle..
Within a matter of a few months Both of this Remark Men of the People has passed on.
We will however continue with the Legacy they left behind ..


  


 Jerry Manuel
Indeed sadly missed but not forgotten, a people's champion who addressed COMMUNICARE HEAD ON


  




 Jimmy van Wyk
Colin Arendse i work a very long time with him still missed him a fighter for social justice


  

 Venice Burgins
The struggle continues and we shall EXPOSE the Communicare Rot exploiting our people

 Ronalds Mkhumango


  


 Write a comment



14:30




<  Jerry Manuel is with Vladimir Castro Manuel and 21 others.

 Jerry Manuel
Lorraine Stemmet this is fact
Let's work collectively to put an end to this catastrophe of extreme capitalism


  

 Write a comment

 Venice Burgins
Emotions aside, the Plight of the most vulnerable for access to justice and victim support is still a dire outcry!


Forward we shall March to a better Ruyterwacht for All

 Jerry Manuel
Thanks Comrade Joao Jardim for your retrospective perspective presented today at the National Assembly to Comrade ADV Venice Burgins.

Thanks Hon MPL Gopie for rekindling the hope in our people of Ruyterwacht whom are in despair.

 Write a comment



'FJS'

14:34

Colin Arendse is with Carlos Filipe Mesquita and 7 others.

attitude..h will be alone in front of that bakkie..rest of workers at the back

Venice Burgins
Com Colin Arendse this is Absurd

We must expose Communicare and its Cabal and safeguard our people against this pandemic called... GREED

Why are these colonized activities still continuing during our lifetime?

Is this the City that's supposed to work for us?

Munammad Khalid Sayed Jerry
Manuel Ronaldo Nal'umango Fares
Jacobs Dean Hamish Bradby Aramis
Julie-Ann Mc Donney Anthony Kek
Shaun August Vinton Morgan Ashley
Malpas

Ntombozuko Kraai

Write a comment



14:34

Colin Arendse

Venice Burgins

Dorothea Nonesi Gopie my Honourable leader you can vividly recall your motion in the house just being a MPL to MEC for housing Bonginkosi madikizela wherein he stated the ratio of income and how its calculated that the rental for sociap housing must not exceed a 30% of income

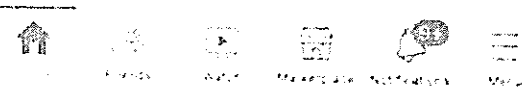
Cde Colin Arendse when one hit a nerve everyone become silent and as you ought to know Silence is regarded as an Admission

Adiel Gorie

A number of cases has been made against Moerida as well as a legal court interdict against her. They go around telling people lies. She was expose for her corruption by her ex close associates who worked with her in the community forum. These criminals must be exposed for who they really are.

Adiel Gorie
Please don't give her any money and do


Write a comment



'FJ6'

14:28



<  Colin Arendse is with Jerry Manuel and 2 others. ...

venice burgins
Ismael Carr I know
The question is whether they understand their portfolio
Like Reply

Venice Burgins
In RSA we still have courts which are competent and hopefully some of our judiciary who are not captured.

The shocking revelations and investigation with evidence gathered is sufficient

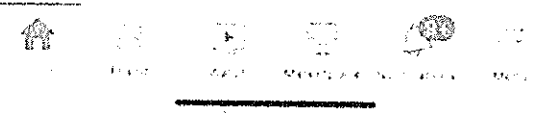
Take Communicare to court and make an application to deregister Communicare

This must seriously STOP

Its exploiting the most vulnerable

Colin Anthony Jerry
Like Reply

Jerry Manuel
Declare all directors delinquents and it will
Add a comment



'A77'

14:38

communicare

Filters Posts you've seen Most recent Tagge

UNITED ACTION GROUP - Join
Venice Bergins

Colin Arendse
Update - Media Release

3rd Dec... See more

Response-to-Article-Thornton-Resi...

Communicare

[Faded text from a document or article is visible in the background of the post]

Home Friends Watch Marketplace Notifications Menu

14:37

Colin Arendse is with Tamzin Hoogbaard and 27 others.

Cape Town - A spotlight has been shone on the financial dealings of social rental housing company Communicare by a group of its tenants.

Like Comment Share

40

25 shares

Deon Carelse
We needed an urgent Audit on All Community Care matters ASAP.. We cant let greet and profits be above human kindness...as its goverment assits. And government resources were use for self gain and not the plight of the poor to have a right for housing. Fuck Community Care.

