

Ubuntu in eviction cases

By Michal Johnson

In the case of *Resnick v Government of the Republic of South Africa and Another* 2014 (2) SA 377 (WCC) the Western Cape High Court considered the applicability of *ubuntu* in the realm of evictions.

The case was brought on appeal following a decision by the court *a quo* that the unlawful occupiers of a property in Tamboerskloof, Cape Town, including the appellant, be evicted. The order of the court *a quo* was handed down on 29 July 2011 and was to be carried out by the sheriff of the High Court some four months later on 1 November 2011.

Section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) was the focus of the appeal and more specifically subs 1, 2, 7 and 8, which read as follows:

‘(1) Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier.

(2) At least 14 days before the hearing of the proceedings contemplated in subsection (1), the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction.

...

(7) If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.

(8) If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine –

(a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and

(b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a).’

As the first inquiry to be made in terms of this section is whether the occupier is an unlawful occupier, the court considered the appellant's argument that she was not an unlawful occupier by virtue of holding tacit consent. The court following consideration of the judgments of Yacoob J and Moseneke DCJ in *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others (Centre on Housing Rights and Evictions and Another, Amici Curiae)* 2010 (3) SA 454 (CC) found that there was no tacit consent and the appellant fell within the definition of unlawful occupier as contained in the Act.

Following the finding in respect of the first inquiry the court turned to the second inquiry, namely whether, after considering all relevant circumstances, it would be just and equitable to grant an eviction order. It was at this point that the court turned its attention to the principle of *ubuntu*.

Relying on *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) the court said that there is no doubt that the interests of the occupier must be balanced by those interests of the land owner, but that in doing so significant consideration must be given to principles such as 'good neighbourliness and shared concern', '*ubuntu*' as highlighted by Sachs J in the *Port Elizabeth Municipality* judgment.

Prior to considering the application of *ubuntu* the full Bench considered what *ubuntu* entails. In this judgment Davis J and Fortuin J describe *ubuntu* as promoting notions of 'humanity, of human beings who recognise the "other", of values of solidarity, compassion and respect for human dignity'. These descriptions ring true of what has been said of *ubuntu* by the Constitutional Court in matters such as *S v Makwanyane and Another* 1995 (3) SA 391. The court also carefully considered what is required in order to give effect to these principles in a manner that does not allow unlawful conduct to be condoned.

The court found that the eviction was justified on consideration of the nature of the occupation and the purpose for which the property was to be used as weighed against the appellant's attempts to provide for herself and her children, the steps taken by her to obtain an income, and her health.

In order to apply the principles of *ubuntu* the court found that it would be just and equitable for the appellant to be given a substantial amount of time to find alternative accommodation, which in this instance equated to six months from the date of the court order.

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