CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 99/08
[2009] ZACC 7

ANDREW MACHELE	1st Applicant
VUYISO NDLEYA	2nd Applicant
MBUKENI MAJOZI	3rd Applicant
COLJET OBERDSON NZIMA	4th Applicant
MALUSELA SOLOMON THINDIZA	5th Applicant
NZAMA ENOS MKABELE	6th Applicant
KWATEBOTSE PIET MMOYANE	7th Applicant
PHUMELE NCHOLINE NDAMANE	8th Applicant
DENNIS SIFISO KHOZA	9th Applicant
BHEKIZWE LUCAS BUTHELEZI	10th Applicant
NIBIOT SPHIWE KHOZA	11th Applicant
CLEMENT MASUKU	12th Applicant
GODFREY TSIETSI MOKOENA	13th Applicant
ANDREW MASHELE	14th Applicant
STANLEY JABULANI DUBE	15th Applicant
PETER JOHNY CHAUKE	16th Applicant
JETHRO KGOSIETSILE THABO MOGOTSI	17th Applicant
ANDREW MASHELE	18th Applicant
FUNDETHULE PHUNGULA	19th Applicant

THULANI JOHANNES BUTHELEZI	20th Applicant
OLIBILE JESTA MOKORENA	21st Applicant
FANINI OBED BUTHELEZI	22nd Applicant
WILSON LIDELA NDABA	23rd Applicant
JABULANI ENEST KHOZA	24th Applicant
MAKHUSAZANA ELIZABETH KLOMUKA	25th Applicant
FUNUYISE MVELASE	26th Applicant
DIPHOFE WILLIAM DIPHOFA	27th Applicant
SABELA JAPHITA MNGUNI	28th Applicant
LESOLANG SOLOMON MADISHA	29th Applicant
NOSISAN MDYOGOLO	30th Applicant
PRECIOUS HLENGIWE DLADLA	31st Applicant
ELIZABETH SONTO DLADLA	32nd Applicant
CHARLES MALULEKE	33rd Applicant
MPORO AMOS MOTAU	34th Applicant
PHEKELELA MANGANASI	35th Applicant
SOLANI JAMES MKANSI	36th Applicant
RICHARD MAMAYI DLAMINI	37th Applicant
CHUENE DALSLY MODIKOA	38th Applicant
MAHUBE IRENE MOGODINYANE	39th Applicant
SONOSINI CYRIAL MHOLONGO	40th Applicant
GLORIA KEREEDITSE MOLEME	41st Applicant
NTSWAKE MAUREEN MOLEFE	42nd Applicant

DOMBO EUNICE XIMBA	43rd Applicant
AMOS THOMAS MASILELA	44th Applicant
SYMPATHY SITHABISILE DUBE	45th Applicant
INNOCENT THEMBA MHLANGA	46th Applicant
TAOLA GRACE MILANZI	47th Applicant
LINDA RADEBE	48th Applicant
JOHN MHLANGA	49th Applicant
THEMBISANI ALLEN SITHOLE	50th Applicant
MOTAUTONA JOHN TLADI	51st Applicant
NOKATHOLIA MARGARET	52nd Applicant
PHILLIP NDLOVU	53rd Applicant
PAUL THOMAS HLUBI	54th Applicant
NOMUSA EUNICE KHUZWAYO	55th Applicant
KOBUS MICHAEL MASILELA	56th Applicant
SHELTON DUBE	57th Applicant
MORRIN NOMUSA MAKHAYA	58th Applicant
SIKHANGEZILE GIFT DUBE	59th Applicant
WILSON MOLEPO	60th Applicant
ALBERT NGOBENI	61st Applicant
NTSIKELELO VINCENT CHAUKE	62nd Applicant
SEKGOMA ELIMON MANYAKANE	63rd Applicant
THOKO GLADYS KHUMALO	64th Applicant
THULANI CHARLES MTHEMBU	65th Applicant

SAMSON VELA BUTHELEZI	66th Applicant
ELVIS NGATHSENI NDLOVU	67th Applicant
PHILANI-MA-AFRIKA	68th Applicant
versus	
WILLIAM MAROFANE MAILULA	1st Respondent
TRUST FOR URBAN HOUSING FINANCE	2nd Respondent
J N BHANA & ASSOCIATES	3rd Respondent
REGISTRAR OF DEEDS	4th Respondent
CITY OF JOHANNESBURG	5th Respondent

