



DISPUTES

Transnet N1 Culemborg Eviction

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The Western Cape High Court has ordered the eviction of over 160 illegal occupiers from Transnet-owned land at Culemborg in Cape Town by 30 September 2026. Most notably the Court did not require the City of Cape Town to provide emergency housing for those evicted, for a unique combination of reasons, including that the unlawfully occupied land, largely occupied by undocumented foreign nationals, was being used as a base from which opportunistic criminal activity was conducted.

Those travelling into Cape Town city centre from the northern suburbs and western seaboard will know the site well. For over a decade, there has been an informal settlement on Transnet land, immediately adjacent to the highway entering the city centre. After a prolonged period, Transnet brought proceedings to evict the unlawful occupiers. The City of Cape Town municipality was added as a respondent, on the assumption that the municipality, as the relevant local authority, would be required to provide emergency / alternative housing to the unlawful occupants, once they were evicted.

The area in question is infamous for crime. Criminals use the busy highway and area of slow-moving traffic, adjacent to the high security risk area, to their advantage. The Court pointed out that there have been over 100 instances of common robbery, or robbery using a weapon or firearm. There were multiple thefts from and attacks of vehicles, and theft of personal possessions. Over a nine-month period straddling 2024 and 2025, over 100 cyclists were attacked and/or robbed, including, tragically, an elderly cyclist attacked with a bottle, who succumbed to his injuries. When one motorist was forced to stop on the side of the road after having collided with a barrier, criminals pounced, compounding the stricken motorist's misery, by relieving him of his cellphone.

Dozens of arrests have been effected for a myriad of crimes, including dealing in and possession of drugs, possession of unlicensed firearms, weapons and stolen property, and for criminal conduct including assault (including on a police officer), intimidation and possession of house-breaking implements. In scenes that mimic Hollywood, there are tunnels connecting the properties that make up the area, which are alleged to be used to store drugs and stolen goods.

Security in the area is so bad that when the legal teams and Judge Wille (the presiding Judge) inspected the area, the security team that accompanied the group refused to take them into certain portions, as their safety could not be guaranteed.

Given the sheer breadth of criminal activity, it was perhaps understandable that the unlawful occupants could not put up a substantive contradiction of the allegations of criminality. Instead, much reliance was placed on general denials, and on an expectation that the municipality would be required to give the unlawful occupiers emergency housing, automatically upon their eviction. Judge Wille disagreed. Emergency housing is not for the taking but must instead be determined in accordance with a number of factors and circumstances.

The Court found that an eviction is not inherently unjust or inequitable simply because there is no emergency housing. The unlawful occupiers gave themselves preferential treatment by unlawfully seizing the land, contrary to the rule of law, where such self-help was not sustainable in terms of our Constitution. This, said the Court, deprived Transnet of its Constitutionally protected property rights.

The Court acknowledged that it could not ignore the fact that the unlawful occupation of the land served as a base for criminal activity, a fact that was not seriously refuted by the unlawful occupiers. The Court found that in some cases, the unlawful occupation of the property in question was deliberate and motivated by the desire to exploit its location for the purposes of criminal activity.

Importantly, the Court considered the complex burden placed on the municipality when assessing a multitude of factors to determine if there is any available land for the purposes of emergency housing, and the transparent and lawful management of such property resources, whilst bearing in mind the many people on long waiting lists for affordable property – it would be unfair for the unlawful occupiers to be allowed to jump the housing queue, at the expense of lawful affordable housing requests.

Budgetary constraints and shortages of resources matter: national funding for emergency housing has been severely restricted (only for declared disasters), meaning that the municipality bears the burden of funding emergency housing. The ability to meet previous levels of funding has been significantly constrained.

In what some might find uncomfortable, the Court found that legal status of the unlawful occupiers (i.e. whether they are in the country legally or illegally) is a relevant factor when assessing whether emergency housing is just and equitable. Crucially, the Court found that there is no legal basis to contend that a person who has no entitlement to be in South Africa, is entitled to emergency housing assistance, as this would violate the rule of law. Home Affairs (whose engagement with the legal proceedings was, said the Court, "disappointing and regrettable") is under a legal duty to intervene when emergency housing is sought by such persons.

Given the 'departure' from what many believed were principles that automatically applied to evictions, one gets the sense that the Judgment is likely to be appealed. However, the details of this particular case might make any attempt at an appeal, an uphill task.

The Judgment is bold, and its reasoning may well resonate with the majority of the public, who are likely to view the Judgment as a victory for common sense that is based on reasoned and sustainable legal principles. However, whether or not the Judgment survives subsequent evaluation by an appeals Court, remains to be seen.



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