CONSTITUTIONAL COURT OF SOUTH AFRICA

Ntombizodwa Maphango and Others v Aengus Lifestyle Properties; with Inner City Resources Centre as amicus curie

CCT 57/11
[2012] ZACC 2

Date of Hearing: 3 November 2011
Date of Judgment: 13 March 2012

MEDIA SUMMARY

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.

The Constitutional Court, today, handed down judgment in a case concerning evictions that arose from a rental dispute between tenants of a Johannesburg apartment building and their landlord.

Ntombizodwa Yvonne Maphango [Mgidlana] and fourteen other residents (tenants) of the Lowliebenhof apartment block in Braamfontein challenged the cancellation of their leases by their landlord, Aengus Lifestyle Properties, a property investment company. Each of the tenants had a lease that ran for a specified period and continued automatically unless either the landlord or the tenant terminated it with written notice.

After purchasing and upgrading the building, the landlord exercised its power to cancel the tenants' leases, by giving the required written notice. However, the landlord offered each of the tenants an opportunity to enter into a new lease on the same terms, but at much higher rentals. The landlord said these increases were necessary because the building's costs had long surpassed the tenants' rentals, which were substantially below market rates.

The tenants, in response, lodged a complaint with the Gauteng Rental Housing Tribunal (Tribunal), a body established under the Rental Housing Act (Act). Following an unsuccessful mediation, the matter was referred to arbitration, but the tenants withdrew their complaint after the landlord brought eviction proceedings against them in the South Gauteng High Court (High Court).

Both the High Court and the Supreme Court of Appeal (SCA) found that the Act did not apply and that, under the common law, the landlord was entitled to terminate the lease agreements by relying on the power to cancel them on written notice. The landlord's conduct

in doing so could not be seen as oppressive or unfair. The order of eviction granted by the High Court was thus upheld by the SCA.

The majority of the Constitutional Court, per Cameron J, found that the critical question was whether the landlord was entitled to exercise the bare power of termination in the leases for the sole purpose of securing higher rentals. The Court found that the High Court and SCA failed to give adequate weight to the Act and that the landlord's conduct may have amounted to an "unfair practice". The Tribunal is empowered to determine whether a landlord committed an "unfair practice", and it might accordingly have ruled in the tenants' favour.

The Court reasoned that the Act takes account of market forces as well as the need to protect landlords and tenants. Its most potent provisions are those at the centre of the dispute in this case, namely termination of a lease and rental determinations that are just and equitable.

The tenants, while withdrawing their complaint from the Tribunal, never abandoned their claim that the landlord engaged in an "unfair practice", and persisted in asserting it before all courts. That complaint, and any the landlord might choose to lodge about the rental rate, should therefore be considered by the Tribunal.

This Court therefore postponed the appeal, and gave both parties until 2 May 2012 to lodge a complaint with the Tribunal. It also allowed the parties to seek leave to apply to this Court following the Tribunal's decision. If the parties choose not to lodge a complaint with the Tribunal, the appeal will be dismissed with costs.

In a dissenting judgment, Zondo AJ (Mogoeng CJ and Jafta J concurring) disagreed with the majority's conclusion that the dispute must be evaluated in the light of the Act. He reasoned that remittance to the Tribunal would be unfair to the landlord because the tenants had not adequately pleaded the "unfair practice" issue. Thus, Zondo AJ concluded, that the matter should be dismissed with no order as to costs.

Froneman J (Yacoob J concurring) wrote a concurring judgement. He found that the Act must apply because courts are obliged to consider relevant statutes when deciding whether a lease may be cancelled. Thus, he stated that the correct interpretation of the Act is essential to addressing the dispute between the parties.