



CONSTITUTIONAL COURT OF SOUTH AFRICA

Nthabiseng Pheko and 777 Others v Ekurhuleni Metropolitan Municipality (Socio-Economic Rights Institute as Amicus Curiae)

**Case No.: CCT 19/11
[2011] ZACC 34**

**Date of Hearing: 15 September 2011
Date of Judgment: 6 December 2011**

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 Tuesday 6 December 2011 the Constitutional Court handed down a judgment concerning the lawfulness of the sudden relocation of hundreds of families that resided in the Bapsfontein Informal Settlement (Bapsfontein) and the demolition of their homes. One of the questions to be decided is whether the circumstances of the case warranted the application of the Disaster Management Act (DMA), which provides for evacuation to a safer area in case of a disaster which threatens to cause death, injury or disease.

Bapsfontein is situated within the jurisdiction of the Ekurhuleni Municipality (Municipality). The Municipality had commissioned investigations into the land, on which the settlement is situated, after complaints about the formation of sinkholes in the area were made. The investigations concluded that the residents of the settlement should be relocated to a safe area as the land was dolomitic. In December 2010 the Municipality declared Bapsfontein a “disaster” in terms of the DMA. The Municipality commenced relocating the residents to a distant area where temporary accommodation was provided for the residents. When the residents resisted relocation, they were forcibly removed and their homes were demolished on the Municipality’s instructions.

On the day of demolition the residents applied to the North Gauteng High Court, Pretoria (High Court), for an urgent interdict to stop the alleged unlawful relocation and demolition of their homes. The High Court held that the relocation was lawful because the residents were evacuated under the DMA to save their lives.

The residents applied for leave to appeal directly to the Constitutional Court. Essentially, they submitted that their relocation and demolition of their homes violated their rights against eviction from their homes or demolition of their homes without an order of court, under section 26(3) of the Constitution, as well as their right to human dignity under section 10 of the Constitution.

The Municipality submitted that the applicants were evacuated under the DMA and that the evacuation did not amount to an eviction and thus a court order was not required.

The amicus curiae, the Socio-Economic Rights Institute of South Africa, argued that the circumstances of the case did not warrant evacuation under the DMA, but required compliance with section 26 of the Constitution and laws governing eviction. Therefore, they argued the Municipality's conduct was unlawful.

In a unanimous judgment, Nkabinde J found that in engaging the DMA to evict the residents of Bapsfontein and demolish their homes without an order of court, the Municipality acted contrary to section 26(3) of the Constitution and outside the powers conferred by the DMA, as the circumstances of the case did not warrant sudden evacuation, as found by the High Court and contended for by the Municipality.

Accordingly, the Constitutional Court granted leave to appeal, upheld the appeal with costs and set aside the order of the High Court. It declared the residents' relocation and demolition of their homes to be unlawful. The Court ordered the Municipality to identify land for the development of housing for the applicants and to report to it by no later than 1 December 2012.