



CONSTITUTIONAL COURT OF SOUTH AFRICA

The Occupiers of Saratoga Avenue v City of Johannesburg Metropolitan Municipality and Another

CCT 12/12

[2012] ZACC 9

Date of Hearing: 30 March 2012

Date of Judgment: 30 March 2012

Date of Reasons for Judgment: 24 May 2012

MEDIA SUMMARY

The following explanatory note is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Today, the Constitutional Court handed down reasons for the order it made on 30 March 2012, when it heard and dismissed an application by the occupiers of premises in Saratoga Avenue, Johannesburg. The occupiers' application sought to vary an order made by the Court in *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* on 1 December 2011 (December order).

In the December order, the Court declared the City of Johannesburg's housing policy unconstitutional and ordered the City provide temporary accommodation to those occupiers whose names appear in the document entitled "Survey of Occupiers of 7 Saratoga Avenue, Johannesburg" (survey) on or before 1 April 2012. The occupiers of the Saratoga premises were ordered to vacate the premises by no later than 15 April 2012.

The occupiers brought an urgent application to vary the December order to require the City to provide temporary accommodation to a wider group of people than those on the survey, and for a postponement of the eviction date. Further, the occupiers alleged that the City would not be able to comply with the original order and had not meaningfully engaged with the occupiers in relation to the temporary accommodation.

The reasons for dismissal are two-fold. First, the Court was the inappropriate forum in which to bring the application, as there was no indication in the December order that the Court intended to regulate and oversee the execution of that order. Thus, the December order became an order of first instance and the application challenging that order should have been

brought in the High Court. Second, and in any event, no case of non-compliance or for variation was made out on the papers before the Court, as the application was launched before the City was obligated to provide the temporary accommodation to the occupiers and the City gave an unequivocal assurance and undertaking to the Court that the accommodation would be provided in time.

The Court held that it was not necessary to make a finding whether meaningful engagement was a substantive requirement, since, on the papers, the occupiers would not be rendered homeless. However, it noted that even if meaningful engagement was necessary in cases such as this, the failure by the City and the occupiers to engage meaningfully with the owner of the property, Blue Moonlight Properties, was another reason why the application could not succeed on the merits.