



CONSTITUTIONAL COURT OF SOUTH AFRICA

Jabulani Zulu and 389 Others v eThekweni Municipality and Others

CCT 108/13

Date of hearing: 12 February 2014

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 12 February 2014 at 10h00, the Constitutional Court will hear an appeal against the order of the Supreme Court of Appeal dismissing an application for leave to appeal against the decision of the KwaZulu-Natal High Court, Durban (High Court). The High Court, in turn, had refused the applicants leave to intervene in an application by the Member of the Executive Council for Human Settlements and Public Works, KwaZulu-Natal (MEC), the eThekweni Municipality (Municipality) and the Minister of Police (Minister).

The applicants are residents of Madlala Village, an informal settlement near Lamontville in KwaZulu-Natal. They have lived there since September 2012. Their shacks and personal belongings have allegedly been destroyed on 24 occasions by the Municipal Land Invasion Control Unit in the presence of South African Police Services (SAPS) officers.

On 28 March 2013 Koen J in the High Court granted the MEC a provisional order authorising the Municipality and the Minister, acting through the SAPS, to take all reasonable and necessary steps to—

- a) prevent persons from invading, occupying and/or erecting structures on certain land;
- b) remove any materials placed by any persons on the land; and
- c) dismantle or demolish any structures that may be constructed on the properties.

On 10 April 2013 when the provisional order came before the High Court for confirmation, the applicants launched an application for leave to intervene and to oppose confirmation thereof. The applicants contended that the effect of the order was to permit eviction of people and demolition of any structures erected by them without court supervision and without inquiry into the circumstances under which the persons concerned lived. On the same day Kruger J dismissed the application to intervene on the basis that the order was not an eviction order but only designed to prevent those who sought to take occupation on the

property. The applicants therefore had no standing to intervene. The provisional order was confirmed.

Before this Court, the applicants contend that their constitutional right regarding housing under section 26 of the Constitution and the attendant protections under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE), are at issue. They insist in their argument that the order permits eviction without judicial oversight and enquiry into their circumstances. They argue that this matter raises a constitutional issue of “whether anybody occupying vacant land illegally, no matter how short the period of occupation, is entitled to the benefits of section 26 of the Constitution”, as well as protections contained in PIE.

The application before this Court is opposed by the Municipality, the MEC and the Minister (the respondents). They contend that no relief was sought or granted against the appellants in the application before the High Court as the said order was directed at preventing land invasions subsequent to the date on which the order was granted. Moreover, the respondents argue that the rights in terms of section 26(3) of the Constitution may be limited where persons invade land illegally in order to coerce the State into providing housing to them on a preferential basis.

The Abahlali Basemjondolo Movement SA (Abahlali) successfully applied for leave to be admitted as friends of the Court (*amicus curiae*) in the proceedings before this Court. Abahlali is a national association of shack dwellers which works to improve the lives and living conditions of shack dwellers. It contends that the order is plainly an eviction order which violates the Constitution. Further, Abahlali argues that the order should be considered a nullity because it permits self-help, acts against unnamed and unknown persons and serves as an interdict against the public at large.