Heard on	:	3 December 2008
Decided on	:	3 December 2008
Reasons handed down on	:	26 March 2009

JUDGMENT

SKWEYIYA J:

Introduction

[1] This matter was brought to this Court by way of an urgent direct access application for leave to appeal. The application had two parts. The first part, pertaining to an interim order granted by the South Gauteng High Court,

Johannesburg[1] (the High Court), concerned the planned eviction of 62 families from their homes. These families include six people with disabilities, seven elderly people, 79 children (22 of whom receive state child-support grants) and 31 woman-headed households. The total number of people who were to be evicted was approximately 300. The second part, pertaining to the merits, concerned the order made by the High Court on 5 November 2008 which gave the first respondent (Mr Mailula) the right to evict the applicants from Angus Mansions, a block of flats in Johannesburg.

[2] Mr Mailula was the only respondent represented in this Court.[2] He opposed this application. The Trust for Urban Housing Finance (the second respondent) abided the decision of this Court.[3]

[3] On 5 November 2008, Willis J, sitting in the High Court, granted an eviction order in favour of Mr Mailula. At the same time, he granted the applicants leave to appeal to the Supreme Court of Appeal. Mr Mailula then lodged an application for leave to execute the eviction order. This application proceeded before Willis J on 13 November 2008 and was granted. The execution order authorised the eviction to be

[1] On 23 February 2009 the President of the Republic of South Africa brought the Renaming of High Courts Act 30 of 2008 into force with effect from 1 March 2009 (Proclamation R13 GG 31948 of 23 February 2009). Section 1 of that Act sets out the names of High Courts which sit in 13 locations throughout the Republic. This judgment will refer to any High Court by its new name.

[2] Five respondents are, however, cited in these proceedings, namely, Mr Mailula (first respondent), the Trust for Urban Housing Finance (second respondent), JN Bhana & Associates (third respondent), the Registrar of Deeds (fourth respondent) and the City of Johannesburg (fifth respondent).

[3] The Trust for Urban Housing Finance is involved in this litigation by virtue of the fact that it financed the purchase of the property in question, Angus Mansions, by Mr Mailula (the purported owner) – something which I discuss briefly below at [9]-[10].

carried out on 15 December 2008, despite the fact that an appeal against the eviction order was pending in the Supreme Court of Appeal.

[4] On 20 November 2008, the applicants approached this Court on an urgent basis because they believed that the interim execution order was not susceptible to appeal to the full bench of the High Court or the Supreme Court of Appeal. Furthermore, they were concerned that, if the application to this Court was not heard and determined by 15 December 2008, they would be evicted from their homes and rendered homeless before the finalisation of the appeal in the Supreme Court of Appeal regarding the dispute between them and Mr Mailula on the eviction order and on other issues.

[5] The Chief Justice issued directions on 24 November 2008 enrolling the matter for hearing on 3 December 2008. The parties were required to show cause why the relief sought in respect of the execution order should not be referred to the Supreme Court of Appeal to be adjudicated, to the extent that it may be so adjudicated given the provisions of section 20 of the Supreme Court Act 59 of 1959,[4] (Supreme Court Act) simultaneously with the appeal that was being prosecuted in that court by the applicants, pursuant to the leave granted to the applicants by the High Court.

[6] As far as the urgent application is concerned, the applicants requested that the order of the High Court be substituted with an order dismissing the execution

[4] Section 20(1) of the Supreme Court Act states:

> "An appeal from a judgment or order of the court of a provincial or local division in any civil proceedings or against any judgment or order of such a court given on appeal shall be heard by the appellate division or a full court, as the case may be."

application with costs. In effect, they asked that the execution order not be operative pending a determination, on appeal, of the merits of the eviction.

[7] After hearing argument on 3 December 2008, this Court announced the following order on 4 December:

> "[1] After hearing argument in this matter, the Court, on 3 December 2008, decided that the following order be issued:
>
> 1. The order of Willis J in the Johannesburg High Court on 13 November 2008, granting the First Respondent leave to execute an eviction order against 62 of the applicants on 15 December 2008, is suspended pending the final determination of the appeal in the Supreme Court of Appeal, pursuant to leave granted to the applicants by the High Court on 5 November 2008.
>
> 2. The application for leave to appeal against the High Court's order of 13 November 2008 is referred to the Supreme Court of Appeal to be adjudicated, to the extent it may be so adjudicated given the provisions of section 20 of the Supreme Court Act 59 of 1959, simultaneously with the appeal referred to in sub-paragraph 1 hereof.
>
> 3. Costs are to be costs in the appeal.
>
> [2] Reasons for this order will be given in due course."

