

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 26/11  
[2011] ZACC 36

In the matter between:

OCCUPIERS OF SKURWEPLAAS 353 JR Applicants

and

PPC AGGREGATE QUARRIES (PTY) LIMITED First Respondent

CITY OF TSHWANE  
METROPOLITAN MUNICIPALITY Second Respondent

MINISTER FOR HUMAN SETTLEMENTS Third Respondent

MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL  
GOVERNMENT AND HOUSING, GAUTENG Fourth Respondent

Heard on : 13 September 2011

Decided on : 7 December 2011

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JUDGMENT

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YACOOB J:

*Introduction*

[1] The applicants for leave to appeal are about 50 families (occupiers) who unlawfully occupy certain land<sup>1</sup> in the Tshwane Metropolitan Municipality (City). The owner of land,<sup>2</sup> (PPC Quarries) successfully obtained an eviction order against the applicants in the High Court,<sup>3</sup> but the High Court also made certain orders against the City aimed at ensuring that the applicants would be provided with alternative land by that municipality.<sup>4</sup> The applicants challenge the correctness of the High Court order on the basis that it was not just and equitable within the meaning of section 4(6) of the PIE Act<sup>5</sup> for them to have been evicted.

[2] The City was joined before the High Court and has also made submissions to this Court. The Member of the Executive Council for Local Government and Housing, Gauteng (MEC), and the National Minister for Human Settlements (Minister) were joined as respondents in and at the instance of this Court. Affidavits filed on behalf of the Minister and the MEC took the same stance. Written argument was filed on behalf of the MEC alone.

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<sup>1</sup> Described as the Remaining Extent of the Farm Skurweplaas 353, J.R., Tshwane, Gauteng.

<sup>2</sup> PPC Aggregate Quarries (Pty) Limited, the first respondent.

<sup>3</sup> *PPC Aggregate Quarries (Pty) Ltd v The People who intend invading the Remaining Extent of the Farm Skurweplaas 353, J.R., Tshwane, Gauteng and Others* Case No. 12289/2010, North Gauteng High Court, Pretoria, 24 March 2010, unreported. Reasons for the order are dated 5 May 2010.

<sup>4</sup> The order is set out at [4] below.

<sup>5</sup> Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

*Inappropriate citation*

[3] It is necessary, before addressing the issue at the crux of this case, to refer to a matter that is cause for considerable concern. PPC Quarries cited the occupiers as two groups of respondents before the High Court. The applicants before us were the second group of respondents before the High Court. The first two respondents joined in the case before the High Court were cited respectively as “[t]he people who intend invading the Remaining Extent of the Farm Skurweplaas 353, J.R., Tshwane, Gauteng” and “[t]he unknown people who invaded the Remaining Extent of the Farm Skurweplaas 353, J.R., Tshwane, Gauteng”.<sup>6</sup> This description of human beings is less than satisfactory and cannot pass without comment. It detracts from the humanity of the occupiers, is emotive and judgmental, and comes close to criminalising the occupiers. This form of citation should not be resorted to. A more neutral appellation like “occupiers” might well be more appropriate.

*The issues in this Court*

[4] The High Court made the following order:

- “3. That the Third Respondent be ordered to:
  - 3.1 Conduct a full audit of the personal particulars of the unlawful occupiers of the Applicant’s property present thereon at 24<sup>th</sup> March 2010 at 14H00 within a period of seven (7) days hereof and to present it to the Applicant

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<sup>6</sup> This description of the parties is also resorted to in the case of *Golden Thread Limited v People who intend invading Portion R25 of the farm Mooiplaats 355JR Tshwane, Gauteng and Others*, [2010] ZAGPPHC 262; Case No. 3492/2010, 2 March 2010, unreported. The judgment on the application for leave to appeal to this Court in the *Mooiplaats* case is being handed down concurrently with this judgment.

and First and Second Respondents' legal representatives within seven (7) days thereafter;

- 3.2 That the Third Respondent provides the unlawful occupiers referred to in the audit access to land on or before 31<sup>st</sup> May 2010.
4. That irrespective of whether the Third Respondent complies with its obligations referred to in paragraph 3 above or not, that the Applicant will be entitled to proceed and to evict the unlawful occupiers from the Applicant's property known as the Remaining Extent of the farm Skurweplaas 353, J.R., Tshwane, Gauteng on the 1<sup>st</sup> of June 2010.
5. That the sheriff of the above Honourable Court and/or Tshwane Metro Police and/or the South African Police Service be mandated and requested to assist the Applicant in its activities and endeavours in executing the task of evicting the First and Second Respondents from the Applicant's property."

[5] The order has three elements:

- a. the first is that the City is obliged to conduct an evaluation of the residents on the land and to provide these occupiers with land before specified dates;
- b. PPC Quarries is authorised to proceed to evict the applicants on (or after) 1 June 2010; and
- c. the occupiers would be liable to forcible eviction at the hands of the Sheriff even if the City fails to provide alternative land for occupation by the applicants and even if they are rendered homeless pursuant to the evictions.

[6] The City did not seek at any stage to challenge the correctness of the judgment of the High Court in issue. It nevertheless contended before this Court that a municipality had neither the obligation nor the power to spend its own money to make emergency

housing available, and that the province of Gauteng and only the province was obliged to finance emergency housing from its own resources. The attempt by the City to challenge, via the back door, the correctness of the High Court order requiring it to provide land to the applicants is not entertained.

[7] In their written argument, the applicants claimed as their main relief an order setting aside the order of the High Court in its totality on the basis that it was not just and equitable to make the order. By the end of oral argument before this Court however, they indicated their contentment with an order that the applicants be furnished with alternative land by the City and that the eviction order would take effect only after the City had made land available.

