



CONSTITUTIONAL COURT OF SOUTH AFRICA

Residents, Joe Slovo Community, Western Cape v Thubelisha Homes and Others

CCT 22/08
[2009] ZACC 16

Date of Judgment: 10 June 2009

MEDIA SUMMARY

The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.

This case concerns an application for the eviction of approximately 20 000 residents of the Joe Slovo informal settlement in the Western Cape. The application was brought in the Western Cape High Court, Cape Town, by government agencies responsible for housing on the basis that the eviction was required for the purpose of developing affordable housing for poor people. The High Court held that the government agencies had complied with the requirements of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act) and granted the eviction order.

The applicants appealed this decision to the Constitutional Court. In this Court, the applicants presented the following main arguments: First, they argued that they had consent to live in the Joe Slovo settlement, which consent had not been terminated. Thus, they were not unlawful occupiers within the meaning of the PIE Act and could consequently not be evicted. Second, they argued that the eviction was not “just and equitable” within the meaning of the PIE Act. Finally, they argued that they had a legitimate expectation that 70% of the houses in the new development should be allocated to former and current residents of Joe Slovo. The government agencies assert that the residents occupied Joe Slovo unlawfully, that their eviction is just and equitable and that there was no legitimate expectation of the kind asserted.

Five judgments were prepared in this matter (by Moseneke DCJ, Ngcobo J, O’Regan J, Sachs J and Yacoob J) which all support the same order. A judgment of the Court was prepared to outline the agreed basis upon which all the judges agree that the order should be made. All the judgments accept that by the time the eviction proceedings were launched, the applicants were “unlawful occupiers” within the meaning of PIE, either because they did not have consent to occupy the settlement in the first place, or because that consent was subsequently revoked. Furthermore, all of the judgments agree that, in seeking the eviction of the applicants, the respondents (particularly the national Minister for Housing and the Minister for Housing in the Western Cape) have complied with their obligations to act reasonably in

seeking to promote the right of access to adequate housing contained in section 26 of the Constitution.

Finally, all the judgments agree that the eviction order as crafted in the judgment of the Court is just and equitable. This order is different to the order made by the High Court. It is based on an order suggested by the respondents after the hearing. In particular, it stipulates that no person may be moved unless alternative accommodation is provided to him or her. It also requires individual engagement with households prior to their move. The order provides also that the parties should engage meaningfully on the timetable for the move; and on any other matter on which they agree to move. It also declares that 70% of the low cost housing to be built at Joe Slovo must be made available to former or current residents of Joe Slovo who have applied for and qualify for housing.

In the result, the Court granted an order which provided, amongst other things:

1. Leave to appeal be granted and the appeal was upheld in part. The order of the Western Cape High Court was set and replaced with the order of this Court.
2. The applicants were ordered to vacate the Joe Slovo informal settlement in accordance with the timetable annexed to the judgment.
3. The judgment required the parties to engage meaningfully on whether the timetable established should be changed and on any other relevant matter upon which they agreed to engage.
4. No eviction may take place unless the people evicted are offered alternative accommodation, being temporary residential units consistent with specific requirements set out in the court's order.
5. The respondents were also directed to engage meaningfully with the applicants concerning the details of the relocation, and to provide them with assistance to move their possessions.
6. The respondents were directed to allocate 70% of the "Breaking New Ground" houses to be built at the site of Joe Slovo to the current and former residents of Joe Slovo who apply for and qualify for this housing.
7. The parties were directed to report to the Court on the implementation of this order and on the allocation of permanent housing opportunities to those affected by this order by 1 December 2009.