



## IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

**Azeem Hassan Walele v The City of Cape Town and Others with The City of Johannesburg as Amicus Curiae**

**CCT 64/07  
[2008] ZACC 11**

**Date of Judgment: 13 June 2008**

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### **MEDIA SUMMARY**

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*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 setting aside the judgment and order of the Cape High Court, in which that Court dismissed the review application instituted by Mr Walele. The applicant had applied to the High Court to set aside a decision by the City of Cape Town to approve building plans for a four-storey block of flats to be erected on a parcel of land situated in Walmer Estate, Woodstock, Cape Town. The applicant owns the residential property adjoining the property on which the block of flats is to be erected.

The applicant raised numerous objections to the City's approval of the plans. The first major complaint was that the City had failed to comply with the mandatory conditions set out in sections 6 and 7 of the National Building Regulations and Building Standard Act 103 of 1977 (the Building Standards Act). He contended that the City's decision-maker had not considered the effect that the erection of the flats would have on his property. He argued that this violated his right to property protected by section 25 of the Constitution. He secondly asserted that the City had violated his constitutional right to procedural fairness by failing to afford him a hearing prior to the approval of the building plans.

The respondents and the amicus, the City of Johannesburg, argued that the applicant was not entitled to a hearing in relation to his neighbours' building plans and that the City had complied with the Building Standards Act. The High Court dismissed the applicant's claims. The applicant's petition to the Supreme Court of Appeal was also unsuccessful. The applicant applied to this Court for leave to appeal.

Jafta AJ, writing for the majority, (Madala J, Mokgoro J, Ngcobo J, Nkabinde J, and Skweyiya J) held that the City had failed to comply with mandatory procedural requirements as set out in the Building Standards Act when read together with Promotion of Administrative Justice Act 3 of 2000 (PAJA). In balancing a landowner's right of ownership with the rights of the owners of neighbouring properties, he held that the decision-maker must independently apply his or her mind to the question of whether building plans should be approved. The purpose of the recommendation by the Building Control Officer under section 7 of the Building Standards Act is to furnish the decision-maker with grounds for the Officer's opinion. The mere pro forma endorsement and signature by the Building Control Officer did not, therefore, constitute a recommendation as contemplated in the Act and did not provide a sufficient basis for the independent decision required of the decision-maker.

Jafta AJ therefore granted leave to appeal to the applicant and upheld the appeal with costs. He set aside the City of Cape Town's decision to approve the plans and remitted the matter to the City for consideration afresh.

O'Regan ADCJ, in a judgment supported by Langa CJ, Kroon AJ, Van der Westhuizen J, and Yacoob J, found that the word "recommendation" in section 6 of the Building Standards Act should not be read to require a written report from the Building Control Officer. She held that the City's pro forma approach, in which the various departments signed off on the compliance of the plan with applicable laws and regulations, satisfied the requirements of the Act.

O'Regan ADCJ furthermore took the view that the decision-maker, in deciding whether or not to approve the building plans, was entitled to rely upon the recommendation of the Building Control Officer, so long as the decision-maker was also independently satisfied that the requirements of the Act had been met. She found that it is sufficient if the decision-maker is satisfied that the Building Control Officer properly took these factors into account when making the recommendation. She concluded that on the facts of this case, the information placed before the decision-maker was sufficient to enable him to make an informed decision, and that he did make such a decision and this was all that the Act required.

O'Regan ADJC agreed with Jafta AJ that the applicant had not shown that he had a right or a legitimate expectation under section 3 of PAJA to receive a hearing prior to the approval of his neighbours' building plans.

O'Regan ADCJ concluded that the application for leave to appeal should be granted, but that the appeal should be dismissed.