Venice Bergins
Deon Carelse unfortunate REALITY Have there ever been any asset or land audit?

Write a comment...

Home Friends Watch Marketplace Notifications Menu

[Handwritten signatures]

'FJB'

C

COMMENTS



23 >



Venice Burgins

Indeed overwhelming jubilation in justice prevailed when we collectively stand up against these atrocities

Transferring knowledge to our people do not costs a cent as we believe in Each One Teach one this empowering all people

Power to our cause

Together we can conquer the impossible

2y Like Reply

4



Jerry Manuel

Ruyterwacht en Lakeside residents are vindicated with this decision in their favor

2y Like Reply

2



Colin Arendse

Well done Advocate Venice Burgins. Power to our cause!

2y Like Reply

3



Audrey Daniels

Amandla Venice Burgins

2y Like Reply

3



Jerry Manuel

The verdict pronounced set a precedent for all those residents who are beneficiaries of social housing under the auspices of Communicare

You can fool some people sometime but not all the people all the time

Those who defend the indefensible must learn the lesson, here the facts speak for itself

2y Like Reply

Write a comment...

Handwritten signature

'FJQ'

2022/07/28, 18:24 - Nikeeta: Good Evening Magistrate Burgins. Virtual remand to Tuesday 2 August 2022 at 12 is in order. Thank you and hope you get well soon.
2022/07/28, 18:25 - Magistrate Burgens: Thanks Ms Sutton
2022/07/28, 18:25 - Magistrate Burgens: See you both 2nd at 12h
2022/07/28, 18:26 - Bonakele Dlova: Noted,with thanks.
2022/07/31, 12:54 - Magistrate Burgens: This message was deleted
2022/07/31, 12:56 - Magistrate Burgens: Morning colleagues

I just checked my son's roster for his exam results (he forgot to write English Paper 2 last year)) so had to rewrite and results due 3rd Aug.

Is there a possibility that we can do the judgement on the 3rd as to save me driving in two consecutive days to CT from Yzerfontein.

Humble apologies for the inconvenience but I MUST ask both if its suitable, if NOT we continue on the 2nd with judgement, no train smash

2022/07/31, 13:31 - Nikeeta: Good afternoon Magistrate Burgins. Wednesday 3 August 2022 is in order for me.

2022/07/31, 13:42 - Magistrate Burgens: Thanks Ms Sutton

Lets see what Mr Dlova respond

2022/08/01, 09:17 - Bonakele Dlova: Morning, 3rd is fine .Thanks

2022/08/01, 10:41 - Magistrate Burgens: Greetings colleagues

See you then 3 Aug at 11h

God bless

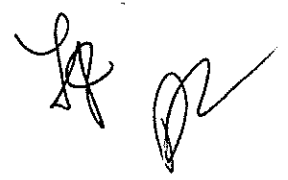
2022/08/01, 11:57 - Nikeeta: Thank you for the confirmation. I will be sending my colleague to note the judgment. Ms Chrishonda Gorridon.

2022/08/01, 12:21 - Magistrate Burgens: Noted with thanks Ms Sutton

2022/08/01, 12:22 - Magistrate Burgens: I'll hand both attorneys copies of the judgement after delivery

2022/08/01, 12:26 - Nikeeta: Thank you Magistrate Burgins.

2022/08/07, 14:30 - Magistrate Burgens left

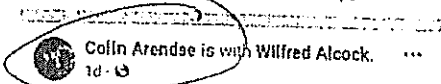
Handwritten signatures in black ink, appearing to be initials or names, located in the bottom right corner of the page.

'F510'
U

STOP COMMUNICARE

6 comments • 7 shares

Like Comment Share



BREAKING NEWS

MASSIVE COURT RULING AGAINST COMMUNICARE NPC

Post

No embargo

1] In a dramatic three hour, 63-page judgment of seismic proportions on 3 August 2022, the Cape Town Magistrates Court ruled against Communicare NPC in an epic case that is going to shake the foundations of state capture and reverberate throughout the corridors of justice for centuries to come.

2] For the first time since 1929, a Court has finally dissected the Communicare myth and, this ruling proves that although the wheels of justice may turn slowly, they have eventually turned full circle against this once apartheid relic.

3] Acting Magistrate Burgins took issue with Communicare (represented by Toefy Attorneys), who appear to have failed to take the Court into its confidence on the vexing issue of the unresolved land claim against it in the Land Claims Court in Randburg (Case No. LCC 100/2019). This despite some pessimists doubting and even questioning the authenticity of the land claim which now, after this groundbreaking judgment, can no longer be in dispute. In a bizarre twist, it appears that Communicare denied before Court that it is a Respondent in the Land Claims Court matter.

