

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Mkontwana v

Nelson Mandela Metropolitan Municipality and Another

CCT 57/03

Bisset and Others v

Minister of Provincial Affairs and Constitutional Development

CCT 61/03

Transfer Rights Action Campaign and Others v MEC for Local

Government and Housing in the Province of Gauteng and Others **CCT 1/04**

MEDIA SUMMARY

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

The Constitutional Court today gave judgment in three cases concerning the constitutionality of section 118(1) of the Local Government: Municipal Systems Act 32 of 2000 and section 50(1) (a) of the Gauteng Local Government Ordinance No 17 of 1939. Both these sections, in effect, preclude transfer of immovable property unless all electricity and water consumption charges due to a municipality in connection with the property by all occupiers of the property including non-owner occupiers for a specified period are paid. Section 118(1) of the Act requires payment of amounts due for two years before the certificate is issued but section 50(1)(a) of the Ordinance applied to amounts due for three years before the certificate is issued.

The main argument of those who objected to these laws is that they allow for arbitrary deprivation of property and infringe section 25(1) of our Constitution. The South Eastern Cape High Court had held that this objection was good.

Yacoob J, delivering the judgment of the majority holds that the legislation deprives people of property. He holds however that the deprivation is not arbitrary. He holds further that the deprivation is not insignificant and that the purpose of the provision is to place the risk on the owner of property if occupiers did not pay for electricity and water they used. This is an important and laudable purpose that encourages payment as well as a sense of civic responsibility. It is emphasised that municipalities are obliged to provide services in a sustainable way.

The judgment concludes that the consumption charge is connected both to the property and to the owner even if the owner is not the occupier. There is sufficient reason for the deprivation because the purpose is compelling and because it is not unreasonable, in all the circumstances to expect the owner to take the risk if the occupier did not pay. The judgment also holds that all municipalities had to provide owners with copies of electricity and water accounts sent to occupiers if the owners requested these in writing.

Yacoob J also holds that these laws do not infringe the right to equality (section 9 of the Constitution), the right of access to housing (section 26 of the Constitution) or the right of access to courts (section 34 of the Constitution).

Writing separately, O'Regan J concurs with the order proposed by Yacoob J, but for different reasons. The difference relates to the approach to the question whether a particular statutory provision constitutes arbitrary deprivation of property in terms of section 25(1) of the Constitution. O'Regan J holds that a court must consider the extent of the deprivation and evaluate it in the light of the purpose of the legislation that occasions the deprivation, in order to determine whether there is "sufficient reason" for the deprivation. Following this approach, she holds that section 118(1) does not constitute arbitrary deprivation of property.

The order of the South Eastern Cape High Court is therefore set aside.

The majority judgment by Yacoob J was concurred in by Chaskalson CJ, Langa DCJ, Madala J, Moseneke J, Ngcobo J, Skweyiya J and Van der Westhuizen J. The minority judgment by O'Regan J was concurred in by Mokgoro J. Sachs J concurred in both the majority and the minority judgments.