



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

Date: 20 October 2025

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

The City of Johannesburg Metropolitan Municipality and Another v Seale and Another
(121/2024) [2025] ZASCA 156 (20 October 2025)

The Supreme Court of Appeal (the SCA) today dismissed an application for leave to appeal against an order of the Gauteng Division of the High Court, Pretoria per Du Plessis AJ (the high court), which interdicted the eviction of persons from property adjacent to the Modderfontein Road in Johannesburg. The high court had also ordered the City of Johannesburg Metropolitan Municipality (the City) to restore of possession of shelters that had been demolished by the City.

The case came before the SCA by way of a referral of an application for reconsideration of the refusal of a petition in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 (the Act). On 29 November 2023, two orders were issued dismissing the application for leave to appeal by the Judges assigned to deal with the petition. The first order dismissed the application on the basis that the requirements for special leave to appeal were not met, whereas the application was in fact one for leave to appeal against an order of the high court sitting as a court of first instance. A second order, ostensibly correcting the first, was issued when the error was drawn to the Registrar's attention.

The SCA held that the jurisdictional requirements for reconsideration consisted in the fact that the issue of the second order, ostensibly to correct the error without any explanation, did not fall within the recognised exceptions permitting the correction of orders issued by a court. Reconsideration of the original application for leave to appeal to avoid a grave injustice was therefore warranted.

On 14 and 21 July 2023 the City had embarked upon the demolition of temporary housing structures erected on property it owned adjacent to the Modderfontein Road in Johannesburg. During the course of the operation building materials were removed and, in some instances, destroyed. The respondents, comprising some 292 individuals, brought an urgent application in the high court. They claimed a declarator that the action constituted an unlawful eviction. They also sought compensation by way of constitutional damages. They also claimed further

relief to vindicate their rights to housing in Part B of the notice of motion which was to be adjudicated in due course.

The City opposed the urgent relief. It did so on the basis that its actions did not constitute an eviction of unlawful occupiers. It claimed that its conduct was aimed at preventing the unlawful invasion and occupation of the property as authorised by a court order, issued by Sutherland J in the Johannesburg High Court (the Sutherland J order).

The high court dismissed the defence. It held that the demolition of the structures and the removal or destruction of building materials used by the occupants, constituted an unlawful eviction of the occupiers. It held that the Sutherland J order had been issued in unrelated proceedings against unidentified persons. The order did not authorise the actions of the City carried out against the occupiers in the present application. It therefore granted the declarator as sought; issued an interdict restraining the City from further demolition of structures; and ordered the City to restore possession of the structures demolished by construction of temporary shelters for the affected persons in need of such shelter. It issued an order, in the alternative, that to the extent that the City was precluded from or unable itself to construct the temporary shelters it should pay to the persons who required such shelters an amount of R1500 to enable them to purchase materials to rebuild their own shelters. The issue of constitutional damages was deferred for consideration together with the relief sought in part B of the application.

The high court refused the City leave to appeal against its order. This prompted the City to file an application for leave to appeal with this Court. As indicated that application was dismissed on 29 November 2023. It is now the subject of reconsideration in terms of s 17(2)(f) of the Act.

In seeking leave to appeal, the City explained that the Sutherland J order, which was issued in March 2017, had been sought because the property adjacent to the Modderfontein Road had been the target of repeated land invasions and illegal occupation. The property was designated for low-income housing development, which had been frustrated because of the land invasions. An application had been brought against persons who had occupied the property and against persons who then intended to occupy the property, to permit the City to take preventive action to stop the unlawful land invasions. The City contended that the order applied, prospectively, to all the persons who attempted to invade the property. On this basis, the City submitted that it authorised preventive action of the sort that had been carried out on the 14th and 21st of July 2023. The City submitted that the high court was not entitled to ignore the Sutherland J order and that in doing so it had erred. The high court ought to have found that the Sutherland J order was valid until set aside and that it indeed authorised the City's action. The City argued that there was a reasonable prospect that another court would come to a different conclusion on appeal.

The SCA found that the high court's conclusion that the respondents had been unlawfully evicted from the property was unassailable. It held that the Sutherland J order, in its terms, did not authorise the demolition and destruction of structures already erected. It found that whereas the Sutherland J order might have been warranted in the particular circumstances of the case that was then before the court, it could not serve as a lawful order against persons who were not parties to that case. The SCA expressed grave doubt that an order against nameless and unidentified persons could constitute a competent order since it would amount to a form of edict applicable to unnamed persons who were not parties to the litigation.

In relation to the order for payment of an amount of money in lieu of construction of temporary structures by the City, the City argued that this amounted to constitutional damages which the respondents had specifically abandoned at the stage that the application for urgent relief was

argued. The SCA rejected the argument. It held that this the order did not comprise constitutional damages. The high court had stated this in unequivocal terms. It had explained that the order was part of its order requiring restoration. It had, furthermore, qualified the circumstances in which such payment would be required.

The SCA therefore found that there was no reasonable prospect of success on appeal and that there was no other compelling reason why leave to appeal should be granted. Since two conflicting orders had previously been issued dismissing the application for leave to appeal, these had to be set aside. It replaced these with an order dismissing the application for leave to appeal with costs. The SCA ordered the City to pay the costs of the application for reconsideration since it had achieved no substantial success in the application.

~~~~ends~~~~