



CONSTITUTIONAL COURT OF SOUTH AFRICA

Schubart Park Residents' Association and Others v City of Tshwane and Others

Case CCT 23/12

Date of Hearing: 23 August 2012
Date of Judgment: 9 October 2012

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.

On Tuesday 9 October 2012, the Constitutional Court handed down judgment in a case involving the residents of the Schubart Park residential complex, situated in the City of Tshwane, Metropolitan Municipality (City). On 21 September 2011, following a two week discontinuation of electricity and water supply to the buildings, a number of residents embarked on protest action that rapidly turned violent. The law enforcement authorities attempted to control the situation by removing the residents from one of the blocks and restricting access to the complex. The situation calmed down, but the removal of the residents from the premises continued. By the end of September more than 700 families were either on the streets or in temporary shelter.

On 22 September 2011 the residents unsuccessfully sought an urgent court order against the City for re-occupation of their homes. The North Gauteng High Court (High Court) found the buildings to be unsafe and ordered the parties to engage and reach an amicable agreement on temporary shelter and alternative housing pending the outcome of the enquiry into the possible refurbishment of the complex. The parties were unable to reach a settlement. On 3 October 2011 the High Court made a final order which required the City to provide temporary housing until the complex had been refurbished and to relocate the residents into the complex subsequent to the refurbishment. However, if renovation was not possible and the complex had to be demolished, residents were entitled to alternative accommodation.

The residents of the complex sought leave to appeal against the decision and judgment of the High Court. The High Court and Supreme Court of Appeal refused the applicants leave to appeal the judgment. In the Constitutional Court, the applicants were granted leave to appeal and their appeal was upheld.

In a unanimous judgment, written by Froneman J, the Constitutional Court held that the dismissal of the application for immediate restoration of the residents' occupation of their homes could not serve the purpose of an eviction court order required under section 26(3) of the Constitution. The High Court order should have made it clear that its order operated merely temporarily and that the residents were entitled to return to their homes once it was safe to do so. The High Court orders were set aside and instead the Constitutional Court declared that the High Court orders did not constitute an order for the residents' eviction as required by section 26(3) of the Constitution and that the residents were entitled to occupation of their homes as soon as reasonably possible. To give effect to the declaratory order, the Court directed the residents and the City to engage meaningfully with one another and to report to the High Court on the progress. Further, the City was ordered to pay the residents' costs in the High Court and Constitutional Court.