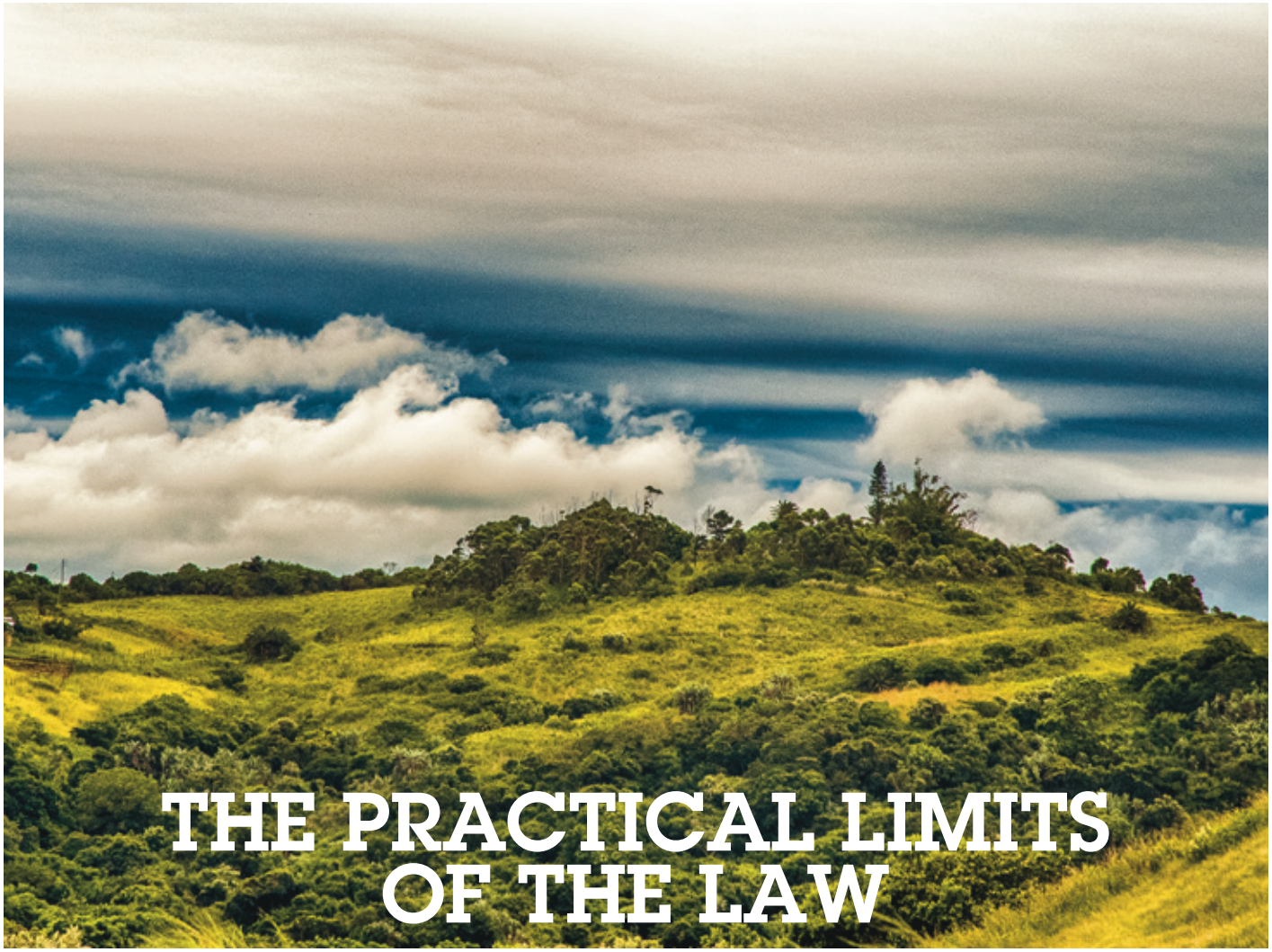

THE PRACTICAL LIMITS OF THE LAW

When constitutional duty collides with community resistance in the enforcement of eviction orders

by **MINIKAZI MTATI-MWANGE**, KwaZulu-Natal Bar*

"Safeguarding the rights of others is the most noble and beautiful end of a human being." – Kahlil Gibran

INTRODUCTION

South Africa's Constitution guarantees the right to access of adequate housing – but when municipalities seek to implement court-sanctioned evictions with accompanying relocations, they often confront a less visible but more stubborn enemy: resistance dressed as community interest.

As legal practitioners representing local government, we know this terrain intimately. Orders are secured, relocation sites identified, and constitutional boxes fulfilled – only for implementation to be derailed by political calculation, territorial posturing and a public sentiment increasingly shaped by a "not in my back yard!" (NIMBY) mentality.

The case of *eThekwini Municipality v Mnyandu and Others (KZD) case no. 827/2018, 20 March 2025*, (unreported), an interlocutory application grounded in the long-running *Omega 24 (Pty) Ltd v Milizwe & Cele & Others* eviction matter, offers a sobering study of what happens when the law says "go" but power on the ground says "no."

THE LEGAL LANDSCAPE: A CONSTITUTIONAL DUTY WITH NO STRAIGHT PATH

In 2018, the High Court granted an eviction order in favour of Omega 24 (Pty) Ltd against unlawful occupiers in Sydenham,

Durban. Justice Ploos van Amstel, in his judgment was explicit: occupiers could not dictate where they would be relocated, and the Municipality was to offer temporary accommodation "within its available resources". In other words, no right of refusal, only the right not to be rendered homeless.

