

Inhabiting the Ruins of the City of Tshwane

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Abstract

In the inner city of Tshwane stand the skeletons of four high-rise buildings – the remains of Schubart Park. While there are no more people inside the ruins of these buildings, they contain the stories of the relations between a city and its inhabitants. In 2012 Justice Froneman wrote the judgment that ordered that the inhabitants of Schubart Park should be reinstated in their former homes, after they were evicted by the City of Tshwane in 2011. More than ten years after his judgment, there is (again) a plan to move the former residents back. From a spatial justice perspective and through Ann Stoler's work on ruination, Chris Butler's call for inhabiting the ruins and Ivan Vladislavić's short story *We Came to the Monument*, I reflect on how court judgments stand between the possible and the impossible. I call for a re-imagination of the ways in which the municipality can relate to the inhabitants of the City and argue that Justice Froneman enables this re-imagination through his judgment in Schubart Park.

Keywords

Schubart Park; spatial justice; ruination; inhabitation; City of Tshwane; Justice Froneman.

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1 Introduction

Artefacts and ruins are remains of human-made objects and structures. In the west of the Tshwane city centre stand the soon-to-be-rejuvenated ruins of the Schubart Park Apartment Complex.¹ The aim of this article is to consider the contribution of Justice Johan Froneman to law as a bridge between imagination and reality, between impossibility and possibility. To achieve this aim I turn to his unanimously supported judgment in *Schubart Park Residents Association v City of Tshwane Metropolitan Municipality* 2013 1 BCLR 68 (CC), handed down in October 2012, and explore it through the notions of relations and ruinations. The case concerned the eviction of between 3 000 and 5 000 people from a high-rise apartment complex in the inner city of Tshwane. The broad question was what a justified order would be where the inhabitants who had been removed from their homes in a situation of urgency approach a court for an order that they may re-occupy their homes?² Justice Froneman found that what the city tried to present as an evacuation was in fact an eviction and that the City had to comply with the requirements of the Constitution. After the judgment, the inhabitants could not re-occupy their homes because of the dilapidated state of the buildings. The judgment and the remains of Schubart Park are artefacts in the Tshwane urban lawscape. Despite the Constitutional Court's ruling in favour of the inhabitants, that they be reinstated in their homes, the apartment complex still stands deserted and ruined. This contribution considers literal ruins and figurative ruins, excavations and artefacts of inhabitation and judging, and asks two questions: Firstly, can the ruins of Schubart Park assist us in thinking about a broader ongoing ruination process, namely apartheid and colonial ruination? Secondly, does the judgment of Justice Froneman about the ruins of Schubart Park make us think differently about the right to the city in terms of inhabiting its ruins? After covering what happened to Schubart Park in the wake of the Constitutional Court judgment in favour of the inhabitants, I turn to these two questions of ruination and inhabiting the ruins of possibility. In order to think about the City of Tshwane in terms of "rock" and ruin, I read the dystopic

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¹ The Schubart Park case was central to my LLD thesis titled "xxx". My gratitude therefore to Karin van Marle for the supervision of my LLD and for creating this opportunity to reflect on the aftermath of the Schubart Park case. Thank you for valuable inputs from the participants in the workshop held in November 2021, and especially to Justice Froneman for his reflections during the workshop and his insight that this case illustrates how court judgments stand between the possible and the impossible. All errors remain my own.

² *Schubart Park Residents Association v City of Tshwane Metropolitan Municipality* 2013 1 BCLR 68 (CC) (hereafter *Schubart Park Residents Association*) para 1.

short story *We came to the Monument* by Ivan Vladislavić as a way to formulate the possibility and impossibility of inhabiting it.