[8] In this judgment I provide reasons for this order.

The context

[9] The High Court heard two applications simultaneously. The first was made on behalf of the 68th applicant, Philani-ma-Afrika (Philani), which sought to have the sale

of the property in which the 1st – 67th applicants reside, Angus Mansions, set aside on the ground that the sale entered into between Philani and Mr Mailula was invalid.[5] Mr Mailula disputed that the sale was invalid.

[10] Mr Mailula is the purported owner of Angus Mansions. I say "purported owner" because there is a dispute between the parties as to whether he is the owner of the building and thus the party entitled to institute eviction proceedings. This is not an issue that falls to be decided by this Court and is one that will no doubt be canvassed before the Supreme Court of Appeal.

[11] The second application, launched by Mr Mailula, sought to evict the applicants from Angus Mansions. The High Court took the view that, once it had dismissed the first application, the second application should be granted on that basis alone. Having found that the sale was valid, the High Court proceeded to grant the eviction order.

[12] However, in granting leave to the applicants to appeal to the Supreme Court of Appeal against the decision that the sale was valid and against the consequent eviction order, the High Court acknowledged that the matter was complex and involved novel points of law and competing interests. It held that there was a reasonable prospect that another court might come to a different conclusion and that there were reasonable

[5] Philani is a company registered in terms of section 21 of the Companies Act 61 of 1973 under registration number 96/07940/08. It was established by the Gauteng Department of Housing and received a government subsidy from the National Housing Board via the Provincial Housing Board for Gauteng, to buy Angus Mansions for the primary purpose of protecting the security of tenure of the residents. Philani was the registered owner of Angus Mansions before it was purportedly transferred to Mr Mailula. All the members of Philani are residents of Angus Mansions.

prospects of success in an appeal. It seems to me that, in substance, this view pertained to the decision not to set aside the disputed sale of Angus Mansions. The complex issues and competing interests of concern to the High Court seemingly relate to the finding on the validity of the sale, and not to the eviction itself which flowed from the finding on the validity of the sale.

[13] The eviction order seems to have been granted on the basis that Mr Mailula was, according to the High Court, the lawful owner of the property. No regard was had to any of the provisions of the Constitution, in particular section 26,[6] or to the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act[7] (PIE), a statute enacted to give effect to rights and values in the Constitution.

[14] In *Port Elizabeth Municipality v Various Occupiers*[8] this Court said the following:

> "The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) was adopted with the manifest objective of . . . ensuring that evictions, in

[6] Section 26 of the Constitution states:

> "(1) Everyone has the right to have access to adequate housing.
>
> (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
>
> (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions."

[7] Act 19 of 1998.

[8] [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC).

> future, took place in a manner consistent with the values of the new constitutional dispensation. Its provisions have to be interpreted against this background."[9]

[15] The application of PIE is not discretionary. Courts must consider PIE in eviction cases. PIE was enacted by Parliament to ensure fairness in and legitimacy of eviction proceedings and to set out factors to be taken into account by a court when considering the grant of an eviction order. Given that evictions naturally entail conflicting constitutional rights, these factors are of great assistance to courts in reaching constitutionally appropriate decisions.

[16] That the High Court authorised the eviction without having regard to the provisions of PIE is inexcusable. PIE is of great importance given that there are still millions of people in our country without shelter or adequate housing and who are vulnerable to arbitrary evictions.

The questions before this Court

[17] The High Court's decision to grant leave to execute the eviction order formed the basis of the urgent relief sought in this Court. In this respect, this Court had to consider whether it should refer this issue to the Supreme Court of Appeal given that that court was already seized with an appeal against the eviction order and other aspects of the dispute between the applicants and Mr Mailula or whether this Court should itself consider the appeal. In so far as the execution order is concerned, we address three issues only:

[9] Id at para 11.

1. In what circumstances an interim execution order is appealable to this Court;
2. Whether this case raises a constitutional matter; and
3. Whether the applicants have shown that they would suffer irreparable harm.

In what circumstances is an interim execution order appealable to this Court?

[18] The applicants are of the view that the current interpretation of section 20 of the Supreme Court Act[10] precludes the appeal of an interim order to a full bench of the High Court or the Supreme Court of Appeal.[11] They submit, however, that this Court is not bound by the provisions of that Act and can, in terms of its rules, entertain the appeal provided that a constitutional issue is raised. Mr Mailula submitted that interim orders are generally not appealable but during argument conceded that they may be appealed to this Court where a constitutional issue is raised.

