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Saving the “Mother Market”: Mobilizing Street Vendors in Durban

Impact: When a historic market in Durban, South Africa was threatened by commercial development, market workers and street vendors, with the support of Asiye eTafuleni, the World Class Cities for All (WCCA) campaign, and other local organizations, came together to defend the rights of vendors to public space and to preserve a historic city landmark.

For many years, the Warwick Junction area has been a thriving market where street vendors and others involved in the informal economy have made their living. On April 29, 2009, the eThekweni (Durban, South Africa) Council granted a 50 year land lease to a party called the Warwick Mall (Pty) Ltd., developers who planned to construct a mall and mini-bus taxi rank on this site, supplanting the historic and vibrant Early Morning Market (EMM). This set in motion a two year struggle to reverse this decision and protect the livelihoods of informal workers who work in and around this Market.

A month earlier, the informal workers were first made aware of the Municipality’s intentions when a public notice was published in a local newspaper on March 3, 2009. The notice invited objections to the proposed lease.

Two distinct groups of informal workers were to be affected by the proposal – stallholders inside the EMM and a further group utilizing the public spaces surrounding the Market. A significant concern was that the negative impact would not only be limited to the visible workers but would also include their often invisible network of assistants, co-workers and suppliers. At least 21,000 people—about 3,000 workers who support, on average, 7-12 dependants on the incomes they derive from the Market precinct – would be affected. Initial objections ranged from the violation of various constitutional rights, the lack of public participation in the decision, the subversion of administrative justice, urban development critique, and general indignation. Although objections were duly submitted, none were acknowledged or upheld.

The first legal challenge was instituted by the Early Morning Market Trader’s Association (EMMTA) in response to the forced closure of the main Market gates on June 11, 2009. This was an attempt by the Municipality to force the stallholders to relocate to the proposed – but hopelessly inadequate – temporary site. The High Court granted interdictory relief to the stallholders as an interim order that would have allowed them to return to their stalls. However, the City officials maintained that only



photo: Asiye eTafuleni

those with “valid permits” prior to June 11, about 35 per cent of the stallholders, could return. However, even these stallholders were then continually harassed by the officials. This Court order was effectively disobeyed by the City, which forced the EMMTA to obtain a further order ruling that the gates should be opened without restrictions. The City’s subsequent response was to issue notices advising that all traders were to be evicted on July 31, 2009 and that the Market would be permanently closed.

This set in motion a litany of legal exchanges and protests, supported by a broad-based coalition under the banner of the World Class Cities for All Campaign, which included StreetNet and many others. Most prominent was the cause of the EMM stallholders. The Warwick Junction traders refer to EMM as the “mother market,” a maternal reminder that it has history and that it has gathered around it a significant number of viable informal income generating activities. Asiye eTafuleni became increasingly aware that certain of these informal workers would be directly harmed by the proposed Mall. For example, the bovine head cooks were to be relocated to an obscure and under-serviced location. Others would suffer because their co-dependent networks would be shattered.

As part of their strategy to render the EMM dysfunctional, City officials began harassing the bovine head cooks and then attempted to restrict the activities of the market barrow operators. This proved to be the catalyst that united the community of informal workers outside the EMM. The Legal Resources Centre (LRC, a non-profit resource) agreed to represent the barrow operators in an urgent application to the High Court in the matter that was known as Mbali and others vs eThekweni Municipality and others. The resultant court order secured the right of the barrow operators to trade without permits.



photo: D. Tsoutouras

This was a defining moment with memorable imagery – approximately 150 barrow operators in their working clothes, with many more waiting outside, crowded the courtyard gallery of the colonial era High Court awaiting the award!

The complete record of the legal struggle now shows that this application emboldened the entire community of informal workers and culminated in review applications, where the earlier applications by the EMMTA were joined with those of other informal workers – fruit and vegetable sellers, bovine head cooks, barrow operators, chicken sellers and a flower seller. Asiye eTafuleni worked with the LRC in obtaining all the supporting affidavits and also joined others in providing “expert opinion” in support of the application.

A daunting and comprehensive set of papers were submitted by the LRC, and to date, the City’s legal representatives have not responded. However, on April 7, 2011 the Executive Committee rescinded its 2009 resolution to lease the EMM site to Warwick Mall (Pty) Ltd. Then on August 2011, the City’s legal representatives advised the LRC of the Municipality’s intention to withdraw the review proceedings.

A key component of the legal struggle remains, namely pursuing the interim relief applications with the intention of obtaining a ruling to secure these as permanent orders. This will ultimately influence future case law, but in real terms, it will secure substantial rights for the informal workers in and around the Market. No doubt, the case will also influence future litigation elsewhere in South Africa.

This 2 year struggle represents a significant achievement for informal workers. During this period, the City officials and politicians employed all means to harass, threaten, confuse and alienate the community of informal workers and the Asiye eTafuleni staff. However, the formation of Asiye eTafuleni can now be seen as having been fortuitous. Its staff members had an exceedingly good prior knowledge of the Precinct and the “inner workings” of the Municipality together with exemplary relations with the trading community. This was in stark contrast to what was being presented by the Municipality or the methods and means it had chosen to deploy in its attempt to influence the community. Asiye eTafuleni believes it was in a privileged position to provide a stabilizing and strategic course of action throughout the struggle. This was undoubtedly reinforced by its international and local networks and the professional expertise of the Legal Resources Centre.

It is also extremely significant to note that there are now early indications that the Municipality has conceptualized a thorough and (potentially) inclusive consultation process to establish a new development framework for Warwick Junction. In addition, during the recent local council elections, a respected informal trader was elected to Council, effectively securing favourable political oversight over the Precinct in the immediate future.

Informal workers have secured a victory; they have become commonplace in the corridors of the High Court, and have secured short and long term rights whilst becoming empowered during, and as a result of, the struggle. All these attributes will, however, be tested because Warwick Mall (Pty) Ltd. has resurrected its intentions and is again pursuing its interests by returning to its initial plan to construct the Mall over the railway corridor!

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August 2011*