2 Schubart Park after the Constitutional Court judgement

On 9 October 2012 Justice Froneman delivered an order that upheld the appeal brought by the former inhabitants of Schubart Park, setting aside the orders of the High Court.³ Because these orders did not comply with the requirements for an eviction order as set out in section 26(3) of the *Constitution of the Republic of South Africa, 1996*, he found that the residents were entitled to occupy their homes again as soon as was reasonably possible. In this regard he ordered:

5. The applicants and the City of Tshwane Metropolitan Municipality must, through their representatives, engage meaningfully with each other in order to give effect to the declaratory order in paragraph 4 above. The engagement must occur with a view to reaching agreement on:
 - 5.1. the identification of the residents who were in occupation of Schubart Park before the removals that started on 21 September 2011;
 - 5.2. the date when the identified residents' occupation of Schubart Park will be restored;

This was certainly not intended as the last word on the matter. Because it was uncertain how long the process might take to restore the residents to their homes, he specifically tasked the high court with over-seeing the process:

The engagement part of the order issued in terms of section 38 should thus provide for meaningful engagement with the applicants at every stage of the re-occupation process. It is, however, uncertain how long that process will be and it is necessary for supervision by a court of the progress in that regard. Experience has shown that this should be done by the High Court.⁴

Over the eleven years since the Constitutional Court judgment there have been reports of the former inhabitants of Schubart Park marching to Tshwane house to register their grievances.⁵ The alternative accommodation provided has not been without issues. When the residents were moved into alternative accommodation, they were scattered across the city. Some people were moved to privately owned buildings and others were relocated to Clarina Estate, which is operated by Housing Company Tshwane. More than 300 residents were moved to Parkview Units, where

³ *Schubart Park Residents Association* para 53.

⁴ *Schubart Park Residents Association* para 51, referring to *Pheko v Ekurhuleni Metropolitan Municipality* 2012 2 SA 598 (CC) para 50, and *Occupiers of Saratoga Avenue v City of Johannesburg Metropolitan Municipality* (CCT 12/12) [2012] ZACC 9 (24 May 2012).

⁵ Anon 2017 <https://www.polity.org.za/article/schubert-park-residents-to-march-to-tshwane-municipality-2017-03-14>.

the landlord, Singyung Investments, threatened them with eviction proceedings in 2021. The landlord in its affidavit, claimed that it had become difficult to control or identify the occupants because they changed regularly and that vandalism by the tenants was costing them a lot of money.⁶ The City's response was that they were not taking any responsibility beyond paying the invoices in terms of the agreement in place. Those who were moved to Ajo Building reported dire conditions and victimisation by security personnel during the COVID lockdown.⁷ After a prolonged legal dispute with Zambli 279 (Pty) Ltd/Tsoseletso Consortium, the City of Tshwane reached a settlement in September 2022, ten years after the ruling of the Constitutional Court, and plans to rejuvenate Schubart Park and reinstate the former inhabitants can now go ahead.⁸ The municipal entity, Housing Company Tshwane, was formed in 2001 as part of the partial privatisation of some municipal services. It took over the Schubart Park housing complex in 2005.⁹ Many attribute the start of the problems in the blocks to the takeover by Housing Company Tshwane,¹⁰ but it is clear from various newspaper and research reports¹¹ that cracks were showing from early on.

Not only did the alternative accommodation provide problems for the former inhabitants over the course of the decade after the judgment, but it also came at a great cost to the City of Tshwane. A recent City of Tshwane Council report estimates the cost of rent and amenities between 15 and 24 million rand per annum.¹²

Whatever the state of the buildings at the time of the High Court orders in 2011, by the time of the Constitutional Court order a year later, the buildings, , were unsafe to inhabit because of the ongoing looting and continued to get more and more unsafe as time went on. This does not suggest that the ruination started with the Constitutional Court judgment in 2012, nor with the evictions in 2011. When did the ruination set in? Was it with its construction in the 1970s by the apartheid government for subsidised housing for public servants? Was it when the administration of Schubart Park fell to the Gauteng Housing Department after 1994, or was it when the complex came

⁶ See Venter *Pretoria News* 3.

⁷ See Tshabalala 2020 <https://www.r2k.org.za/2020/04/16/former-schubart-park-residents-are-not-happy-at-the-new-building/>.

⁸ Berlinton 2023 <https://www.tshwane.gov.za/?p=58739>; Mahope *Pretoria Record* 2.

