

The Tides; They are a-Changing

Claiming damages from a municipality for failure to comply with a court order

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INTRODUCTION

In *Changing Tides 74 (Pty) Ltd v City of Johannesburg*¹ the Johannesburg High Court found the City of Johannesburg Metropolitan Municipality liable for damages amounting to R12,374,993.00 plus interest, for its failure to provide temporary emergency accommodation to unlawful occupiers of a building owned by Changing Tides 74 (Pty) Ltd (“**Changing Tides**”). This follows an action brought by Changing Tides against the City for economic loss rooted in delict, a declaratory order, and related relief.

The central issue for determination in this case is whether the City of Johannesburg’s (“**the City**”) failure to secure emergency accommodation for the unlawful occupiers of Changing Tides’ building was wrongful and breached various constitutional rights.

The case is a significant legal dispute that highlights the tension between property rights and the constitutional obligation to provide adequate housing. It also raises critical questions about the responsibilities of municipalities and the consequences of failing to comply with court orders to house unlawful occupiers.

BACKGROUND

Changing Tides, the plaintiff, owned a property situated at 191 Jeppe Street, Johannesburg, which had an eleven-storey building known as Chung Hau Mansions. This property was unlawfully occupied by approximately 249 men, women, and children and was colloquially referred to as a “hijacked building”.² Changing Tides brought an application to evict these unlawful occupiers. On 14 June 2012, Judge Claassen J granted an order (“the Claassen Order”) which directed the City to provide the unlawful occupiers with temporary shelter by 30 January 2013, before their eviction on 15 February 2013.³

The City failed to comply with the Claassen Order by the stipulated date. The unlawful occupiers launched an enforcement application, leading to further court orders from Lamont J and Satchwell J in February and April 2013, all mandating the City’s compliance by the provision of temporary housing to the unlawful occupiers.⁴

The City appealed against the Lamont and Satchwell orders against it (but not the Claassen order) but was unsuccessful culminating in the dismissal of its Constitutional Court application in June 2015.⁵ Changing Tides continued to bear the burden of the cost of accommodating the occupiers during all of this time.

In November 2015, Changing Tides applied to re-enrol the consolidated applications for the Court to determine dates for the City to provide temporary emergency accommodation and for the occupiers to relocate, or for other just and equitable relief. This application also required the City’s named officials to explain under oath the efforts they took to ensure compliance.⁶ However, the unlawful occupiers filed supporting papers seeking a finding that the City was in contempt of Court.

Subsequently, on 10 January 2016, the City was prompted to provide the unlawful occupiers with temporary emergency accommodation.⁷ Following an application by Changing Tides, the matter was designated as a commercial matter on 16 November 2020.

CHANGING TIDES’ CLAIMS AND THE CITY’S DEFENSES

Changing Tides argued that the City of Johannesburg’s failure to comply with the Claassen Order caused it financial damages, was wrongful, and infringed the occupiers’ right to adequate housing. It also contended that its right to property under section 25(1) of the Constitution was contravened for three years, as it was unable to renovate and rent the property to students until 1 February 2017, when it should have been able to rent it out from 1 February 2014.⁸

The City of Johannesburg disputed the wrongfulness of its conduct, claiming a lack of available resources to comply with the Claassen Order and asserting that it worked within its means to address homelessness. It relied on several “tenders” of temporary accommodation as evidence of its compliance.⁹

WRONGFULNESS AND NEGLIGENCE

The court found that Changing Tides had discharged its onus of proving that the City of Johannesburg failed to comply with the Claassen Order before January 2016. Regarding the City's tenders of accommodation, the court noted that the first tender at Ekuthuleni was for an insufficient number of beds and was disputed by the Socio-Economic Rights Institute (SERI) as being already occupied and subject to a "day-time lockout rule". The second tender at the Linatex Building was also rejected due to unacceptable conditions, including prohibiting children, separating families, and imposing a "day-time lockout rule". The City's third plan to build a temporary relocation area (TRA) also did not materialize effectively.¹⁰

The court agreed with Changing Tides that the City could not argue that the Claassen Order exceeded its obligations under section 26 of the Constitution, the Housing Act, or the Blue Moonlight judgment, as the City had not appealed the Claassen Order. Furthermore, the court found the City's argument regarding limited available resources to be without merit, as the Claassen Order compelled the provision of emergency accommodation regardless of the City's financial position and was specific to the circumstances of the eviction application.¹¹ The court highlighted that the City had agreed to the 30 January 2013 deadline in full knowledge of its financial situation. The City's failure to apply for a variation of the Claassen Order, even after claiming it was "impossible" to accommodate the occupiers due to resource constraints, was also noted by the court.

