



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Jabulani Zulu and 389 Others v eThekweni Municipality and Others**

**CCT 108/13**

**Date of hearing: 12 February 2014**

**Date of judgment: 6 June 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 appeal against an order of the KwaZulu-Natal High Court, Durban (High Court).

The appellants are residents of Madlala Village, an informal settlement near Lamontville Township, Durban and have lived there since September 2012. The appellants' alleged that there had been at least 24 incidents of demolition of their shacks carried out by the Municipal Land Invasion Control Unit with the assistance of the South African Police Service (SAPS).

In March 2013 the High Court, Koen J, granted the MEC an interim order authorising the eThekweni Municipality (Municipality) and the Minister of Police, acting through SAPS, to take all reasonable and necessary steps to prevent persons from invading, occupying and/or erecting structures on certain land; remove any materials placed on the land; and dismantle or demolish any structures constructed on the land. This land includes Madlala Village. In bringing that application the MEC had not cited the appellants even though she was aware that they had built their homes or some structures on the land.

In April 2013, the MEC and the Municipality sought confirmation of the interim order before Kruger J in the High Court. The appellants brought an application for leave to intervene in these proceedings. They contended that they had a direct and substantial interest in the interim order issued by Koen J. They argued that they should, therefore, be allowed to intervene and challenge the appropriateness and lawfulness of that order. They also contended that in effect Koen J's order authorised their eviction without compliance with the requirements of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE).

The Municipality and the MEC opposed the intervention application and argued that the order did not affect the appellants because it was aimed at preventing land invasions. Kruger J held that PIE was not applicable and dismissed the intervention application. He also

dismissed a subsequent application by the appellants for leave to appeal to the Supreme Court of Appeal. The appellants unsuccessfully petitioned the Supreme Court of Appeal. They then approached the Constitutional Court for leave to appeal. The Constitutional Court granted leave to appeal; it also admitted Abahlali Base Mjondolo as friends of the Court.

In the main judgment written by Zondo J, in which Moseneke ACJ, Skweyiya ADCJ, Cameron J, Dambuza AJ, Jafta J, Khampepe J, Madlanga J, and Majiedt AJ concur, the Court found that Koen J's order affects the appellants because they live on the property. The Court held that the order authorises in effect the demolition of their homes and their eviction even though they were not cited in the proceedings brought by the MEC. Zondo J further held that the appellants had standing in those proceedings and the High Court should have allowed them to intervene. The judgment upheld the appeal and granted the appellants leave to intervene so that they could challenge the correctness of the interim order. He also took the view that the correctness or otherwise of Koen J's order should not be decided by the Constitutional Court at this stage as it is the subject of pending proceedings in the High Court and it was not on appeal before the Constitutional Court.

In a separate judgment, concurred in by Froneman J, Van der Westhuizen J agrees with the main judgment that Koen J's order is an eviction order that contravenes the protections in PIE, but goes further to find that the order is unlawful and unconstitutional. Van der Westhuizen J reprimands the Municipality for seemingly misinforming the Court as to the nature and use of the order, especially, in the light of the evictions that occurred a day after the hearing. He notes that state parties have a constitutional duty to assist in the administration of justice and must provide reliable submissions.

In another judgment, concurred in by Skweyiya ADCJ, Cameron J, Dambuza AJ, Jafta J, Khampepe J, Madlanga J, and Majiedt AJ, Moseneke ACJ concurred in part with the judgment by Van der Westhuizen J in so far as it is held that the appellants should have been granted leave to intervene based on their direct and substantial interest in the matter. He also agreed with both judgments that the interim order of Koen J is effectively an eviction order and that the conduct of the Municipality is unacceptable, in view of the submissions made in this Court. He, however, held that it is unnecessary for the Constitutional Court to reach and decide the constitutional validity of the interim order.