

# Both sides to appeal in land claim case

## Supreme Court to rule on Protea Village saga

FATIMA SCHROEDER  
High Court Writer

BISHOPSCOURT and Fernwood residents have been given the go-ahead to appeal the Land Claims Court's dismissal of their bid to nullify a 2006 restitution deal with former Protea Village residents.

The Protea Village residents were removed when it was declared for whites only by the apartheid government.

The land that is the subject of the case consists of two erven, Erf 212 and 242, and a farm. The Bishops Court and Fernwood residents' properties surround the land.

While they did not, in their original application to the Land Claims Court, object to Erf 242 and the farm being restored to the claimants, the applicants took issue with other aspects.

Attorney William Booth, who lives in Bishops Court, and two commercial entities, representing Bishops Court and Fernwood residents, were this week granted leave to appeal the Land Claims Court's June decision yesterday.

The court has also granted the minister of land affairs and the land claims commissioner leave to appeal the portions of its decision relating to costs.

The minister and commis-

sioner want the court to order the Bishops Court and Fernwood residents to pay the legal costs the State incurred. They argued that the residents did not undertake to assert or defend a constitutional right.

Instead, according to the State, the residents sought to interdict the "constitutional duty of the state to vindicate the entitlement of the Protea villagers to restitution and equitable redress arising from the forced removals of the villagers by the state under racially discriminatory legislation and practices".

"Applicants sought to perpetuate racially discriminatory practices involved in establishing (the erf) as a public place at the expense of the dispossessed and any equitable redress that they and their descendants are entitled to," the State's lawyers argued.

Judge Shanaaz Mia ruled in favour of the State in June and ordered that each party pay its own costs. The parties returned to court yesterday, where the residents applied for leave to appeal the dismissal of the application, and the minister and commissioner applied for leave to appeal the costs order.

Judge Mia granted both applications.

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# Lawyer's unpaid fees lead to long delay to start of Giddy murder trial

JADE WITTEN  
Court Reporter

THE START of the trial of three men arrested after the murder of UCT student Dominic Giddy has been postponed by the Cape Town Regional Court because one of the accused is unable to pay legal fees.

The trial had been set down

for three days this week, but the court heard yesterday that Thabo Nogemane, lawyer for one of the three men, Simphiwe Ngoma, had not been paid.

It is alleged that Ngoma, 21, Zukisani Sonqwaku, 24, and Bongani Mathamo, 27, robbed Giddy, 22, and two of his friends, Daniel Martin, 23, and Pieter Slabbert, 22, while they

were walking to Giddy's Observatory home on February 13 last year.

Giddy was stabbed to death. The men are now expected to go on trial in February. By then they would have spent two years in jail as awaiting-trial prisoners.

Magistrate Jan van Zyl held an enquiry yesterday into why Nogemane was not paid.

Ngoma's mother, Thozama Alicia Ngoma, was called to the stand and told the court that she was unemployed and her son had been in Grade 12 at the time of his arrest - two months after the murder.

She testified that his sister was supposed to pay the legal costs, but she could not because money had disappeared from her bank account.

"It is a really sad state of affairs," Van Zyl said.

"This case was on the roll on February 23 and 24 and it was postponed to March 15.

"Eight State witnesses were present and all were excused because (Ngoma) had a defence problem. I have to do this reluctantly and ask the witnesses to come to court again."

Giddy's father, Patrick, who

lives in Durban, was in court with other witnesses yesterday.

Van Zyl ordered that a State-funded advocate be appointed to represent Ngoma. He provisionally postponed the case to October 6.

He said the court diary was booked for the rest of the year, and the trial would most likely start in February.

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UNDER ATTACK: Kgosi Thebe and Sinethemba Cekiso, who were discriminated against for being gay.

PICTURE: CINDY WAXA

# Stand up for gays and lesbians, leaders told

NONTANDO MPOSO  
Independent News Cadet Agency

RELIGIOUS leaders have been asked to use their influence to protect those targeted and violated because of their sexual orientation.