⁹ Du Toit 2009 *Journal of Architectural and Planning Research* 161-162.

¹⁰ Housing Company Tshwane 2020 <https://www.govpage.co.za/housing-company-tshwane-hct-vacancies/housing-company-tshwane>.

¹¹ In 1984 the Human Science Research Council through a group of researchers compiled a report on the "place perspective" of Schubart Park. While the report portrays initial perceptions of the building style as positive, it hardly paints a picture of perfect conditions. See in general Schutte *Social Interaction and Place Perspective*.

¹² City of Tshwane *Report of the Special Mayoral Committee*. My gratitude to reporter Rapula Moatshe, who furnished me with a copy of the report.

under the full control of the Pretoria City Council in 1999? Or only when the City Council partially privatised some of their services, or when Housing Company Tshwane took over the housing complex in 2005? One lesson, as Edward Soja has it, "is clear: once spatial injustice is inscribed into the built environment, it is difficult to erase."¹³ Therefore I want to think about this in archaeological terms, more particularly in terms of ruination.

3 Ruination

In the preface to her edited collection *Imperial Debris – of Ruins and Ruination* Ann Stoler shifts the focus from the noun ruin to "ruination" as an active, ongoing process that allocates imperial debris differentially.¹⁴ To ruin is an active process and a violent verb that unites apparently disparate moments, places and objects. Along with the contributors to the collection she looks at ruins as sites that condense alternative senses of history, and with ruination as an ongoing corrosive process that weighs on the future.¹⁵ The focus falls on the enduring quality of imperial remains, what they impinge on, and the uneven distribution of their impaired states. This approach resists seeing ruins merely as "memorialized monumental 'leftovers' or relics" but instead as what people are left with.¹⁶ What are the aftershocks and "social afterlife of structures, sensibilities and things?"¹⁷ These after-effects can be discerned in the "corroded hollows of landscapes, in the gutted infrastructures of segregated cityscapes and in the micro ecologies of matter and mind."¹⁸ The question that emerges from this understanding is therefore: How do spatial formations persevere in their material debris, in ruined landscapes and through the social ruination of people's lives?

In the Schubart Park case Justice Froneman draws attention to the relations that remain. His judgment shows very clearly how power relations and people's positions in society produce spaces. The City of Tshwane, like other cities, has been produced by this imagining of those who inhabit the inner city, and who have the right to the city. Justice Froneman reminds us that we are continuing to live in the ruins of apartheid when he emphasises the importance of "engagement without preconceptions about the worth and dignity of those participating in the engagement process."¹⁹ It matters how

¹³ Soja *Seeking Spatial Justice* 41.

¹⁴ Stoler *Imperial Debris* ix.

¹⁵ Stoler refers to the Oxford Dictionary definition of the verb "ruin": "to inflict or bring great and irretrievable disaster upon, to destroy agency, to reduce to a state of poverty, to demoralize completely." Stoler *Imperial Debris* 9.

¹⁶ Stoler *Imperial Debris* 9.

¹⁷ Stoler *Imperial Debris* 10.

¹⁸ Stoler *Imperial Debris* 9.

¹⁹ *Schubart Park Residents Association* para 44.

the inhabitants are viewed. As Justice Froneman observes, looking at the historical relations between the inhabitants and the City of Tshwane:

The City's tender was an inadequate basis for a proper order of engagement between the parties. It proceeded from a 'top-down' premise, namely that the City will determine when, for how long and ultimately whether at all, the applicants may return to Schubart Park. Unfortunately the history of the City's treatment of the residents of Schubart Park also shows that they appeared to regard them, generally, as 'obnoxious social nuisances',²⁰ who contributed to crime, lawlessness and other social ills. If there were individuals at Schubart Park who were guilty of, or contributed to, these ills, they should have been dealt with in accordance with the provisions of the law relating to them.²¹

