



CONSTITUTIONAL COURT OF SOUTH AFRICA

Mawethu Lawrence Saziwa and Others v Mhlontlo Local Municipality and Others

CCT 53/24

Date of hearing: 27 February 2025

Date of judgment: 17 March 2026

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, 17 March 2026, the Constitutional Court handed down judgment in an application for leave to appeal against the judgment and order of the Eastern Cape Local Division, Mthatha (High Court). The application was brought by 29 residents of the Mhlontlo Local Municipality in the Qumbu district in the Eastern Cape who alleged that their homes were destroyed or severely damaged following a hurricane which occurred on 8 February 2022 (the weather event).

After the weather event, the applicants sought assistance from their local ward councillors, requesting temporary emergency shelter. The Mhlontlo Local Municipality and its management (Local Municipality) denied the existence of a hurricane and stated that the declaration of a disaster within the meaning of the Disaster Management Act 57 of 2002 (DMA) was required. They also placed responsibility on the O.R. Tambo District Municipality (District Municipality) and the Provincial Department of Human Settlements (Provincial Department). Both the District Municipality and the Provincial Department denied any duty to aid the applicants.

The applicants launched an application in the High Court seeking declaratory and interdictory relief. The High Court treated the matter as a review under the Promotion of Administrative Justice Act 3 of 2000 (PAJA), and found that the applicants had not exhausted the internal remedies available to them and that the litigation was not bona fide as they had failed to prove that a disaster had occurred. Following their dissatisfaction with the order of the High Court, the applicants subsequently approached the Supreme Court of Appeal, which application was unsuccessful.

In this Court, the applicants argued that the High Court mischaracterised their case as a PAJA review and had failed to properly consider the statutory obligations imposed on the respondents. They contended that the respondents all bore constitutional and statutory obligations to assist them even if a disaster had not been declared under the DMA, and their failure to act had violated their constitutional rights.

The Local Municipality persisted with its denial of the weather event that occurred on 8 February 2022 and stated that, in the absence of a declaration of a disaster in terms of the DMA, it was not positioned to assist. They submitted that even if a disaster had been declared, it was the Provincial Department which was mandated to assist the applicants.

The Provincial Department denied that it had any responsibility, claiming that it is only empowered to react to a disaster once a municipality approaches it with a request for allocation of funds to provide emergency housing.

The District Municipality similarly disavowed any responsibility and submitted that the DMA, the Housing Act 107 of 1997 (Housing Act) and the National Housing Code (NHC) placed no obligations on district municipalities to provide emergency housing.

In a unanimous judgment by Opperman AJ, this Court held that the matter clearly engaged its constitutional jurisdiction as it involved a pool of rights that were potentially infringed, including the rights to dignity and housing. Furthermore, the matter involved the responsibilities of various levels of government to provide emergency housing, which required consideration by this Court.

In its analysis of the issues, this Court held that that the High Court had erred in recasting the applicants' case as a review. The applicants had sought declaratory relief based on the failure of the respondents to afford the applicants temporary emergency shelter and a mandamus that they be directed to do so.

This Court criticised the respondents for not conducting any on-site investigation and simply denying the existence of the weather event. This Court therefore held that there was no genuine dispute of fact as to the existence of an extreme weather event on 8 February 2022.

This Court found that a disaster, as contemplated by the DMA, had occurred and, in the absence of a classification of the disaster in terms of the DMA, it was to be treated as a local disaster, for which the District Municipality bore primary responsibility. It noted that the District Municipality was required to deal with the local disaster in terms of existing legislation, which would have been the Housing Act and the NHC.

This Court emphasised that the Constitution promotes co-operative government, and the inaction by the Local and District Municipalities was contrary to the principles of co-operative governance and Ubuntu. It determined that the applicants were entitled to a declarator that the Municipalities' refusal and/or failure to come to their aid after the disaster on 8 February 2022 was unlawful and unconstitutional. Although the applicants had not persisted with relief against the Provincial Department, the latter undertook to co-operate in any order made against the Local and District Municipalities.

In determining an appropriate remedy, this Court considered the affidavits filed by the parties after the hearing in accordance with this Court's directions. The affidavits revealed various disputes of fact, and the matter was remitted to the High Court to determine those disputes. This Court ordered that once the High Court determines which applicants are still in need of temporary emergency shelter, the respondents are to file reports explaining how the needs of the applicants would be addressed. This Court also ordered that the High Court would have the power to make further orders to ensure prompt finalisation of the matter. Finally, this Court ordered the Local and District Municipalities to pay the applicants legal costs that were incurred in this Court, the Supreme Court of Appeal and the High Court. The Provincial Department was ordered to pay its own costs.