4] The issue of locus standi (the right to bring an action before Court) took centre stage in the judgment and it appears from the ruling that Communicare failed to place evidence before Court by way of a Title Deed that it was the legal owner of the property in dispute - a simple and basic requirement in law.

5] This ruling is massive for all our oppressed victims of Communicare and a huge victory for those who have not carelessly strayed from the path to hold them to account. This is our Damascus moment as we confront the confused elephant in the room that has been staring us all in the eye since that "sunset" period between 1989 and 1994.

6] Acting Magistrate Burgins, in a technically sound judgment, also questioned the origin of Communicare specifically in terms of the Interim Constitution of 1993 which stipulated at the time that any assets acquired under the old regime were meant by law to have been handed over to the new government post 1994.

6.1) There appears to be no proof that the assets of the Citizens Housing League vir Arne Blankes et al, who fortuitously changed their name (several times) and then to Communicare in 1990 (the same year in which President Mandela was released from prison), ever handed the land and buildings acquired under the previous regime over to the newly elected government after 27 April 1994. Also, nobody has seen the asset registers of Communicare or its surrogate, Goodfind Properties and our victims do not understand how Communicare can stile themselves as a social

AH:1, Anthea Houston

2. Toefy Att

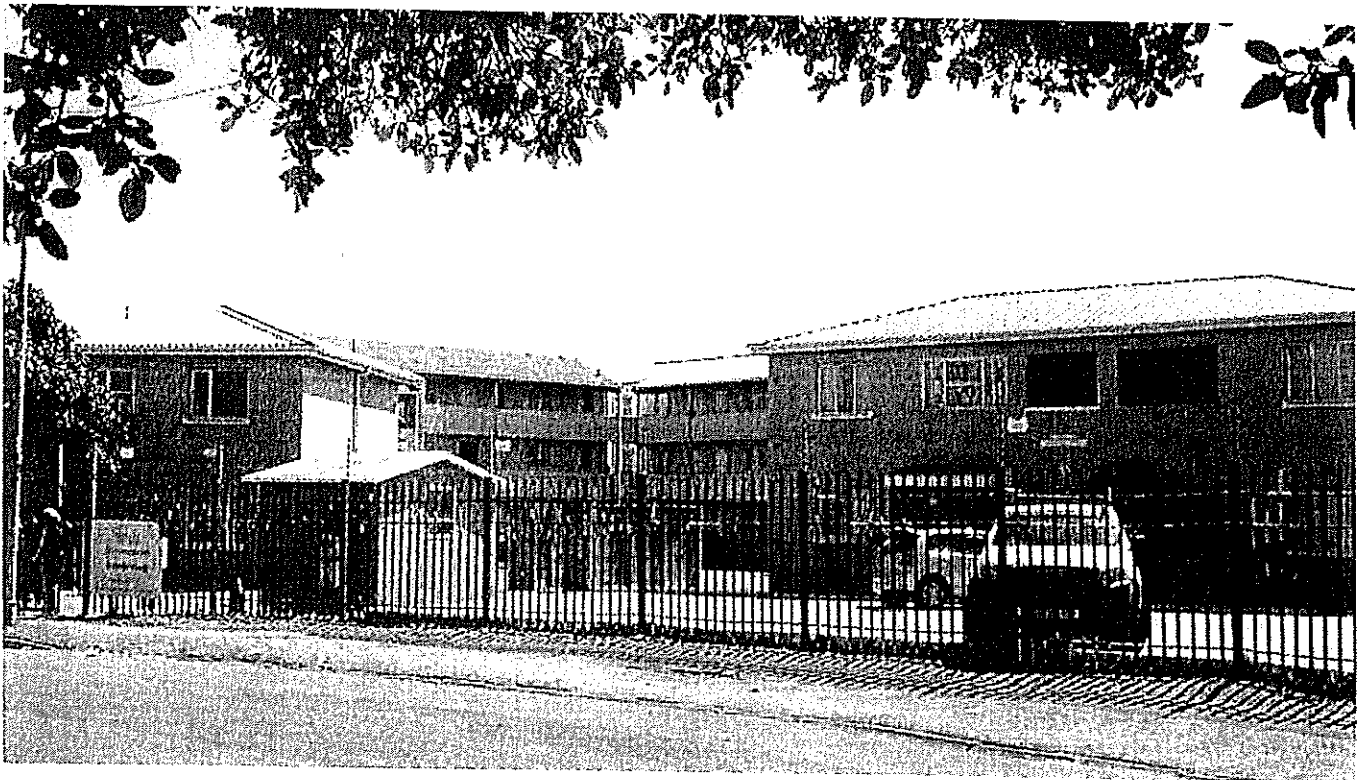
'FSM'