This is one of the most significant contributions of the judgement. It illustrates a continuation of the ruination shaped by a perception of who lives in Schubart Park. This is something that started as early as when construction of the housing complex commenced in 1976. The blocks were commissioned by the apartheid government's National Housing Board in order to provide white middleclass civil servants with accommodation in close proximity to the administrative capital. The four concrete blocks, built in Le Corbusier style, invoke the "city of rock" of Vladislavić's story.²² The blocks were also built by the Apartheid government to prevent the spread of a racially mixed low income neighbourhood in Pretoria, which eventually happened gradually over time, but especially after 1994. Stoler's book focusses on the ongoing process of ruination, but I now shift the focus back to ruins and in particular, inhabiting the ruins of the city as proposed by Chris Butler.²³

4 Inhabiting the ruins of the possible

A key aspect in the Schubart Park case is that, in contrast to the High Court proceedings,²⁴ the residents were victorious in the Constitutional Court. Even though they were not being reinstated in their former home, Schubart Park, the City was compelled to and did provide them and paid for alternative accommodation after the Constitutional Court ruling, more than ten years ago. While this was one solution to part of the problem, there were two serious complications to the residents not living in Schubart Park. The first concerned the inhabitants. Because the alternative accommodation was provided in different buildings scattered across town and not necessarily located close to Schubart Park, the inhabitants faced the

²⁰ Here justice Froneman references *Port Elizabeth Municipality v Various Occupiers* 2005 1 SA 217 (CC) para 41.

²¹ *Schubart Park Residents Association* para 50.

²² See the discussion of this short story below.

²³ Butler 2019 *Law & Crit.*

²⁴ The High Court granted three separate orders on 22 September, 23 September and 3 October 2011. The first two were dismissals of an application to immediately reinstate the residents in their homes, while the third ordered the implementation of the city's tender.

immediate challenge of being far from their places of work and their children's schools.²⁵ They were also split up between the different locations and the strong sense of community which had existed before the evictions was eroded. The second complication concerned the buildings themselves. With no inhabitants, the buildings became a site where metal could be extracted from the structures and within a few years the walls of the apartment complex had been chipped away and only the inner structures remained. Central to the Schubart Park case is the notion of impossibility. The question whether it was impossible to inhabit the apartment complex was essential in the cases in the High Court and carefully considered in the Constitutional Court.²⁶ Impossibility is one of the common law defences to a spoliation claim.²⁷ Impossibility was the only defence the City raised in its affidavit opposing the dismissal order.²⁸ Referring to the cases of *Rikhotso*,²⁹ *Tswelopele*³⁰ and *Fose*,³¹ Justice Froneman reaches the conclusion that regardless of whether spoliation proceedings lead to restoration or not, they should not serve as a foundation for any permanent dispossession and therefore cannot fulfil the requirements for eviction in terms of section 26 of the Constitution. While the case of Schubart Park developed and contributed to the growing body of jurisprudence on evictions in South Africa, the focus of this contribution falls on the question of impossibility and the way in which Justice Froneman, through his judgment in Schubart Park, implicitly challenges the stark lines between possibility and impossibility in law.

²⁵ Van Marle and De Villiers 2013 *AFLJ* 140 n 62.

²⁶ It remains a pity that the applicants could not present any new evidence on the condition of the buildings during the Constitutional Court case, because it was an appeal and new evidence was impermissible. *Schubart Park Residents Association* para 31: "The application for leave to introduce further evidence on the condition of the buildings suffers the same defect and must be dismissed."

²⁷ *Schubart Park Residents Association* para 22: "The applicants sought an order in the High Court for restoration on the ground that they were despoiled of possession of their homes. This immediately added the dimension of section 26(3) of the Constitution to what would otherwise have been a normal spoliation application. It is the interplay between the ordinary requirements of spoliation and the demands of section 26(3) of the Constitution that is at issue here."

²⁸ The High Court granted three orders on 22 and 23 September 2011, and 3 October 2011. Justice Froneman combines the September orders firstly in the dismissal of the application by the residents to immediately re-occupy their homes (dismissal order) and thereafter in the October order, which related to the tender of the City and the implementation thereof (tender implementation order).

²⁹ *Rikhotso v Northcliff Ceramics (Pty) Ltd* 1997 1 SA 526 (WLD) 535A-B.

