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: 29 October 2026

Status: Immediate

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Drakenstein Municipality v Eric Lolo and Others (625/2023) [2026] ZASCA 145 (29 October 2026)

Today, the Supreme Court of Appeal (SCA) upheld an appeal by the Drakenstein Municipality against a judgment of the Western Cape Division of the High Court, Cape Town (the high court).

The issues in the appeal were whether the municipality had breached its statutory and constitutional obligations to take reasonable measures to provide emergency housing for its residents, particularly, the first and second respondents, Mr Eric Lolo and his daughter Ms Berrenice Fransman who lived with Ms Fransman's minor son, and to make reasonable provision from its own financial resources for that purpose. A related issue was whether section 5.2.2 of the municipal housing selection policy was constitutionally invalid as excluding rural residents and workers from benefitting from the municipal formal housing scheme.

Mr Lolo had been living and working on Farm Langkloof Roses in Wellington, a rural area since, at least, 1996.[1] In 2006 Mr Lolo registered on the housing waiting list with the Drakenstein Municipality. It is not clear from his affidavit what happened after his registration. In November 2013 he was retrenched from work on the farm. In August 2015 the farm owner Green Willows instituted eviction proceedings in the Drakenstein Magistrates' Court against him and those who lived with him, including Ms Fransman. The Municipality was cited in the eviction proceedings as the authority responsible for providing Mr Lolo with emergency housing on his eviction.

In response, the municipality filed an affidavit in which it stated that it did not have emergency housing for Mr Lolo and his family readily available. It also filed a report setting out the state of municipal housing within its area of administration. It alluded to a large increase in evictions from the farms in the area and the challenges it was having in providing emergency houses for the people who were evicted. It also set out the efforts it was making to secure land in order to provide both emergency and formal housing. The municipality also stated that although it did not have readily available emergency accommodation, it would make arrangements to provide emergency accommodation to evicted people.

The high court however, found that the municipality had failed to discharge its obligation to provide both emergency and formal housing to its residents. It also found that the municipality had failed to make provision, from its own funds (rather than the allocation from the Provincial Administration) for emergency housing. The court also found that section 5.3.2 of the municipality's Housing Selection Policy deprived rural residents who had been on the waiting list for the municipal housing for a substantial period of time from benefiting from the 20% housing allocation reserved for rural residents in all municipal housing projects. The high court then issued declarators of breach of constitutional obligations in relation to the non-compliances it had found.

The SCA upheld the appeal against the judgment of the high court. It found that no proper case had been made on Mr Lolo's founding papers for the relief granted by the high court. The SCA found that Mr Lolo had not been

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[1] Mr Lolo first worked on the farm from 1976 until 1983 and then again from 1996 until his retrenchment in 2013.

aware when instituting the proceedings that the municipality did have an emergency housing policy and that such policy in fact provided that the municipality would also contribute its own financial resources to complement those of the provincial government in the provision of housing. On becoming aware of the policy then his case changed to that of failure to provide formal housing. The SCA also found that there was no basis for the finding by the high court that the municipality had to provide its own funding for housing, exclusive of provincial contribution. The principle was only that municipalities cannot avoid providing houses on the basis that this is a provincial responsibility. It also found that the high court had not considered factual evidence tendered by the municipality on all the efforts it had undertaken to provide since the institution of the high court application, including the provision of financial resources for those projects and evidence of emergency aid housing projects built.

As a result, the SCA upheld the appeal and set aside the high court's order.

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