



CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 173/13

Case CCT 174/13

In the matter between:

**SOUTH AFRICAN INFORMAL TRADERS
FORUM**

First Applicant

AYANDA KELA

Second Applicant

ROSEMARY NDEBELE

Third Applicant

**ONE THOUSAND TWO HUNDRED AND
EIGHT FURTHER APPLICANTS**

Fourth to 1211th Applicants

and

CITY OF JOHANNESBURG

First Respondent

**THE JOHANNESBURG METROPOLITAN
POLICE DEPARTMENT**

Second Respondent

**THE EXECUTIVE MAYOR OF THE CITY OF
JOHANNESBURG, MPHOSISO MASEKO**

Third Respondent

**THE CITY MANAGER OF THE CITY OF
JOHANNESBURG, TREVOR FOWLER**

Fourth Respondent

**THE CHIEF OF THE JOHANNESBURG
METROPOLITAN POLICE DEPARTMENT,
BRIGADIER ZWELIBANZI NYANDA**

Fifth Respondent

**SOUTH AFRICAN NATIONAL TRADERS
ASSOCIATION**

Sixth Respondent

CENTRAL JOHANNESBURG PARTNERSHIP

Seventh Respondent

And in the matter between:

SOUTH AFRICAN NATIONAL TRADERS RETAIL ASSOCIATION	Applicant
and	
CITY OF JOHANNESBURG	First Respondent
THE JOHANNESBURG METROPOLITAN POLICE DEPARTMENT	Second Respondent
THE EXECUTIVE MAYOR OF THE CITY OF JOHANNESBURG, MPHOSISO MASEKO	Third Respondent
THE CITY MANAGER OF THE CITY OF JOHANNESBURG, TREVOR FOWLER	Fourth Respondent
THE CHIEF OF THE JOHANNESBURG METROPOLITAN POLICE DEPARTMENT, BRIGADIER ZWELIBANZI NYANDA	Fifth Respondent
CENTRAL JOHANNESBURG PARTNERSHIP	Sixth Respondent
SOUTH AFRICAN INFORMAL TRADERS FORUM	Seventh Respondent
AYANDA KELA	Eighth Respondent
ROSEMARY NDEBELE	Ninth Respondent
ONE THOUSAND TWO HUNDRED AND EIGHT FURTHER APPLICANTS	Tenth to 1218 th Respondents

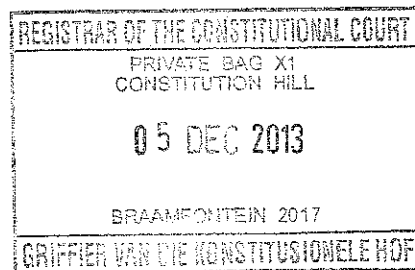
ORDER DATED 5 DECEMBER 2013

CORAM: Moseneke ACJ, Skweyiya ADCJ, Cameron J, Dambuza AJ, Froneman J, Jafta J, Madlanga J, Mhlantla AJ, Nkabinde J and Zondo J.

Having heard counsel, the following order is made:

1. Leave to appeal directly to this Court on an urgent basis is granted.
2. The appeal is upheld.
3. The order of the South Gauteng High Court, Johannesburg, made on 27 November 2013, under case number 43427/13, is set aside.
4. The following order is made:
 - a) Pending the determination of Part B of the application in the High Court, the first to fifth respondents are interdicted from interfering with the trading of the applicants listed in Annexures A and B to this order at the locations they occupied immediately before their removal between 30 September and 31 October 2013.
 - b) The first to fifth respondents are directed to pay the applicants' costs in this Court and in the High Court including, in each case, the costs of two counsel.


MS STANDER
SENIOR REGISTRAR
CONSTITUTIONAL COURT



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CONSTITUTIONAL COURT OF SOUTH AFRICA

South African Informal Traders Forum and Others v City of Johannesburg and Others

South African National Traders Retail Association v City of Johannesburg and Others

CCT 173/13

CCT 174/13

Date of hearing: 05 December 2013

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.

On 5 December 2013 at 09h00 the Constitutional Court will hear urgent applications by the South African Informal Traders Forum and the South African National Traders Retail Association for leave to appeal against an order of the South Gauteng High Court, Johannesburg, in terms of which the applicants' applications for interim relief were struck off the urgent roll.

The applicants represent informal traders who have been trading in the City of Johannesburg for several years. Informal trading rights are regulated and approved in terms of the City's Informal Trading By-laws. Although the applicants allege that they had the necessary authorisation to trade informally, during October 2013 they were removed from their trading locations and had their goods impounded by City officials. They were told that they had been removed as part of "Operation Clean Sweep" with the aim of ensuring that only traders legally entitled to trade in the inner city do so.

The applicants instituted proceedings in the High Court seeking urgent interim relief permitting them to return to their trading locations pending a review of the lawfulness of the City's conduct. The High Court refused to grant them the interim order and struck the matter from the urgent roll for lack of urgency.

In this Court, the applicants argue that they have suffered, and continue to suffer, serious and irreparable harm as a result of Operation Clean Sweep. They further submit that if they are not granted the interim relief they seek, their deprivation will become more severe. They further

contend that the effect of the High Court's order is to breach their rights in terms of section 34 of the Constitution which guarantees access to courts. Finally, the applicants argue that the interim relief they seek is narrow, will not prejudice the City and will do no more than place them in a position to continue with their trading until the full review of the lawfulness of the City's conduct is determined.

The primary basis for the respondents' opposition to this application is that it is not in the interests of justice for this Court, as the final appellate court in the country, to entertain a direct appeal of a High Court order that is discretionary and interlocutory, and has no final effect. While the respondents accept that the applicants may be suffering a loss of income and financial prejudice and insecurity as a result of being prevented from trading they argue that the prejudice is temporary, and is being steadily alleviated upon the verification and reallocation of traders' locations.