[19] This Court had the opportunity to confront the non-appealability of interim orders, albeit in a different context, in *Minister of Health v Treatment Action Campaign (No 1)*[12] (*TAC I*). The issue that arose in that case was whether an execution order, granted where an appeal on the merits was still pending, was appealable.

[10] See n 4 above.

[11] In this regard, the applicants cited Livanos v ABSA Bank Ltd [1999] 3 All SA 221 (W) at 225b-c; South African Druggists Ltd v Beecham Group plc 1987 (4) SA 876 (T) at 880A-B; Tuckers Land and Development Corporation (Pty) Ltd v Soja (Pty) Ltd 1980 (1) SA 691 (W) at 699C; and South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd 1977 (3) SA 534 (A) at 551G-552H.

[12] [2002] ZACC 16; 2002 (5) SA 703 (CC).

[20] In *TAC I*, the North Gauteng High Court, Pretoria had made an order relating to the national and provincial governments' programme in respect of the supply of Nevirapine (a drug which prevents mother-to-child transmission of HIV) to pregnant women living with HIV and to their babies, in public health facilities. It ordered government to make Nevirapine available to mothers and their newborn babies in public health facilities under certain stated circumstances and conditions.

[21] The Minister for Health then sought leave to appeal to the Supreme Court of Appeal against this order, which was granted, thus automatically suspending the High Court order. However, upon application by the Treatment Action Campaign, the High Court ordered that its order be executed in the interim pending the final determination of the appeal in the Supreme Court of Appeal. The interim execution order was then appealed to this Court.

[22] It is generally not in the interests of justice for a litigant to be granted leave to appeal against an interim order of execution. The rationale underlying the non-appealability of interim orders was stated by this Court in the following terms:

> "[T]he effect of granting leave to appeal against an order of interim execution will defeat the very purpose of that order. The ordinary rule is that the noting of an appeal suspends the implementation of an order made by a court. An interim order of execution is therefore special relief granted by a court when it considers that the ordinary rule would render injustice in a particular case. Were the interim order to be the subject of an appeal, that, in turn, would suspend the order."[13] (Footnote omitted.)

[13] *TAC I* above n 12 at para 5.

[23] I pause to note, however, that while the rationale for the non-appealability of interim orders is generally sound, it does not always provide for situations where the injustice that arises falls not on the party in whose favour the interim order or special relief is granted, but on the party who would, in the ordinary course of events, seek to appeal against the interim order. This matter presents one of those situations. Such a concern is acknowledged by the decision in *TAC I* where, after holding that "it will generally not be in the interests of justice for a litigant to be granted leave to appeal against an interim order of execution",[14] the Court continued to say the following:

> "[F]or an applicant to succeed in such an application, *the applicant would have to show that irreparable harm would result if the interim appeal were not to be granted* – a matter which would, by definition, have been considered by the Court below in deciding whether or not to grant the execution order. If irreparable harm cannot be shown, an application for leave to appeal will generally fail."[15] (My emphasis.)

[24] The primary consideration in determining whether it is in the interests of justice for a litigant to be granted leave to appeal against an interim order of execution is, therefore, whether irreparable harm would result if leave to appeal is not granted. The applicant would have to show that irreparable harm would result if the interim order were not to be granted. A court will have regard to the possibility of irreparable harm and the balance of convenience.[16]

[14] Id at para 12.

[15] Id.

[16] Id at para 10.

[25] Two questions therefore arise: Does the appeal concern a constitutional matter and, if so, has the applicant shown irreparable harm so as to justify intervention by this Court? If both these questions are answered affirmatively, the interests of justice would demand appropriate intervention. It is to these questions that I now turn.

Does this case raise a constitutional matter?

[26] Section 167(3) of the Constitution provides that this Court "may decide only constitutional matters, and issues connected with decisions on constitutional matters". Only since the coming into effect of our Constitution has the supreme law of the land protected all citizens.[17] Before then, Parliament was supreme and could enact laws which discriminated against entire communities. Widespread removals of people from one area to another occurred frequently. This history is well known.[18] We now have a Constitution which specifically protects against arbitrary evictions.[19] In my view, an eviction from one's home will always raise a constitutional matter. Further, in the *Jaftha* case, Mokgoro J said that "at the very least, *any measure* which permits a

[17] Section 1(c) of the Constitution states that:

> "The Republic of South Africa is one, sovereign, democratic state founded on the following values:
>
> . . .
>
> (c) Supremacy of the Constitution and the rule of law."

