# CONSTITUTIONAL COURT OF SOUTH AFRICA

**Johnson Matotoba Nokotyana and Others v Ekurhuleni Metropolitan Municipality and Others**

**CCT 31/09**
**[2009] ZACC 33**

**Date of Judgment: 19 November 2009**

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## MEDIA SUMMARY

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*The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

This application for leave to appeal against a judgment of the South Gauteng High Court, Johannesburg (High Court) concerns service delivery at the municipal level. It illustrates the dire need for the achievement of socio-economic goals in our country, the crucial but limited role of courts in this regard, the importance of cases that are brought to court being properly conceived and structured and that bureaucratic efficiency and cooperation between spheres of government and communities are essential.

The applicants are members of the Harry Gwala Informal Settlement (Settlement), situated on the eastern edge of Wattville Township. They approached the High Court for an order against the Ekurhuleni Metropolitan Municipality (Municipality) to install (1) communal water taps, (2) temporary sanitation facilities, (3) refuse removal facilitation and (4) high-mast lighting in key areas, pending a decision by the Member of the Executive Council for Local Government and Housing, Gauteng (MEC), on whether the Settlement is to be upgraded to a formal township. The Municipality submitted a proposal for its upgrading to the MEC in August 2006, but a final decision has not yet been taken.

Based on the Municipality's agreement to provide taps and refuse removal services, the High Court ordered it to provide those services. It dismissed the claim for sanitation services and high-mast lighting though.

In this Court, the applicants contend that the High Court failed properly to apply several constitutional and statutory provisions, especially the right of access to adequate housing under section 26 of the Constitution and the National Housing Code. They insist on one ventilated improved pit latrine per household, alternatively two per household. They also insist on high-mast lighting. According to them, these constitute basic sanitation and lighting.

Since the High Court judgment, the Municipality has adopted a new policy in which it offers to provide one chemical toilet per ten families before the end of October and to make efforts to provide high-mast lighting where the infrastructure exists. The MEC, the national Minister of Human Settlements and the Director-General of the national Department of Human Settlements, all of whom were joined pursuant to directions issued by this Court, undertook to assist the Municipality with funding to provide one chemical toilet per four households in the Settlement. They emphasised, however, that they could only offer this to the Settlement, as they were not in a position to extend it to the many similarly placed informal settlements.

In a unanimous judgment by Van der Westhuizen J, the Court held that the High Court was correct to find that Chapters 12 and 13 of the National Housing Code are not applicable, as the former deals with emergency situations and the latter with upgraded townships. The applicants' direct reliance on several constitutional provisions was furthermore found to be vague, insufficiently specified and inappropriate. The Court does not pronounce on the reasonableness of the Municipality's new policy, as it is inappropriate to consider a case so fundamentally changed on appeal. While acknowledging that it is tempting to order the Municipality to accept the assistance offered by the provincial and national governments, in order to improve the lives of at least the applicants before this Court, the Court held that it would not be just and equitable to make an order benefitting only those who caused sufficient embarrassment to the authorities by litigation to motivate them to assist and not the many others in a similar situation.

The delay by the MEC in deciding whether to upgrade the Settlement was found to be the most immediate reason for the dilemma and desperate plight of the residents. As long as the status of the Settlement remains in limbo, little can be done to improve the situation regarding sanitation and lighting. The MEC was thus ordered to take a final decision on the application to upgrade the status of the Settlement within 14 months of the date of the order.

The application for leave to appeal was granted, but the appeal was dismissed.