COMMERCIAL

CAPE ARGUS NEWS

Communicare loses eviction case in magistrate's court, says it will appeal the ruling



Communicare's Goedehoop complex in Brooklyn. Picture: Tracey Adams/African News Agency (ANA)

Published Aug 5, 2022



Written by

Mwangi Githahu

Multimedia Journalist, Cape Argus

f

SHARE





Listen to this article

0.00 / 4.35 1X

Cape Town - The Cape Town Magistrate's Court has ruled against social housing giant Communicare in an eviction case due to rent arrears that morphed into a question of the ownership of some of its properties.

In March last year, after a challenge from tenants, Communicare was forced to release a statement detailing the history of how it came to be in its present form since apartheid times.

Story continues below Advertisement

It said it had officially changed its name via the registrar of companies in 1964, from Citizens' Housing League Utility Company to Citizens' Housing League. It went through another name change to the Housing League, and finally in 1990 to Communicare.

The issue of ownership came up in the affidavits presented in court by the tenant against whom Communicare had brought the application in terms of the Prevention of Illegal Eviction From and Unlawful Occupation Act, or PIE Act.

Communicare's affidavit submitted for the matter said the tenant, Ncumisa Matu, entered a lease agreement with it in July 2015, but had fallen into arrears with her rental since June 2019, and had remained in continued breach to date.

More on this

- Cape beneficiary given notice to vacate after unlawfully selling her BNG home
- Communicare, tenant locked in legal dispute
- Communicare tenants picket Parliament, demand to be given homes after decades of renting

- **Family wins interim order against eviction by social housing giant Communicare**

They said this eventually led to the issuing of a formal letter of demand on January 16, 2020, and later an eviction notice.

In her affidavit, Matu opposed the eviction application by Communicare.

She said that in January 2019, Communicare informed her and the rest of the community at the flats in Brooklyn that they were transferring all their assets to a new company, Goodfind Pty Ltd.

Story continues below Advertisement

She said the tenants were told that if they refused to sign the new leases, their contracts would be terminated, giving them a month's notice, and that Communicare did not need to furnish any reasons for the termination of the contracts.

She said she would be rendered homeless if she were to be evicted, and requested the court dismiss all the actions against her because there is currently a case in the high court which is dealing with all the matters of Communicare's ownership of the flat she lives in.

Reached for comment on Thursday, Communicare chief operating officer Makhosi Kubheka said the organisation planned to appeal the judgment, and that Matu was neither a leaseholder nor a lawful occupant of the unit in question.

Story continues below Advertisement

Kubheka said that while Communicare respected and had confidence in the due process of the law, they were concerned that unlawful occupants were allowed to abuse court processes.



"Communicare has several grounds to appeal the judgment, including issues raised in relation to ownership of the property, its right to seek legal recourse against rental non-payments and the misunderstanding regarding the social housing institution status of Communicare."

In the judgment, Acting Magistrate Venice Burgins took issue with Communicare on the matter of the unresolved land claim against it in the Land Claims Court in Randburg, Johannesburg.

Story continues below Advertisement

Burgins questioned the origin of Communicare specifically in terms of the Interim Constitution of 1993, which stipulated at the time that any assets acquired under the old regime were meant by law to have been handed over to the new government post-1994.

In November last year, Land Claims Court Judge Thomas Ncube instructed the Deeds Office to provide all the documents related to Communicare's ownership of a number of properties in a case where tenants had queried the real ownership.

At the time, Kubheka said all property owned by Communicare was registered with the Deeds Office and that after the requirements for all legally registered companies in South Africa, Communicare is registered and in good standing with the Companies and Intellectual Property Commission (CIPC).

"The fact that this matter is before the court does not mean that tenants don't have to pay their rent. Communicare advises tenants to continue to pay their rent if they don't want a bad credit record or face the risk of their arrears being handed over for collection," Khubeka said last year.

Housing activist Colin Arendse said he was looking for a law firm or an NGO to assist with litigation funding to obtain an urgent high court interdict to stop Communicare from filing eviction applications in the lower magistrate's courts while the land claim lodged against it is still pending in the higher Land Claims Court.

mwangi.githahu@inl.co.za

Cape Argus