The court also upheld Changing Tides' argument that its right to property was infringed due to the City's non-compliance, leading to the deprivation of access to and use of the property between 30 January 2013 and January 2016.

Additionally, the court clarified that the requirement of "arbitrary-ness" for deprivation of property only applies when a law of general application permits such deprivation, which the Claassen Order did not constitute.¹²

Furthermore, the court stated that the City's failure to comply with the Claassen Order infringed sections 34 and 165(4) of the Constitution by undermining the rule of law and the effectiveness of the courts.¹³

The court concurred with Changing Tides' submission that the City of Johannesburg displayed a lack of political will or intention to comply with its legal and constitutional duty, amounting to, at best, gross recklessness.¹⁴ This recklessness was further evidenced by the City's failure to comply with subsequent court orders until faced with contempt proceedings.

The court found that the City ought reasonably to have foreseen that its failure to comply with the Claassen Order would deprive Changing Tides of its property and the ability to generate income. The court concluded that the City's harm-causing conduct was wrongful, and public policy dictated that it be held liable for the loss suffered by Changing Tides.¹⁵

COURT ORDER

The court determined that Changing Tides suffered a loss of income for three years, from 1 February 2014 to 1 February 2017, as it was only able to start earning rental income from the latter date due to the City's failure to provide accommodation by the end of January 2013. Consequently, the court awarded Changing Tides damages in the amount of **R12,374,993.00**, including more interest.¹⁶

SIGNIFICANCE OF THE JUDGMENT

This judgement highlights the fundamental principle that all organs of state, including municipalities, are bound by court orders and must comply with them. The court stated that the City of Johannesburg's failure to comply with the Claassen Order undermined the rule of law and that the failure to comply with the court order caused damages to a property owner which was unable to use its property because the municipality failed to provide the occupiers thereof with temporary alternative accommodation.

The judgement acknowledges that the Claassen Order might have gone beyond the City's general obligations under Section 26 of the Constitution. However, it firmly establishes that once a court order is in place, especially concerning the provision of temporary emergency accommodation, the obligated party must adhere to it. The City's arguments about a lack of resources were rejected, particularly because they did not seek a variation of the Claassen Order. The rejection of the City's argument indicates that a higher level of accountability is required from municipalities once a specific court order/directive is issued.

This case further establishes a precedent where a private company has successfully sued a municipality for damages resulting directly from the municipality's failure to comply with a court order. Individuals and entities who suffer financial losses due to a municipality's failure to fulfill its legal obligations, especially those mandated by court orders can seek similar recourse.

CONCLUSION

This judgement reinforces the authority of the courts and the obligation of state entities to abide by their decisions.

It also suggests a growing recognition of the potential for holding municipalities accountable, through delictual claims, for financial losses incurred by private parties as a direct consequence of their failure to comply with court orders, particularly those relating to constitutional rights. This could lead to a greater emphasis on compliance and a more responsible approach to litigation by organs of state.

¹*Changing Tides 74 (Pty) Ltd v City of Johannesburg (40135/2016) [2025] ZAGPJHC 279 (14 March 2025)*

²*Changing Tides 74 (Pty) Ltd v City of Johannesburg para 5*

³*Changing Tides 74 (Pty) Ltd v City of Johannesburg para 4*

⁴*Changing Tides 74 (Pty) Ltd v City of Johannesburg para 6*

⁵*Changing Tides 74 (Pty) Ltd v City of Johannesburg para 7*

⁶*Changing Tides 74 (Pty) Ltd v City of Johannesburg para 8*

⁷*Changing Tides 74 (Pty) Ltd v City of Johannesburg para 9*

⁸*Changing Tides 74 (Pty) Ltd v City of Johannesburg para 11*

⁹*Changing Tides 74 (Pty) Ltd v City of Johannesburg para 12*

¹⁰*Changing Tides 74 (Pty) Ltd v City of Johannesburg para 21*

¹¹*Changing Tides 74 (Pty) Ltd v City of Johannesburg para 24*

¹²*Changing Tides 74 (Pty) Ltd v City of Johannesburg para 28*

¹³*Changing Tides 74 (Pty) Ltd v City of Johannesburg para 29*

¹⁴*Changing Tides 74 (Pty) Ltd v City of Johannesburg para 30*

¹⁵*Changing Tides 74 (Pty) Ltd v City of Johannesburg para 32*

¹⁶*Changing Tides 74 (Pty) Ltd v City of Johannesburg para 40*



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