



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

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Stay At South Point Properties (Pty) Ltd v Mqulwana and Others (UCT intervening as amicus curiae) (1335/2021) [2023] ZASCA 108 (3 July 2023)

Today, the Supreme Court of Appeal (SCA) upheld an appeal with no order as to costs against the order of the Western Cape Division of the High Court, Cape Town (the high court), which discharged a rule *nisi* and dismissed the appellant's application to evict the respondents. The respondents had been called upon to show cause why they should not have been evicted from the student residence which they continued to occupy without the consent of the owner of the property.

The appellant was the owner and the manager of a residence, known as New Market Junction (the residence). It was a residence for students enrolled at the Cape Peninsula University of Technology (CPUT). The respondents were all students who were studying at CPUT during the 2020 academic year. The University of Cape Town (UCT) was admitted as an *amicus curiae* in the appeal. The appellant leased the residence to CPUT for purposes of providing student accommodation. The respondents were allocated accommodation by CPUT in the residence until the end of November 2020. However, they remained in occupation of the residence and refused to vacate, after CPUT gave them notice to do so within 72 hours of their last examination of the 2020 academic year, in terms of its procedures. When the respondents resisted their forcible removal, the appellant approached the high court for an order to evict the respondents from the residence. The appellant relied upon the *rei vindicatio* to do so.

The respondents contended that the appellant was non-suited on the basis that the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) applied to the proceedings brought by the appellant and to the extent that the appellant failed to bring the eviction proceedings in terms of PIE, the application was fatally defective. The appellant contended that the residence did not constitute the respondents' home, and if evicted, they would not be rendered homeless, because they had homes to go to. Thus, the appellant submitted that PIE did not find application.

Although the respondents were no longer in occupation of the residence at the commencement of the hearing in the SCA, both parties agreed that the appeal ought to have proceeded because of the wider and far-reaching implications of the eviction of students from student accommodation. The SCA was also persuaded that it should hear the appeal, because

the rights and duties of students provided with accommodation by CPUT was an issue of recurring controversy.

The central issue in the appeal was whether, given what the SCA has previously held a home to be for the purposes of s 26(3) of the Constitution and its implementation in PIE, the provision of student accommodation by CPUT to its students constituted a home, so as to render PIE of application.

The SCA found that there were three important features of the accommodation afforded by CPUT to the respondents which were relevant. First, the students came from homes in order to study at the university. Thus, eviction did not render the students homeless, as the respondents had homes other than the residence. Second, the provision of student accommodation was for a finite period of time and it had a limited and defined purpose: to accommodate students for the duration of the academic year and thereby assist them to study at the university. Third, those who benefitted from the accommodation knew full well that each year new students came to the university for the very assistance that the respondents had enjoyed. Equity required that those who have had the benefit of accommodation should yield to those who have not.

The SCA thus found that the features of the student accommodation made available to the respondents indicated that that accommodation was not a home. It was a residence, of limited duration, for a specific purpose, that was time-bound by the academic year, and that was, for important reasons, subject to rotation.

The SCA held that it followed that PIE did not apply to the respondents' occupation of the property. The appellant was thus entitled to evict the respondents in reliance upon the *rei vindicatio*. The high court's refusal to order the respondents' eviction was therefore in error. Accordingly, the appeal was upheld.

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