



CONSTITUTIONAL COURT OF SOUTH AFRICA

MC Denneboom Service Station CC and Another v Phayane

CCT 71/14

Date of judgment: 3 October 2014

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 amending an order of the Gauteng Division of the High Court, Pretoria.

The respondent, Mr Phayane, sought an order in the High Court evicting the applicants, MC Denneboom Service Station CC (Denneboom) and Mr Chiloane, from immovable property owned by Mr Phayane. Mr Phayane alleged that Denneboom and Mr Chiloane were in unlawful occupation of the property. The applicants contended that, in addition to Denneboom, there were a number of persons residing on the property, including Mr Chiloane and accordingly Mr Phayane had to comply with the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE) in seeking their eviction, which he had not done.

Mr Phayane therefore sought an amendment of his pleadings to exclude residential occupants of the property from the eviction order. The High Court permitted this amendment and subsequently granted an order evicting Denneboom, Mr Chiloane and all those working under them. However, the order also stated that any residential occupants were excluded.

The applicants applied to the Constitutional Court for leave to appeal after their applications for leave to appeal to the full bench of the High Court and the Supreme Court of Appeal failed. In their application they raised a number of arguments, including that the High Court's order authorised the eviction of Mr Chiloane, who is also a residential occupant of the property, without compliance with PIE.

The Constitutional Court decided the matter without hearing oral submissions after considering written representations by the parties. In a unanimous judgment written by Khampepe J, the Court granted leave to appeal on the basis that the High Court's order potentially authorised the eviction of Mr Chiloane as a residential occupant, but refused leave in all other respects. It held that the High Court's order was defective insofar as it could be interpreted to evict Mr Chiloane as a residential occupant, without due compliance with the requirements of PIE. However, the eviction of the non-residential occupants – including Denneboom and all those working for it or working for Mr Chiloane – was justified as PIE does not apply to these occupants. Accordingly, this Court amended the order of the High Court to exclude the eviction of Mr Chiloane as a residential occupant.