This legal clarity, however, has not translated into practical traction.

Three relocation sites were proposed – Waterfall Extension 4, Ntshongweni and Verulam. In each instance, the receiving communities rejected the proposal, with some residents demanding formal houses, not land, and others insisting that newcomers would lower property values, bring crime, or "start a new informal settlement".

A fourth site – closer to the occupiers' current location – was ruled out due to its D'MOSS (Durban Metropolitan Open Space System) designation, a legal environmental restriction. Thus the municipality was caught between constitutional compliance and practical paralysis.

AMANZIMTOTI: WHERE RIGHTS COLLIDE WITH TRADITIONAL POWER

Eventually, land was secured in Amanzimtoti. It was lawfully purchased by the municipality. The occupiers accepted the site. But when the municipality sought to implement the relocation, fierce resistance emerged from the ward councillor and the Traditional Council.

What followed was not mere disagreement – it was active obstruction. The councillor refused to participate in engagement meetings. Traditional leaders threatened violence. One Induna said, "kuyochitheka igazi" – there will be bloodshed. Consultations collapsed. The municipality was forced back into court, this time seeking an interdict to ensure compliance with an already-issued eviction order.

> "WHEN THE MUNICIPALITY SOUGHT TO IMPLEMENT THE RELOCATION, FIERCE RESISTANCE EMERGED FROM THE WARD COUNCILLOR AND THE TRADITIONAL COUNCIL."

THE INTERLOCUTORY JUDGMENT: A REAFFIRMATION OF THE RULE OF LAW

Justice Singh, in her interlocutory judgment in *eThekwini Municipality v Mnyandu and Others (KZD) case no. 827/2018, 20 March 2025* (unreported), reaffirmed that:

- The Amanzimtoti site is lawfully owned by the municipality and is the designated relocation site;
- No ward councillor or traditional authority may override a valid court order;
- Threats and intimidation constitute impermissible interference with constitutional implementation.

This was not merely a procedural ruling – it was a substantive reaffirmation of the supremacy of the Constitution and the enforceability of judicial orders.

COMMUNITY ENGAGEMENT ≠ COMMUNITY VETO

South African courts have repeatedly affirmed the value of community engagement in eviction proceedings. In *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others 2012 (6) SA 294 (SCA) and Occupiers of 51 Olivia Road, Berea Township, and 197 Main Street, Johannesburg v City of Johannesburg and Others 2008 (3) SA 208 (CC)*, the Constitutional Court underscored the need for meaningful consultation with affected parties. In *Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC)*, the court emphasised the necessity of balancing legality, dignity and justice.

But nowhere do these cases suggest that community engagement grants the right to obstruct lawful state action. Engagement is not consent, although it is desirable to achieve consensus. It is an important safeguard, not a referendum. Municipalities are not required to beg permission to comply with the Constitution. In other words, engagement shapes the process – not the outcome.

Yet, increasingly, we see engagement weaponized – used by local elites to impose preconditions that municipalities cannot legally or financially fulfil. The demand that RDP houses be built before relocation, or that only certain "deserving" beneficiaries be welcomed, undermines both equality and urgency.

THE POLITICAL UNDERCURRENT: SILENCE, ELECTIONS, AND INVISIBLE HANDS

Ward councillors are elected officials. Their fortunes depend on voter goodwill. In both the *Mnyandu* case and the *Omega* case, earlier efforts to relocate to Waterfall Extension 4, councillors hesitated – or outright refused – to support relocation efforts, fearing backlash from residents.

This political hesitation introduces another layer of complexity: municipalities are required to implement difficult decisions, while the very political actors meant to support them remain absent, ambiguous, or actively oppositional.

It is a form of soft sabotage – unseen in pleadings but decisive in outcome.

WHEN LAW MEETS LAND: STRATEGIC REFLECTIONS FOR PUBLIC LAW PRACTITIONERS

So what can legal practitioners do when legal success becomes practical gridlock? A few reflections:

1. Frame the litigation to anticipate obstruction. Make it clear that while engagement is required, compliance with court orders is not optional.
2. Document everything (and/or advise your instructing attorneys and consultants to do the same): meetings convened, letters sent, threats received, who refused to participate, who did participate. This evidence is critical when returning to court.
3. Seek structural relief where necessary: interdicts, compliance timelines, and declarations that clarify the limits of stakeholder authority.
4. Educate the bench. Many courts are sympathetic to theoretical balance but need guidance on how obstruction unfolds in practice.
5. Reframe the narrative: relocation is not a housing opportunity. It is a constitutional necessity to prevent homelessness.

CONCLUSION: THE FATE OF ORDERS AFTER JUDGMENT

The rule of law cannot end at judgment. A court order is not a symbolic act – it is a directive meant to be implemented.

The *Omega 24 and Others* and the *Mnyandu and Others* case remind us that the most dangerous threat to constitutional implementation may not be the law itself but the informal power that emerges when fear, politics, and community pressure converge.

As practitioners, we must insist that the Constitution does not bend to popularity, and that municipalities are not merely the service providers of the state but the defenders of its legal foundation.

Justice cannot be a promise on paper. It must be a reality on the ground. A

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