



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### Malan v City of Cape Town

CCT 143/13

**Date of hearing: 20 February 2014**

**Date of judgment: 18 September 2014**

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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 in an application for leave to appeal against an eviction order granted by the Western Cape High Court, Cape Town. The appeal concerned the validity of the City of Cape Town's decision to cancel a lease agreement with the applicant, Ms Malan.

In 1979 Ms Malan's late husband concluded a lease agreement with the City in respect of a house which is part of the City's rental housing stock. After her husband's death, Ms Malan took over the lease. She still lives on the property with two of her adult sons, her adult daughter and two minor grandchildren. In October 2008 the City sent Ms Malan a letter stating that it intended to cancel the lease with effect from 31 December 2008, on the grounds that she was in arrears with rental payments and the South African Police Service had reported to the City that illegal activities were being conducted on the property. Ms Malan did not vacate the property on 31 December 2008. In January 2009 the City sent another letter confirming the lease was cancelled and that it intended to evict Ms Malan.

In October 2009 the City launched eviction proceedings in the High Court. The Court held that the lease agreement had been properly cancelled and ordered that Ms Malan be evicted in terms of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act (PIE). Ms Malan was refused leave to appeal to the Supreme Court of Appeal.

Before this Court, Ms Malan argued that the High Court erred in granting the eviction order because the City's cancellation was invalid as it violated her constitutional rights to

equality, dignity and housing. She also contended that the clauses in the lease agreement empowering the City to cancel the lease were against public policy. The City argued that the lease was cancelled because Ms Malan had breached it: she was in arrears with rental payments and had allowed illegal activities to be conducted on the property. It contended that despite being afforded adequate opportunity to rectify her breach, Ms Malan failed to do so. The City argued that, given the demand for public rental housing and the prevalence of drug trafficking within the City, evicting those who abuse their rights to occupy City property is justified – particularly as the City had secured alternative accommodation for Ms Malan in an old-age home.

This Court granted Ms Malan leave to appeal but dismissed the appeal. The majority judgment written by Majiedt AJ (with Moseneké ACJ, Skweyiya ADCJ, Cameron J, Jafta J, Khampepe J and Van der Westhuizen J concurring) concluded that the City validly cancelled the lease because of Ms Malan's arrear rental and the illegal activities conducted on the property. The judgment held that Ms Malan was notified and aware of the illegal activities, but did nothing to prevent them from continuing.

Dambuza AJ (with Froneman J and Madlanga J concurring) would have upheld the appeal. She held that in the context of low-cost housing leases, a lessee must be afforded an opportunity to rectify a breach, both in respect of arrear rental and illegal activities – even if the lessee was aware of these activities. She found that the clauses the City relied on for cancellation could be implemented fairly and were not unconstitutional or against public policy as long as the lessee is afforded this opportunity. Ms Malan was not given this opportunity and therefore the cancellation was premature.

In a separate judgment, Zondo J also found that the appeal should be upheld. He concluded that the City was not entitled to cancel Ms Malan's lease and evict her from her home because no breach of the lease had been shown. Even if there had been a breach of the lease in the form of illegal activities on the property, he held that a fair balance must be struck between the City's right to terminate the lease and its obligation under the Constitution and PIE to take certain procedural steps before cancellation. These procedural steps – which had not been taken – were to raise the issue of the alleged breach of the lease with Ms Malan, hear her side of the story, and give her an opportunity to rectify the breach before cancellation or eviction.