



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Betlane v Shelly Court CC**

**Case No: CCT 14/10**

**Date of Judgment: 24 November 2010**

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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.*

On Wednesday, 24 November 2010 the Constitutional Court delivered a judgment in an application for leave to appeal against the order to evict Mr Betlane from his rented accommodation and the writ of execution which authorised the eviction, as well as the application for direct access. He asked the Court to set aside orders which effectively restrained him from seeking leave to appeal against the eviction order.

Mr Betlane is a former tenant of premises belonging to Shelly Court CC (Shelly Court), the respondent. A dispute arose about the arrear rental. Shelly Court obtained an eviction order against Mr Betlane in the South Gauteng High Court (High Court). In each of the three attempts made by Mr Betlane to set aside the eviction order and the writ of execution, the High Court made an order barring him from appealing against the decision. He approached the Constitutional Court directly to challenge the validity of these orders on the basis that they infringed his right of access to court in terms of section 34 of the Constitution.

Shortly before the matter was heard in the Constitutional Court, Shelly Court abandoned all the restraining orders. The effect of the abandonment was that the barriers which effectively prevented Mr Betlane from appealing were removed. It was for this reason that the Constitutional Court, in a unanimous judgment by Mogoeng J, dismissed the application for direct access to set aside the restraining orders, as well as the application for leave to appeal against the eviction order.

The lawfulness of the writ of execution was challenged on the basis that the writ was applied for, granted and executed while his application for leave to appeal against the eviction order was still pending. The writ was issued by the registrar and not by the Judge as required in terms of the Uniform Rules of Court. For this reason, the Constitutional Court held that the writ was unlawful and set it aside.