At an event at safe house iThemba Lam, Gugulethu, yesterday, Elizabeth Petersen, founder of the South African Faith and Family Institute, said that religious leaders had to hold perpetrators accountable

for their actions.

"Faith communities must be a safe haven for all God's people," she said.

Attending the meeting was the family of Zoliswa Nkonyana, a 19-year-old lesbian who was murdered in 2006.

Nkonyana was stabbed and beaten to death by 20 men a few metres from her Khayelitsha home, after she and a friend had been taunted for being lesbians by a group of girls.

The trial of nine men

accused of her murder has been postponed 38 times.

Yesterday, Funeka Soldaat, a volunteer from Luleki Sizwe, an international campaign against corrective rape, said that lesbians were forced to hide when it came to religion.

After she "came out", her mother, a dedicated patron of the church, didn't speak to her for 10 years. "I know more than 30 lesbians that have been killed," she said.

"I could have been one of

them. There are times when I'm really scared... but can't go to the church to ask for help."

iThemba Lam, established in 2007, is a safe house for people discriminated against because of sexual orientation.

Father John Oliver, from the Western Cape's Religious Leaders Forum, dismissed the notion that rape could "correct" sexuality. "We as religious leaders have the responsibility of spreading the word."

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# Judge upholds R230m restraint order on director

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High Court Writer

THE WESTERN Cape High Court has confirmed a provisional restraint order that allowed the Asset Forfeiture Unit (AFU) to attach R230 million in properties linked to a Centurion businessman accused of fraud.

The court confirmed the order, dismissing an application lodged by Melvyn Cunningham to reconsider the June order on several grounds. These included his argument that the AFU was not entitled to rely on the Prevention of Organised Crime Act (POCA).

Cunningham, who was the managing director of Webworks, and his auditor, David Warren, are accused of defrauding the Fidentia group.

The pair have not yet been tried on the fraud charges, but have made several appearances in the Bellville Commercial Crimes Court.

The restraint order the AFU obtained in June was for R230m in assets to satisfy a confiscation order in the event that Cunningham was convicted.

But Cunningham filed papers questioning the AFU's reliance on POCA, saying he was not being treated fairly.

He said the crime he was charged with was "far

removed" from POCA's primary or intended sphere of operation.

Cunningham also said that the AFU failed to make material disclosures to the court when it initially applied for the restraint order.

However, Acting Judge Wilhelm van Staden dismissed Cunningham's application for a reconsideration of the provisional restraint order, saying he would give reasons later.

The case is to return to court in December, when Cunningham must show why the order should not be made final.

In the criminal case, Cunningham and Warren are accused of deliberately presenting Fidentia with a vastly inflated picture of the earning capacity of Webworks, to induce the group to buy shares.

The State alleges Cunningham deliberately misstated the affairs of Webworks in its statements during negotiations, and this led Fidentia to buy the company's shares and loan account for R160m.

However, Webworks was insolvent and did not offer the cost-earnings ratio Fidentia expected it to have.

The AFU has calculated that the benefit to Cunningham was R230m, but by the time the case is concluded and costs are added the sum will be R290m.

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## Homeless baby kidnapping accused drops her bail application

COURT REPORTER

A 20-YEAR-old woman who allegedly kidnapped a seven-month-old baby from Brooklyn at the weekend has abandoned an attempt at bail after

admitting in court that she lives on the street.

Roseline Philander, of Kraaifontein, appeared in the Cape Town Magistrate's Court yesterday.

She has been charged with kidnap-

ping Gabriella de Waal from her family home at about 8am on Saturday.

The baby's mother, Shamiya Isaacs, told police that a woman, known only as "Makyla", asked if she could take the baby for a walk, but she

had refused.

Isaacs left her daughter unattended for five minutes.

When she returned, the child was gone.

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Find the third clue in the Cape Argus, Thursday 8 September!

Weekend Argus Cape Argus

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