



IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

**Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v
City of Johannesburg, Rand Properties (Pty) Ltd, Minister of Trade and Industry,
and the President of the Republic of South Africa with the Centre on Housing
Rights and Evictions and the Community Law Centre, University of the Western
Cape as amici curiae.**

CCT 24/07

Medium Neutral Citation [2008] ZACC 1

Date of judgment: 19 February 2008

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.

This case started in Johannesburg when that city applied to the Johannesburg High Court for the eviction of more than 400 occupiers of buildings in the inner city on the basis that the buildings were unsafe and unhealthy. The High Court refused to evict the occupiers, but instead ordered the City to remedy its housing programme which was found to be inadequate. The Supreme Court of Appeal upheld the appeal by the City and granted eviction on condition that the City would provide alternative accommodation to those who would be rendered homeless.

Before giving judgment, this Court issued an order requiring the parties to engage meaningfully with each other with a view to addressing the possibilities of short-term steps to improve current living conditions and of alternative accommodation for those who would be rendered homeless. The parties reached consensus that the City would not eject the occupiers, that it would upgrade the buildings and that it would provide temporary accommodation. In addition, the parties agreed to meet and discuss permanent housing solutions. An agreement was reached by the parties and made an order of court by this Court.

In a unanimous judgment by Yacoob J, this Court decides three issues. Firstly, in giving reasons for the engagement order, the Court held that it is essential for a municipality, to engage meaningfully before ejecting people from their homes if they would become homeless after the eviction. This is mandated by various provisions of the Constitution, including section 26(2). People must be treated as human beings. A court must take into account whether there has been meaningful engagement before granting an order evicting people from their homes. The Supreme Court of Appeal should therefore not have granted the ejectment order in the circumstances of this case where there had been no engagement.

Secondly, while the City has obligations to eliminate unsafe and unhealthy buildings, its constitutional duty to provide access to adequate housing means that potential homelessness must be considered by a city when it decides whether to evict people from buildings.

Thirdly, that part of the National Building Regulations and Building Standards Act (the Act) that makes it a crime for people who remain in buildings after an eviction notice by the City, but before any order of court for eviction, is unconstitutional. This sanction may serve a legitimate purpose but is constitutionally acceptable only after a court has ordered the eviction.

In upholding the appeal this Court declared section 12(6) of the Act to be inconsistent with the Constitution and ordered a reading so that the section can be read as including a proviso that the subsection applies only to people who, after service upon them of an order of court for their eviction, continue to occupy the property concerned. The Court further ordered that the proviso shall not apply to cases in which people have already been convicted of contravening the section. It ordered the City to pay the costs of the applicants.