³⁰ *Tswelopele Non-Profit Organisation v City of Tshwane Metropolitan Municipality* 2007 6 SA 511 (SCA).

³¹ *Fose v Minister of Safety and Security* 1997 3 SA 786 (CC).

In an article tracing the fictionalised documentaries of Patrick Keiller,³² Butler argues for connecting the "material ruins of our present with utopian imaginings of alternative forms of sociality - beyond the conceptual limits of capitalist realism and the catastrophic futures of neoliberal space."³³ The fictional documentaries of Keiller are based on the thoughts and travels of a protagonist, "Robinson", who is never seen during the course of the films. The travels and thoughts are imparted to the viewer by a narrator who is also invisible throughout.³⁴ Set in Britain these three films show the viewer several examples of the continuing ruination processes and social decline that have come to mark post-Thatcherite Britain. For Butler the Keiller's Robinson trilogy provides an example of an attempt to build a bridge between our material conditions and an imagined world.³⁵ He argues that Keiller's engagement with the idea of catastrophe, through spatial, social and historical registers, is an attempt to link the material ruins of our present with utopian imaginings of alternative forms of sociality.³⁶

Butler shows that if, as Henri Lefebvre suggests, "the space which contains the realised preconditions of another life is the same one as prohibits what those preconditions make possible",³⁷ it is crucial not only to visualise alternatives but also to materially inhabit them. In *The Production of Space* Lefebvre argues that since there is a direct link between the body and the space of the body, there is a relationship between the body's "occupation of" and "deployment in" space.³⁸

Before producing effects in the material realm (tools and objects), before producing itself by drawing nourishment from that realm, and before reproducing itself by generating other bodies, each living body is space and has its space: it produces itself in space and it also produces that space. This is a truly remarkable relationship: the body with the energies at its disposal, the living body, creates or produces its own space; conversely, the laws of space, which is to say the laws of discrimination in space, also govern the living body and the deployment of its energies.³⁹

The idea of space being produced by bodies and the relations between them is significant because it links to the notions of spatial memory or spatial legacy. Asking the question about re-inhabiting Schubart Park also asks the question of how to inhabit the ruins of apartheid and colonialism in South

³² The trilogy of films discussed is *London*, *Robinson in Space* and *Robinson in Ruins* (Keiller 1994, 1997, 2010). See Butler 2019 *Law & Crit* 226.

³³ Butler 2019 *Law & Crit* 225.

³⁴ Butler 2019 *Law & Crit* 226.

³⁵ Butler 2019 *Law & Crit* 239. He references Anthony Kinin: "A bridge between imagination and reality must be built": Kinin A "Film and Spatial Critique in the Work of Patrick Keiller" 2009 *Intermédialités* 105-125.

³⁶ Butler 2019 *Law & Crit* 239.

³⁷ Butler 2019 *Law & Crit* 239 with reference to Lefebvre *Production of Space* 189-190.

³⁸ Lefebvre *Production of Space* 169-172.

³⁹ Lefebvre *Production of Space* 170.

Africa. The spatial legacy that remains written on South African cityscapes requires that we materially inhabit them to make alternatives possible.

Justice Froneman's judgment in Schubart Park opens up a new understanding of Lefebvre's right to the city in the midst of ruination.⁴⁰ The judgment, delivered two years after the evictions, when the plundering and ruination of Schubart Park was already well under way, ordered that the inhabitants be returned to or be reinstated in their homes. This represents a utopian imagining of an alternative form of sociality beyond the conceptual limits and the catastrophic future presented by the municipal council's case. It insists that those who are evicted, evacuated and excluded from the city are not "obnoxious nuisances", but that they may, can, and should belong in the city. It invites us to understand the right to the city in these terms. The films of Keiller are set in a context different from South Africa but the line of thinking that Butler draws from them is valuable for our setting. I draw on the short story by Ivan Vladislavić, *We came to the Monument*,⁴¹ and delve deeper into the concept of ruination to ponder a similar possibility of imagining and realising alternative spatialities.

