

SACHS J ABRIDGED JUDGMENT (CONCURRING)

Nokuthula Phyllis Mkontwana v Nelson Mandela Metropolitan Municipality

[127] I concur in the judgment of Yacoob J. The judgment of O'Regan J applies the same basic test for arbitrariness, namely, viewed in its specific context is there sufficient reason for the particular deprivation in question? The one difference of note is that in applying the test, Yacoob J places special emphasis on the fact that there is sufficient connection between the deprivation and ownership not to make it arbitrary. O'Regan J, on the other hand, looks at the matter more broadly. Evaluating the relationship between the means employed, namely, the deprivation in question, and the ends sought to be achieved, namely, the purpose of the law being examined, she finds that the deprivation is not arbitrary. In my view, the latter approach subsumes the former. It does so in a conceptually helpful manner, and facilitates the context-specific balancing that the notion of arbitrariness implies. I support the jurisprudential gloss it adds to the judgment of Yacoob J, and concur in it as well.