[8] PPC Quarries emphasised the importance of its right of ownership and the rule of law. It contended in effect that it had acted reasonably throughout and that there was no basis upon which it should reasonably be burdened to a greater extent. It therefore opposed the application for leave to appeal and supported the order of the High Court. In response to a question from a member of the Court, PPC Quarries expressed its willingness to allow the applicants to remain in occupation of the land for four months after the date of any eviction order that might be made by this Court.

[9] It is now time to decide whether to grant leave to appeal.

*Leave to appeal*

[10] The application for leave to appeal to the Supreme Court of Appeal was dismissed both by the High Court and the Supreme Court of Appeal. Leave to appeal in this Court will be granted if a constitutional matter is raised and if it is in the interests of justice to grant it. The constitutional matter in this case concerns the interpretation and application of the PIE Act, a law enacted by Parliament to give effect to the provisions of section 26(3) of the Constitution.<sup>7</sup> The interests of justice requirement is met. There is a reasonable prospect, as will be seen below, that this Court will conclude that it is just and equitable for the applicants not to be evicted, in the circumstances of this case, until those applicants who will be homeless have been provided with alternative land. It will in the circumstances be unjust not to grant leave. Leave to appeal will therefore be granted.

*Merits*

[11] The owner's contention that it should not be burdened any further and that the High Court order is just and equitable is, as I have said, predicated on the High Court's understanding of the nature of the right of ownership. In *Blue Moonlight*,<sup>8</sup> this Court concluded that the owner's right to property could not be regarded as wholly unqualified in enquiries concerned with whether an eviction would be just and equitable:

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<sup>7</sup> Section 26(3) provides:

"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."

<sup>8</sup> *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another (Lawyers for Human Rights as Amicus Curiae)* [2011] ZACC 33, 1 December 2011, as yet unreported.

“Of course a property owner cannot be expected to provide free housing for the homeless on its property for an indefinite period. But in certain circumstances an owner may have to be somewhat patient, and accept that the right to occupation may be temporarily restricted . . . . An owner’s right to use and enjoy property at common law can be limited in the process of the justice and equity enquiry mandated by PIE.”<sup>9</sup>

[12] There is no evidence that PPC Quarries plans to use the property gainfully in the foreseeable future and there is no reason at this stage, to assume that the City would not take steps reasonably quickly to provide alternative accommodation particularly in the light of the fact that it has never challenged the correctness of the High Court judgment except in the inept, indirect and half-hearted way already alluded to.

[13] And if the City were to provide alternative accommodation within a reasonable time it is neither just nor equitable for those applicants who will be rendered homeless consequent upon the eviction to be thrown onto the streets for an intervening time before they are provided appropriate help by the City. Like in *Blue Moonlight*, the circumstances of this case require a linkage between the date of eviction and the date on which the order obliges the City to provide alternative accommodation. As was said in *Blue Moonlight*:

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<sup>9</sup> Id at para 40.

“The order does not link the date of eviction to a specified date on which the City has to provide the accommodation. Thus, from the date of eviction until the date on which the City provides emergency housing, the Occupiers may find themselves homeless. This may be a long time.

...

The date of eviction must be linked to a date on which the City has to provide accommodation. Requiring the City to provide accommodation 14 days before the date of eviction will allow the Occupiers some time and space to be assured that the order to provide them with accommodation was complied with and to make suitable arrangements for their relocation. Although Blue Moonlight cannot be expected to be burdened with providing accommodation to the Occupiers indefinitely, a degree of patience should be reasonably expected of it and the City must be given a reasonable time to comply. The date should not follow too soon after the date of the judgment.”<sup>10</sup> (Footnote omitted.)

[14] It will be just and equitable to oblige the City to provide alternative accommodation one month before the date of eviction.

### *Costs*

[15] The applicants and the first respondent have been largely successful. The municipality must be ordered to pay their costs.

### *Order*

[16] The following order is made:

1. Leave to appeal is granted and the appeal is upheld.
2. The order of the North Gauteng High Court, Pretoria in case number 12289/2010 is set aside.

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<sup>10</sup> Id at paras 99 and 100.



3. The City of Tshwane Metropolitan Municipality must—
  - (a) gather complete information on the personal circumstances of all occupiers on the land described as Remaining Extent of the Farm Skurweplaas 353, J.R. Tshwane, Gauteng as at 24 March 2010 and on the number of these occupiers who will become homeless after their eviction;
  - (b) present this information to the applicants’ attorneys by 28 February 2012; and
  - (c) provide those occupiers who would be rendered homeless access to alternative accommodation by 30 April 2012.
4. PPC Aggregate Quarries (Pty) Limited is entitled to evict the occupiers from its land on 31 May 2012.
5. The City of Tshwane Metropolitan Municipality is ordered to pay the costs of the applicants and PPC Aggregate Quarries (Pty) Limited including, where applicable, the costs of two counsel in the High Court and this Court.

Mogoeng CJ, Moseneke DCJ, Froneman J, Jafta J, Khampepe J, Nkabinde J, Skweyiya J and Van der Westhuizen J concur in the judgment of Yacoob J.

For the Applicants:

Advocate R Jansen and Advocate H Barnes instructed by Lawyers for Human Rights.

For the First Respondent:

Advocate M Chaskalson SC and Advocate FJ Nalane instructed by Bowman Gilfillan Incorporated.

For the Second Respondent:

Advocate JJ Botha instructed by Mphahlele Attorneys.

For the Third Respondent:

Advocate N Cassim SC and Advocate J Kanyane instructed by the State Attorney.

For the Fourth Respondent:

Advocate T Motau SC and Advocate K Pillay instructed by Mdhluli, Pearce and Mdzikwa Incorporated.