[18] For a history of the legislative scheme under apartheid and the grave injustices perpetrated in respect of land see *Port Elizabeth Municipality v Various Occupiers* above n 8 at paras 8-10; O'Regan "No more forced removals? An historical analysis of the Prevention of Illegal Squatting Act" (1989) 5 *South African Journal on Human Rights* 361; Van der Walt "Dancing with codes – protecting, developing and deconstructing property rights in a constitutional state" (2001) 118 *South African Law Journal* 258; and Van der Walt "Exclusivity of ownership, security of tenure, and eviction orders: a model to evaluate South African land-reform legislation" (2002) *Tydskrif vir die Suid-Afrikaanse Reg* 254.

[19] Section 26(3) of the Constitution states that—

"[n]o one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions."

person to be deprived of existing access to adequate housing, limits the rights protected in section 26(1)."[20] (My emphasis.)

[27] It follows that the relief sought by the applicants raises a constitutional matter. So too does the interim relief which affects their rights. The present matter concerns the proposed execution of an order evicting the applicants from their homes.

Irreparable harm

[28] In *TAC I* this Court further stated:

> "If the applicant can show irreparable harm, that irreparable harm would have to be weighed against any irreparable harm that the respondent (in the application for leave to appeal) may suffer were the interim execution order to be overturned."[21]

In the present matter, this Court had to consider whether the applicants or Mr Mailula would suffer irreparable harm.

Harm to applicants

[29] The applicants have shown that they would suffer irreparable harm if the execution order was carried out. If they were evicted, they would lose their homes. Although Mr Mailula submitted that the applicants were not the "poorest of the poor" and could therefore "rent accommodation tomorrow" if they were evicted, this misses the point. The applicants may not be the "poorest of the poor" but as recipients of

[20] *Jaftha v Schoeman and Others; Van Rooyen v Stoltz and Others* [2004] ZACC 25; 2005 (2) SA 140 (CC); 2005 (1) BCLR 78 (CC) at para 34.

[21] *TAC I* above n 12 at para 12.

housing subsidies they do fall within a stratum of society that is particularly in need of protection. In any event, the sudden loss of one's home is an indignity for anyone, and the protections provided by the Constitution apply regardless of socio-economic status.

[30] The applicants also disputed Mr Mailula's claim that alternative accommodation was readily attainable. Even if such accommodation was available, something about which I have doubts, this fact does not diminish the trauma of losing one's home, especially in the midst of litigation.

Harm to Mr Mailula

[31] The High Court was of the view that Mr Mailula risked losing his building as he was unable to pay the debt owing on utilities to the City of Johannesburg and that this justified the grant of the execution order. In this Court, Mr Mailula claimed that he would suffer irreparable harm because of the possibility of foreclosure by the second respondent (as a result of his outstanding debts on the property) and the increase in costs for his planned renovation of the property. However, during oral argument, counsel for Mr Mailula conceded, properly so in my view, that given the second respondent's indication that it would abide the decision of this Court pending the appeal in the Supreme Court of Appeal, it was highly unlikely that it would foreclose.

[32] In any event, the potential harm to be suffered by Mr Mailula would be minimal and not irreparable. The planned renovation of the property cannot commence until the question of title has been addressed by the Supreme Court of Appeal and Mr Mailula has properly established that he is the lawful owner. The potential harm to Mr Mailula is not irreparable and cannot, in the circumstances, be caused by the continued occupation of the applicants, who it so happens, are paying tenants.

[33] I conclude, therefore, that while the applicants will suffer irreparable harm consequent upon their eviction, Mr Mailula will not suffer any material harm, let alone irreparable harm, if the eviction order is not executed.

The appropriate relief

[34] In the circumstances, it would ordinarily be in the interests of justice to grant an order in favour of the applicants in relation to the order of execution. However, other considerations militate against this course.

[35] Section 38 of the Constitution empowers any competent court, including this Court, to grant "appropriate relief" if approached by a person alleging that a right in the Bill of Rights has been infringed or threatened.[22] It is plain that the eviction of the

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[22] Section 38 of the Constitution states in relevant part:

> "Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights."