The monument in the story is the Voortrekker Monument and the story is set in Pretoria. It is told from the perspective of two narrators. One is the daughter of a person called Steenkamp, the leader of a group of families who survived the siege of the city and now try to return, but find the city in ruins. The other is a statue, one that stands in a busy city square in the beginning, but later detaches itself from its pedestal and walks to the monument. The statue witnesses the changes in the city, the siege, the emptying out of the city and its destruction. This human statue in the post-apocalyptic Pretoria then reflects upon and merges itself with the friezes of the Voortrekker Monument. The statue moves through the city. It is first a statue in "the heart of it all" on "a pedestal at a busy intersection."⁴² But even as a statue, he falls in love, he dreams, he contradicts himself.⁴³ One night,

⁴⁰ Runciman *Mobilisation and Insurgent Citizenship* 211 states that "At the heart of the Schubart Park struggle is an implicit debate over who has the right to the city." The concept of the right to the city, Lefebvre *Writings on Cities* 147-159, encompasses the right to appropriation and the right to participation. Lefebvre's ideas echo in the slogan of the Schubart Park residents: "The City of Tshwane belongs to us and Schubart Park belongs to us."

⁴¹ First published in 1989 in Vladislavić *Missing Persons* and later also included in 2010 in Vladislavić *Flashback Hotel*.

⁴² Perhaps referring to the statue of Paul Kruger in Church Square in the inner city? Vladislavić *Flashback Hotel* 67.

⁴³ In the city centre on its pedestal, the statue's hands were frozen in a permanent gesture, the one open and the other shut – but, he tells us, "local historians, who wanted to give our city a history with footnotes, began to say that sometimes the hand that was open in the morning was shut at night. They said that I was some kind of miracle, or at least, that I contradicted myself." Vladislavić *Flashback Hotel* 70.

when the tide had gone out, the statue climbs down from its pedestal, stretches, and walks away.

I walked through the gutted city. I walked past the survivors, asleep in the ruins in their stainless-steel beds. Next to their incorruptible clocks And so I came at length to the Monument and it seemed like a place to stay.⁴⁴

The monument, like the rest of the city, is by the time the statue and the families arrive also in a dilapidated state. The statue then integrates himself into the outside wall of the Monument, becoming a sentinel, watching the city crumble and burn. The Monument endures. When he sees the approaching party of the Steenkamps, and realises that his early love, the daughter of Steenkamp, has returned to the city, he flees inside the Monument, moving from frieze to frieze in an attempt to find a place to hide. What the story manages to do is to make unfamiliar the city of Pretoria and its history, as connected to South African history. In doing so the inequalities of the past are highlighted. Published in 1989, *We came to the Monument* was written at a time when a different future for South Africa was very hard to imagine.⁴⁵ It is for this reason that the families who inhabit the ruins of the monument and the ruined statue that inhabits the ruins of the city resonate with Butler's call to materially inhabit the ruins in order to imagine a different city. Throughout the story the city remembers. The monuments not only remind, but remember. The stone of the cityscape grinds to sand and becomes the sand in the hourglass of time.⁴⁶ The sand of time and place becomes the very blood of the city's inhabitants.

It seems to me sometimes as if the earth stopped dead on its axis then. Like a globe blocked by a child's hand, and slowly began to revolve in the opposite direction. It gathers up the long thread of history, so carelessly unwound into space. When the people are asleep, the sand settles in the blood, the streets.⁴⁷

5 Conclusion

Previously, in my LLD thesis, I focussed on the build-up to the September 2011 evictions from Schubart Park, or, with others, on the everyday lived experiences of those in the high rises.⁴⁸ In this contribution I turn my attention to the aftermath of the Constitutional Court decision in 2012. After that order residents were moved to alternative accommodation. Some still live there. I briefly discuss the different complications and more litigation raised by the alternative accommodation, while also remembering that

⁴⁴ Vladislavić *Flashback Hotel* 72.

⁴⁵ Mukherjee 2012 *Journal of Postcolonial Writing* 472.

