



IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Andrew Machele and 67 Others v William Marofane Mailula and Others

**CCT 99/08
[2009] ZACC 7**

Judgment Date: 26 March 2009

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.

Today the Constitutional Court handed down judgment in a matter in which the applicants sought to prevent the carrying out of an eviction until the validity of the eviction order had been finally determined in the Supreme Court of Appeal.

On 5 November 2008, the South Gauteng High Court, Johannesburg granted an eviction order in favour of the first respondent (Mr Mailula) and against the applicants, who reside in a block of flats in Johannesburg. On the same day, the High Court granted the applicants leave to appeal against the eviction order to the Supreme Court of Appeal. Upon application by Mr Mailula, the High Court, on 13 November 2008, granted an interim execution order which permitted the eviction order to be carried out on 15 December 2008. The effect of this order was that approximately 300 people would be evicted from their homes despite the fact that leave to appeal had been granted to the applicants in respect of the eviction order itself. The applicants sought to appeal directly to this Court, on an urgent basis, because they believed that the nature of the execution order precluded an appeal to a Full Bench of the High Court or the Supreme Court of Appeal.

The Chief Justice issued directions which enrolled the matter for hearing on 3 December 2008.

On 3 December 2008 the Constitutional Court granted an order suspending the planned eviction of the applicants from their homes. The order indicated that reasons for the decision would follow in due course.

The judgment handed down today provides reasons for the order granted on 3 December 2008. Skweyiya J, writing for a unanimous Court, held that an eviction from one's home raised a constitutional issue. The applicants showed that they would suffer irreparable harm if the execution order was carried out; they would lose their homes. Conversely, the potential harm to be suffered by Mr Mailula would be minimal and not irreparable. On this basis, it was in the interests of justice to grant leave to appeal and to stop the planned eviction from being carried out. Moreover, it would be fair and just for this decision to be referred to the Supreme Court of Appeal to be adjudicated simultaneously with the appeal already pending in that Court on the merits of the eviction itself.

The application accordingly succeeded.