In *Fose v Minister of Safety and Security and Another* [1997] ZACC 6; 1997 (3) SA 786 (CC); 1997 (7) BCLR 851 (CC), a case which dealt with the comparable provision in the interim Constitution (section 7(4)), Ackermann J said as follows (at para 19):

applicants will result in the infringement of their rights and that their rights have, at least, been threatened by the High Court's order authorising execution.

[36] At the time of launching the urgent application for leave to appeal against the execution order in *TAC I*, the Minister for Health had already lodged an application for leave to appeal the merits of the decision in this Court and the matter had been enrolled for hearing. This Court was properly seized of the matter. It was in a position to determine the appropriateness of the High Court's execution order, which itself was closely related to its decision on the merits of the matter.

[37] In this case, unlike in *TAC I*, an appeal against the High Court judgment was pending in the Supreme Court of Appeal when the application for leave to appeal was made to this Court. This application is related to the merits of the appeal pending in the Supreme Court of Appeal. It is always undesirable for two courts to be seized with the same litigation and where possible this should be avoided. The applicants approached this Court in relation to the execution order because on their understanding of section 20 of the Supreme Court Act no appeal lay against that order

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> "Appropriate relief will in essence be relief that is required to protect and enforce the Constitution. Depending on the circumstances of each particular case the relief may be a declaration of rights, an interdict, a mandamus or such other relief as may be required to ensure that the rights enshrined in the Constitution are protected and enforced. If it is necessary to do so, the courts may even have to fashion new remedies to secure the protection and enforcement of these all important rights." (Footnote omitted.)

See also *Fose* at para 69. See generally, *United Democratic Movement v President of the Republic of South Africa and Others (African Christian Democratic Party and Others Intervening; Institute for Democracy in South Africa and Another as Amici Curiae) (No 2)* [2002] ZACC 21; 2003 (1) SA 495 (CC); 2002 (11) BCLR 1179 (CC) at para 115; *Du Toit and Another v Minister of Welfare and Population Development and Others* [2002] ZACC 20; 2003 (2) SA 198 (CC); 2002 (10) BCLR 1006 (CC) at para 38 fn 38; *TAC I* above n 12 at para 20; *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* [1999] ZACC 17; 2000 (2) SA 1 (CC); 2000 (1) BCLR 39 (CC) at para 65 fn 91.

to the full bench of the High Court or the Supreme Court of Appeal. The proper constitutional interpretation of section 20 of the Supreme Court Act is a matter which should in the first instance lie with the Supreme Court of Appeal and we think it inappropriate to express any view on it. Nor do we express any view on the merits of the appeal serving before the Supreme Court of Appeal.

[38] In the circumstances this Court decided that the appropriate remedy to be granted to the applicants, at this stage, would be to suspend the execution order. Moreover, it was both appropriate and just that the decision of the High Court granting leave to execute the eviction order be referred to the Supreme Court of Appeal to be adjudicated simultaneously, to the extent possible given the provisions of section 20 of the Supreme Court Act, with the appeal already pending in that Court in respect of the eviction itself.

Costs

[39] The parties were in agreement that costs should be costs in the appeal and there was no reason that this should not be the case.

Order

[40] At the risk of repetition, but for the sake of completeness, I repeat the order handed down on 4 December 2008:

> "[1] After hearing argument in this matter, the Court, on 3 December 2008, decided that the following order be issued:

1. The order of Willis J in the Johannesburg High Court on 13 November 2008, granting the First Respondent leave to execute an eviction order against 62 of the applicants on 15 December 2008, is suspended pending the final determination of the appeal in the Supreme Court of Appeal, pursuant to leave granted to the applicants by the High Court on 5 November 2008.

2. The application for leave to appeal against the High Court's order of 13 November 2008 is referred to the Supreme Court of Appeal to be adjudicated, to the extent it may be so adjudicated given the provisions of section 20 of the Supreme Court Act 59 of 1959, simultaneously with the appeal referred to in sub-paragraph 1 hereof.

3. Costs are to be costs in the appeal."

[41] It was for the reasons expressed in this judgment that this order was made.

Langa CJ, Moseneke DCJ, Mokgoro J, Ngcobo J, O'Regan J, Sachs J, Van der Westhuizen J and Yacoob J concur in the judgment of Skweyiya J.

For the Applicant:	Advocate S Budlender and Advocate C Steinberg instructed by Jerry Nkeli & Associates Inc.
For the First Respondent:	Advocate RG Cohen instructed by Mervyn Joel Smith Attorneys.