⁴⁶ "I lived in a city of rock. In the morning a tide of flesh and blood came in, it surged through the streets and crashed against the buildings, voices slid over one another like pebbles. In the evening, the tide receded, leaving the streets full of sand." Vladislavić *Flashback Hotel* 67.

⁴⁷ Vladislavić *Flashback Hotel* 77.

⁴⁸ Van Marle and De Villiers 2013 *AFLJ* 129-145.

many of the evicted inhabitants were never housed in alternative accommodation. While the former residents of Schubart Park were trying to inhabit their new, alternative, and, intended to be interim homes, their former home was looted and broken down to such a degree that only the skeletal structures of the buildings remain. Looking at Schubart Park's remains in the Tshwane central business district from Stoler's ruination reminds us that we are still living in the ruins of apartheid. While this is important, I think it is one way of seeing the ruins and reading the judgment as an artefact in the ruins. I therefore turn to Butler's call for inhabiting the ruins of the possible, against the backdrop of his reading of Keiller's fictional documentaries. *We came to the monument* by Vladislavić opens up the same possibility for Tshwane that Butler's reading of Keiller's documentaries does. I illustrate this by reading the city as one of rock and sand, as fixed and in flux.

Reflecting on the body of jurisprudence on evictions, Justice Froneman notes that these provisions and cases assist us to appreciate in the first place that there is an interrelation between different rights and interests, and in the second place, that the tension between these interrelated rights and interests can best be resolved by engagement between the parties.⁴⁹ Justice Froneman acknowledges the difficult context in which the high court orders were made and proceeds very carefully.⁵⁰ In a similar spirit, I am not suggesting that the inhabitants should continue to live in precarious housing conditions in the city or that, in instances of urgency, they should continue to inhabit dangerous, ruined buildings. Indeed, "great caution must be exercised".⁵¹

Where urgency dictates that immediate restoration will not be ordered it must be made clear, preferably by a declaratory order to that effect, that the refusal to order re-occupation does not purport to lay the foundation for a lawful eviction under section 26(3) of the Constitution. The order must be temporary only, and subject to revision by the court. Urgent orders of this kind will be rare: there is legislation providing for the timeous removal of people living in

⁴⁹ *Schubart Park Residents Association* para 44.

⁵⁰ See for example *Schubart Park Residents Association* paras 35-36: "The initial order granted on 22 September 2011 was made under very difficult circumstances. It was made late at night after hearing oral evidence in relation to violent protest action that was finally brought under control only that same day. The factual assessment of immediate danger resulting from the fires to the lives of the residents, including elderly people and children, made by the Judge cannot be second-guessed in this Court. Even if it could, I would find it difficult to fault the immediate effect of the order. The important question, however, is whether that immediate order pronounced in a final way upon the lawfulness of the applicants' removal from their homes. If it did, it was legally incompetent, as explained earlier. But what emerges from the orders is not as clear-cut as that."

⁵¹ *Schubart Park Residents Association* para 38.

unsafe buildings,⁵² for temporary evacuation in disaster situations,⁵³ and for eviction in the normal course.⁵⁴

Inhabiting the ruins of the possible in the context of the *Schubart Park* case imagines a different way in which the municipality can relate to the inhabitants of the city. In his judgment Justice Froneman was concerned that, until the oral argument before the Constitutional Court, the municipality tried to justify the removal of the inhabitants as lawful under the emergency and disaster legislation, "when it was clearly not the case".⁵⁵ By acknowledging the applicants' assertion that the City used the crisis as an excuse to evict them and by insisting that the ruins should be re-inhabited, he built a bridge between possibility and impossibility.

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⁵² Section 12 of the *National Building Regulations and Building Standards Act* 103 of 1977; Regulation A15 in GN R2378 in GG 12780 of 12 October 1990.

⁵³ Section 54 of the *Disaster Management Act* 57 of 2002.

⁵⁴ *Schubart Park Residents Association* para 38 with reference to the *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act* 19 of 1998.

⁵⁵ *Schubart Park Residents Association* para 39.

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List Of Abbreviations

AFLJ	Australian Feminist Law Journal
Law & Crit	Law and Critique